

CASE NO. A-4704  
Appeal of Middleburg Associates, LLC  
(Hearing held March 8, 2004)

DECISION OF THE BOARD OF MANAGERS

This proceeding is an application for a variance pursuant to Section 8-12(b) of the Chevy Chase Village Code. The applicant is the contract purchaser of Lots 24 and 25, Block 7, in the Chevy Chase, Section 1A Subdivision. The applicant proposes to resubdivide Lots 24 and 25 to enlarge Lot 24 by taking a 13-foot wide strip of land from the southwest side of Lot 25 and adding it to Lot 24. This reallocation would reduce the frontage of Lot 25 from 75 feet to 62 feet. The enlarged Lot 24 would be known as Lot 28 and the reduced Lot 25 would be known as Lot 29.

The applicant seeks a variance from the requirements of Section 8-17(e) of the Village Code which provides: "No permit shall be issued for the construction of any dwelling house upon a lot having a frontage of less than seventy-five (75) feet and an area of less than seven thousand five hundred (7,500) square feet; provided, however, that these limitations shall not apply to any lot having a frontage of less than seventy-five (75) feet and an area of less than seven thousand five hundred (7,500) square feet which is embraced in any subdivision of lots recorded prior to July 12, 1982".

The property that is the subject of this variance request would be known as Lot 29, Block 7, in the Chevy Chase, Section 1A

subdivision. The subject property is located in the 5400 block of Grove Street, Chevy Chase, Maryland 20815, in the R-60 zone.

Notice of the hearing was mailed to all abutting property owners, posted at the Village Hall and posted on the property on February 24, 2004.

The applicant submitted an application, a site plan showing existing conditions, a proposed resubdivision plan, schematic drawings showing the proposed footprints of houses, garages and a driveway to be constructed on proposed Lot 28 (formerly Lot 24 and part of Lot 25) and proposed Lot 29, as well as a statement in support of the application. A copy of the covenants applicable to the subject property were received for the record.

Photographs, taken by the Village staff, showing existing conditions at the subject property were also presented for the record. A letter was received from Bliss and Tom Ryan of 5414 Grove Street supporting the application on the condition that Grove Street is not extended. Also, a letter of support was received from the Ryans and the residents of five other nearby properties.

At the hearing, Bob Moesle appeared on behalf of Middleburg Associates, LLC, and explained the basis for the applicant's request. Mr. Moesle stated that existing Lot 24 is oddly shaped with a curved frontage along Grove Street. He testified that, due to the unusual shape, there is a limited development envelope on Lot 24. He explained that the limited development envelope would require that any house built on Lot 24 be located near the

rear setback line with a front entrance garage. Mr. Moesle asserted that this type of development would have detrimental effects by placing the two-story main house closer to the properties to the rear of Lot 24, severely restricting the size and functionality of the rear yard, altering the streetscape along Grove Street and requiring that the driveway be extended from the end of the existing pavement on Grove Street to the front of the new house to be constructed on Lot 24. It was noted that both Lot 24 and Lot 25 front on the buffer zone between Chevy Chase Village and the Chevy Chase Center commercial development in the Friendship Heights Central Business District.

Also, it was noted that the Village has taken the position that preservation of the buffer area, to the maximum extent feasible, is a high priority for the Village and its residents.

Mr. Moesle explained that, while the proposed resubdivision would reduce the width of Lot 25 (proposed Lot 29 would have a 62-foot width), it would allow the development on new Lot 28 to be more in accordance with the goals of the Chevy Chase Village Building Code and the public interest than would be possible for development on existing Lot 24. Mr. Moesle testified that if the lots are resubdivided as proposed, the house on new Lot 28 can be located closer to the southeast frontage of the lot than would be possible on old Lot 24. Such a location closer to the southeast frontage would allow a larger rear yard which would benefit the residents of Lot 28 and provide greater buffering between the main house on Lot 28 and the residences to the northwest.

