

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6074**

**PETITION OF MARTHA MARMO-FERNANDES**

(Hearing held July 13, 2005)

**OPINION OF THE BOARD**

(Effective date of Opinion, September 8, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioner proposes the construction of a new single-family dwelling that requires a variance of ten (10) feet as it is within fifteen (15) feet of the established front building line. The required established building line is twenty-five (25) feet.

Steven A. Robins, Esquire; Patrick L. O'Neil, Esquire; and Curt Schreffler of Cass Engineering, represented the petitioner at the public hearing.

The subject property is Lot 44, Block 10, West Chevy Chase Heights Subdivision, located at 4619 Chase Avenue, Bethesda, Maryland, 20814, in the R-60 Zone (Tax Account No. 03472863).

Decision of the Board: Requested variance **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes the construction of a new single-family dwelling.
2. Mr. O'Neil stated that the subject property is a corner lot located at the intersection of Tilbury Street and Chase Avenue. Mr. O'Neil stated that as a result of a resubdivision, Lot 41 in Block 10 is considered an interior lot by Montgomery County zoning regulations. Mr. O'Neil stated that because Lot 41 fronts on a side street, Tilbury Street, the petitioner's lot must meet a 25 foot established front building line requirement. Mr. O'Neil stated that the petitioner's lot is the only lot in the neighborhood required to meet this standard, instead of a 15 foot streetline setback. Lot 41, after its resubdivision in 1977, is 75,000 square feet. See, Exhibit No. 16 [resubdivision of Lot 41].

3. The petitioner testified that currently located on her lot is an existing house and a detached garage. The petitioner testified that the garage is a two-car structure, with access from Tilbury Street. The petitioner testified that she proposes to demolish the existing house and reconstruct a new single-family home. See, Exhibit No. 15 [rendered site plan].
4. The petitioner testified that west of her lot is a public park; east of the lot is a single-family home; and catty-corner to her lot is a garden apartment structure. The petitioner testified that the lot directly behind her lot was subdivided and that the house on the lot, Lot 41, faces Tilbury Street. The petitioner testified that Lot 41 is the only house in the neighborhood that fronts on Tilbury Street, and that because of the orientation of this house on the lot, the new construction on her lot must meet two established front building line requirements. See, Exhibit No. 8(a) [large zoning vicinity map].
5. Mr. Schreffler testified that the original subdivision for West Chevy Chase Heights was recorded in 1916 and that the subdivision was made up of lots 30 feet wide, with property owners owning two lots. Mr. Schreffler testified that at that time property owners built houses across property lot lines. Mr. Schreffler testified that Exhibit No. 12 [neighborhood map – West Chevy Chase Heights] shows the neighborhood and that the dashed lines represent the joint ownership of pairs of lots.
6. Mr. Schreffler testified that many of the properties in the neighborhood have officially combined two lots through the subdivision process. Mr. Schreffler testified that the boundaries for the petitioner's neighborhood are Chase Avenue at its southern boundary; Maple Avenue at its northern boundary, Lynbrook Drive at its eastern boundary, and Tilbury Street and Wisconsin Avenue at its western boundary.
7. Mr. Schreffler testified that the subject property underwent a minor subdivision in 2005 that combined Lots 21 and 22 into Lot 44. Mr. Schreffler testified that the subject property has frontage on Tilbury Street and Chase Avenue and that the petitioner's lot along with Lot 41, adjoin an unimproved, public alley. Mr. Schreffler testified that the Department of Permitting Services (DPS) has determined that the petitioner's lot must meet two established front building lines.
8. Mr. Schreffler testified that there are 39, 60 foot wide, corner lots in the neighborhood and that DPS has applied the 15 foot streetline setback to 38 of the 39 lots. Mr. Schreffler testified that the petitioner's lot is the only lot in the neighborhood that must meet an established building

line requirement for a side street. Mr. Schreffler testified that the existing house is sited in the setback and that it is currently set back 10 feet from Tilbury Street. Mr. Schreffler testified that the proposed house would be set back 15 feet from Tilbury Street and that it would be located further from the street than the existing house.

9. Mr. Schreffler testified that if the established building line requirements were applied to the property, the resulting footprint for the house would be 27 feet wide. Mr. Schreffler testified that the other corner lots in the neighborhood have a house footprint that is 37 feet wide. Mr. Schreffler testified that applying the required established building line of 41.3 feet from Chase Avenue and the 25 foot established building line setback from Tilbury Street to the lot results in a 1,053 square foot buildable envelope, which is 17 or 18% of the total lot area.

### **FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioner's property is a corner lot located at the intersection of Chase Avenue and Tilbury Street. The property has an existing house that is currently located 10 feet from Tilbury Street. The petitioner proposes to demolish the existing house and construct a new house. DPS requires that the new house meet a 41.3 foot established front building line setback at its Chase Avenue boundary and a 25 foot established front building line setback at its Tilbury Street boundary.

The subject property is located in West Chevy Chase Heights Subdivision, which has 39 corner lots within the subdivision. DPS has determined that that 38 of the 39 corner lots meet a 15 foot streetline setback for the side street that adjoins those lots. DPS has determined that the petitioner's lot must meet a 25 foot established building line at its boundary that adjoins a side street. The application of the established building line setbacks to the subject property will result in a buildable envelope that would be 27 feet in width.

The Board finds that these are exceptional circumstances peculiar to the petitioner's property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owner.

*(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the construction of a new single-family dwelling is the minimum reasonably necessary.

*(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

*(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the new construction, as proposed, will be located further from street than the existing house and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of ten (10) feet from the required twenty-five (25) foot established front building line for the construction of a new single family dwelling is granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of her witness and the representations of her attorneys, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) through 4(f), 5(a) and 5(b) and 15.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Wendell M. Holloway, seconded by Donna L. Barron, with Louise L. Mayer, Angelo M. Caputo and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 8th day of September, 2005.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.