

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6465

PETITION OF JACK PIERCE

OPINION OF THE BOARD
(Hearing Date: May 27, 2015)
(Effective Date of Opinion: June 18, 2015)

Case No. A-6465 is an application by Jack Pierce for a variance of 3.30 feet from the 20-foot rear yard setback required by Section 59-7.7.1.D.2 of the Zoning Ordinance, and for a variance of .60 feet from the seven-foot side yard setback required by Section 59-7.7.1.D.2 of the Zoning Ordinance. The Petitioner proposes to build two room additions.

The Board of Appeals held a hearing on the application on May 27, 2015. Jack Pierce appeared and testified.

Decision of the Board: Variances Granted.

EVIDENCE PRESENTED

1. The subject property is Lot 17, Block F, located at 5213 Chandler Street, Bethesda, Maryland, 20814, in the R-60 Zone.
2. Mr. Pierce stated that one of the additions he proposes is a second-story addition above the existing garage, which already encroaches .60 feet into the side setback on the north side of the lot. [See Exhibit Nos. 4(a), 11(a), Transcript, May 27, 2015, p. 8].
3. Mr. Pierce stated that he discussed the proposed construction with his abutting neighbor on Chandler Street, who liked his proposals.
4. Mr. Pierce also proposes an addition on the rear (west side) of his house, which requires a 3.30-foot variance because a portion of the addition would encroach into the

20-foot rear setback. Mr. Pierce testified that this addition will involve removal of an existing screened porch and will decrease the overall footprint. He stated that part of the goal with this construction is to create a straight wall that connects to the addition at the southwest side of his house. He stated that the current condition in this location created destructive drainage toward the foundation of the house. [See Exhibit Nos. 3, 4(a), 11(b), Transcript, May 27, 2015, pp. 10-13].

5. In Case No. A-2709, Petition of M. Blair Bowers, on October 13, 1989, the Board of Appeals granted a prior variance of 10.5 feet from the rear lot line setback on this property, to allow construction of an earlier addition at the southwest side of the house. The Board granted that variance based on the irregular shape of the lot, and the fact that the existing dwelling was non-complying. The rear wall of the addition that Mr. Pierce proposes on the west side of his house will connect with and be on the same plane as the rear wall of the addition allowed by the prior variance. [Exhibit No. 4(a), Transcript, pp. 12-13].

6. In response to Board questions, Mr. Pierce testified that he has made no prior changes to his house [Transcript, p. 9], and that he was not the owner of the property when the previous variance was granted on October 13, 1989 [Transcript, p. 17].

FINDINGS OF THE BOARD

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.i – exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property

The Board finds that the subject property has a uniquely irregular, non-rectilinear shape, and that this unusual shape compresses the buildable envelope available to the Petitioner. [Exhibit 4(a)].

Section 59-7.3.2.E.2.a.ii – the proposed development uses an existing legal nonconforming property or structure

The Board finds that the existing house is already nonconforming in both locations where the Petitioner seeks to build. The Board notes that there are portions of the existing house at its west side for which a variance was granted to a prior owner, and to which Mr. Pierce's proposed construction would be attached.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

Mr. Pierce is not the original owner of the home, and was not the owner when the prior variance was granted. The Board can find no evidence that he created the non-conformities.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that both requested variances are minimal, just six tenths of a foot on the north side, co-extensive with the existing construction, and on the west side, just the amount necessary to create a straight wall that will connect to the existing structure.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that Mr. Pierce's proposed renovation of the existing residential property is consistent with the residential uses contemplated for the neighborhood, and causes no impairment to the master plan.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board can find no evidence that the proposed construction will be adverse to the use and enjoyment of abutting or confronting properties. Neither variance increases the house's footprint. In fact, the construction on the west side decreases the footprint. The construction proposed at the north side of the house will encroach just six tenths of a foot into the setback, and Mr. Pierce testified that he shared his construction plans with his neighbor to the north, who liked them.

Accordingly, the requested variances to allow construction of two additions are granted subject to the following conditions:

1. Petitioner shall be bound by his testimony and exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion; and
2. Construction shall be according to Exhibit Nos. 4(a)-(b), and 5(h) – (k).

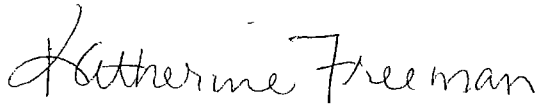
Therefore, based upon the foregoing, on a motion by Carolyn J. Shawaker, Vice-Chair, seconded by Stanley B. Boyd, with John H. Pentecost, Edwin S. Rosado, and David K. Perdue, Chair, in agreement, the Board adopted the following Resolution:

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



David K. Perdue
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 18th day of June, 2015.



Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date 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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

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.