Mr. Moesle testified that if the variance is granted and the resubdivision is accomplished, the applicant would construct a joint driveway along the property line between new Lots 28 and 29. This would shorten the length of the driveway in the Grove Street public right of way so that the center of the driveway would enter the subject properties less than 62 feet from the end of the existing pavement of Grove Street. Mr. Moesle explained that if the variance is denied, the driveway would have to travel through the Grove Street right of way (buffer zone) for the full 75-foot width of Lot 25 and an additional length along the frontage of Lot 24 until the point where it would turn toward the front-loading garage of a house on Lot 24. Mr. Moesle testified that the joint driveway would be 15 feet wide, would be located between the two houses to be constructed and would lead to two one-story two-car garages at the rear of Lots 28 and 29. Thus, the buildings closest to the neighbors to the northwest would be one-story garages rather than two-story main houses.

By constructing the house on Lot 28 closer to the southeast frontage than would be possible on Lot 24, the new house on Lot 28 could be constructed closer to the established building line along Grove Street, which would maintain the character of the neighborhood, according to Mr. Moesle. He explained that a house constructed on Lot 24 would alter the streetscape because it would be set back farther from Grove Street than other existing houses and would noticeably alter the appearance of the Grove Street streetscape.

The letter of support from the neighbors stated that the neighbors support the application for two main reasons. One is the representation by the applicant that maintaining the 75 foot frontage on Lot 25 would require the new driveway to extend considerably farther down the length of the buffer zone in order to reach the garage of the new home on Lot 24. The neighbors expressed the concern that such a driveway would have a significant negative visual impact on the overall aesthetics of the buffer zone. Also, the neighbors expressed the concern that a longer driveway would increase the safety risks associated with cars that may speed down Grove Street in the belief that Grove Street extends beyond the crest of a hill which peaks at the end of the existing pavement.

The second major concern for the neighbors is the visual impact of the proposed houses. The neighbors are concerned that, in the absence of a variance, the applicant will construct the two houses farther back on the lots than the other existing homes on Grove Street. The neighbors believe that this discontinuity in the setbacks will be immediately apparent to the eye. The neighbors noted that only one of the six developed lots on the 5400 block of Grove Street meets the 75-foot frontage requirement, and that three of the developed lots have a 60-foot frontage. Therefore, they concluded that the 62-foot frontage proposed by the applicant would not alter the character of the neighborhood.

Finally, the Grove Street neighbors expressed concern that construction of new homes farther back on Lots 24 and 25 would have a greater visual impact on the properties to the northwest, which have Center Street addresses, and construction in such a location would require the removal of a larger number of trees, to the detriment of everyone.

No testimony or other evidence in opposition to the application was submitted.

Based upon the testimony and evidence of record, the Board makes the following findings in connection with this matter:

1. This case presents a unique situation that results from a combination of very unusual characteristics of Lots 24 and 25.
2. As a result of the realignment of Grove Street and Belmont Avenue, which occurred in 1950, Lot 24 is generally triangular in shape with the longest property line being a curved front lot line abutting Grove Street.
3. Most properties in the Village are rectangular in shape.
4. Because the entire property line along Grove Street is considered a front lot line, Lot 24 is subject to an unusually small and triangularly shaped footprint for development.

5. Lots 24 and 25 front on the unpaved portion of Grove Street, which has been dedicated as a buffer zone in accordance with the Friendship Heights Sector Plan, the binding elements of rezoning Case G-775, and a contractual agreement between Chevy Chase Village and the Chevy Chase Land Company.

6. It has been determined by the Village Government, as well as the Montgomery County Planning Board and the Montgomery County Council, that the establishment and preservation of the buffer area, to the maximum extent feasible, is in the public interest and is a high priority in promoting the public welfare.

7. If the variance is granted, the applicant would be able to construct a much shorter driveway in the Grove Street public right of way and thus disturb the buffer area to a lesser extent than if the variance is denied.

8. Five of the six developed lots along the northwest side of Grove Street are less than 75 feet in width and three of those lots have 60-foot frontages.

9. The proposed 62-foot frontage of proposed Lot 29 would be consistent with the lot widths of developed lots on Grove Street and would not alter the character of the neighborhood.

10. Proposed Lots 28 and 29 would each contain more than 7500 square feet as required by Section 8-17(e) of the Chevy Chase Village Building Code.

11. Granting the variance would enable the applicant to maintain a consistent setback along the northwest side of Grove Street, preserving the character of the neighborhood.

12. Granting the variance would enable the applicant to minimize the number of trees that would have to be removed to develop the subject properties.

13. Public policy supports the preservation of trees as is evidenced by Chapter 17 of the Chevy Chase Village Code which restricts actions that would harm or cause the removal or destruction of trees on private property.

14. The applicant has met its burden of proving that several special conditions exist and that the denial of the requested variance would result in unwarranted hardship and injustice to the applicant.

15. Special conditions applicable to the subject property include, but are not limited to (a) the fact that Lot 24 is a triangular shaped lot restricted by a 25-foot front setback from approximately 45% of the property's boundaries; (b) unlike many areas of the Village, Lots 24 and 25 are in an area where existing developed lots have less than 75 feet of frontage; (c) Lots 24 and 25 front on the unimproved portion of Grove Street that has been dedicated as a buffer area; and (d) even though proposed Lot 29 would have only 62 feet of frontage, proposed Lot



29 would exceed the 7500 square foot lot size requirement of Section 8-17(e) of the Village Code.

16. The applicant has met its burden of proving that the strict enforcement of the requirements of the Village Building Code would result in an unwarranted hardship and injustice to the applicant by: (a) preventing it from constructing houses that would maintain the established building line; (b) by requiring the applicant to construct a driveway that would encroach into the buffer area to a much greater extent than if the variance is granted; and (c) by requiring the applicant to build and market a house on Lot 24 without a functional rear yard.

17. Denial of the requested variance would impose the above-described hardships on the applicant without any countervailing public benefit.

18. Development of Lots 24 and 25 without the proposed resubdivision would have several negative impacts on neighboring properties and the public in general by forcing the construction of the proposed new houses closer to the residences to the northwest, altering the established building line, increasing the amount of pavement that would be required to be installed in the buffer area and decreasing the amount of rear yard space available to the future owners of Lot 24.

19. One of the purposes of the Village Building Code is to maintain the character of the neighborhood and to avoid

construction that would interfere with the use or enjoyment of nearby properties. For the reasons discussed above, the proposed variance would aid in the maintenance of the character of the neighborhood and would allow the applicant to minimize the impact of the proposed houses on the use and enjoyment of nearby properties.

Based upon the foregoing findings, the Board concludes that the proposed variance is required because special conditions exist whereby the enforcement of the requirements of the Chevy Chase Village building code would result in unwarranted hardship and injustice to the owner; the proposed variance would most nearly accomplish the intent and purpose of the requirements of the Chevy Chase Village building code; and the proposed variance would not violate any Village covenants applicable to the subject property.

Accordingly, the requested variance from the requirement of Section 8-17(e) of the Village Code which provides: " No permit shall be issued for the construction of any dwelling house upon a lot having a frontage of less than seventy-five (75) feet and an area of less than seven thousand five hundred (7,500) square feet; provided, however, that these limitations shall not apply to any lot having a frontage of less than seventy-five (75) feet and an area of less than seven thousand five hundred (7,500) square feet which is embraced in any subdivision of lots recorded prior to July 12, 1982" is granted, subject to the following conditions:

(1) Lots 24 and 25 shall be resubdivided into new Lots 28 and 29 in accordance with the exhibits submitted for the record in this matter;

(2) the driveway serving Lots 28 and 29 shall be in the location shown in the exhibit submitted for the record in this matter;

(3) the houses to be constructed on Lots 28 and 29 shall be located in substantially the same locations as are shown in the exhibits submitted for the record in this matter and shall be designed so as to maximize the distance from the rear walls of the houses to the northwest property lines;

(4) the design and materials to be used to construct the portion of the joint driveway that will be located in the Grove Street public right of way shall be subject to approval by the Village Board of Managers;

(5) no trees for which a Village tree removal permit is required shall be removed without the prior approval of the Village Board of Managers;

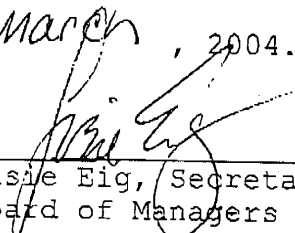
(6) the construction of the houses on Lots 28 and 29 shall be commenced on or before March 8, 2005 and shall be completed on or before March 8, 2006.

The Chevy Chase Village Board of Managers hereby adopts the following Resolution:

BE IT RESOLVED by the Board of Managers of Chevy Chase Village that the Decision stated above be adopted as the Decision required by Section 8-12(d) of the Chevy Chase Village Code.

The foregoing Resolution was adopted by the Chevy Chase Village Board of Managers with the following members voting in favor: George L. Kinter, Samuel A. Lawrence, Betsy Stephens, and Douglas B. Kamerow. David Winstead and Susie Eig abstained. Richard S. Rodin was not present for the hearing in this matter and did not participate in this Decision.

I DO HEREBY CERTIFY, that the foregoing Decision and Resolution were approved and adopted by the Chevy Chase Village Board of Managers on this 11 day of March, 2004.

  
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Susie Eig, Secretary  
Board of Managers

ccv:middleburg.opn

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December 17, 2003

RECEIVED  
DEC 18 2003

Derek Berlage, Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

RE: Pre-application concept plat, re-subdivision of  
Lots 24 and 25, Block 7, Chevy Chase, Section 1A

Dear Chairman Berlage:

I am writing to you on behalf of Chevy Chase Village, the incorporated municipality in which the above-referenced property is located. The Village's governing body, the Board of Managers, has taken the unusual step of voting to support the proposed resubdivision. Normally, the Village Board encourages and expects the strict application of the standards for the resubdivision of lots in a platted subdivision. In the Village, this typically requires rectangular lots with straight lot lines. However, we believe that the above-referenced application involves a unique situation that justifies a flexible approach to the subdivision requirements.

As you may be aware, the Grove Street right of way abutting the subject lots has been the subject of considerable attention during the past several years. In approving and adopting the Friendship Heights Sector Plan, the Planning Board and the District Council designated this section of Grove Street as a buffer area to protect the residences in Chevy Chase Village from development in the Friendship Heights Central Business District. Attached hereto, as Exhibits 1 and 2, are excerpts from the Friendship Heights Sector Plan illustrating and describing the intention that the Grove Street right of way be used as a green buffer. We have superimposed the location of Lots 24 and 25 on Exhibit 1 for your convenience.

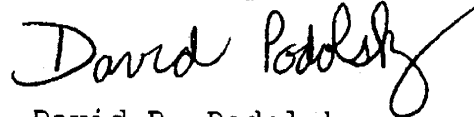
Subsequent to the adoption of the Sector Plan, the Chevy Chase Land Company proceeded with an application for TSM Zoning (G-775) for a portion of the Chevy Chase Center. This rezoning, as well as the resubdivision of the Chevy Chase Land Company's property engendered extensive hearings before the Planning

subdivided, is not ideal for the type of development that should occur in this area. Thus, the relocation of a portion of the common lot line toward the northeast will allow for a more desirable house on that lot. In anticipation of the question as to why the entire common lot line cannot be shifted to the northeast, we note that Chevy Chase Village requires that a buildable lot must have 75 feet of frontage (see Exhibit 6 attached).

In summary, normally we would oppose a proposed resubdivision with a lot line that jogs. However, we support the application to resubdivide Lots 24 and 25 because we believe that it maintains the frontage required by the Village, will provide the opportunity for an improved development and, most importantly, will preserve green space in the buffer area. These benefits justify approving the application.

Thank you for your consideration of our position. If you have any questions or we can be of further assistance in your evaluation of this matter, please let us know.

Very truly yours,



David R. Podolsky  
Village Counsel

DRP:ag

cc: Geoffrey Biddle, Village Manager  
Board of Managers  
Jody Kline, Esquire