

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6486

PETITION OF JOHN CHOU

OPINION OF THE BOARD

(Public Hearing Date: February 17, 2016)
(Effective Date of Opinion: March 8, 2016)

Case No. A-6486 is an application by John Chou for a two (2) foot variance from the 25-foot sum of side setbacks required by Section 59-4.4.8.B.2 of the Montgomery County Zoning Ordinance. The variance is sought for the construction of a garage.

The Board of Appeals held a public hearing on the application on February 17, 2016. Mr. Chou, the property owner, appeared pro se, and testified in support of the variance (the "Petitioner").

Decision of the Board: Requested Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 5, Block G, located at 8510 Postoak Road, Potomac, MD, 20854, in the R-90 Zone.
2. The Petitioner's written statement in support of the variance references a steep slope behind the existing home, stating that "Lot 5 has a substantial drop-off behind the existing primary structure, including behind the carport. Exhibit No. 1 shows a scaled diagram of the existing property and topology with a 9+ foot drop-off and a ~35-degree slope grade. Generally speaking, Lot 5 is not suited for placing additions behind or next to the primary structure or carport." It goes on to say that "Lot 5 is too narrow to build a detached garage on either side and has a substantial drop-off behind the property. It would be too costly, hazardous, and unsightly to build a detached garage behind the

property, as it would require the construction of a retaining wall that is 9 feet high by 13 feet wide that must be filled with stone and dirt. Petitioner has no other reasonable options but to enclose the existing carport for the addition." See Exhibit 3.

In addition, the Petitioner's written statement states that "many houses on the street and in the general vicinity already have garages. A variance for the addition will not alter Lot 5's conformity with the general neighborhood." See Exhibit 3.

3. Mr. Chou testified that he is proposing to enclose an existing carport. He testified that if he were to move the plane of the [southwestern] side of the existing carport two feet closer to the house, to comport with the required sum of both sides setback and eliminate the need for a variance, his garage would be unusable, explaining that even if he could get a car into it, he would be unable to open the car doors. He testified that the two foot variance that he is requesting is the minimum needed enclose the existing carport with walls. He stressed that he is not expanding the size of the existing carport.

Mr. Chou corroborated in his testimony the assertions he made in his written statement, testifying that the narrowness of his property precludes him from building a garage on the side of his house without a variance, and that his property drops off precipitously behind his house. He testified that he lives on the top of a hill, and that the back of his property has extreme steepness which would require nine feet of fill if he were to locate a garage there. He testified that there are many houses in his neighborhood that are similar in style to his and that have garages, estimating pursuant to a Board inquiry that half of the homes have garages. He stated that to the best of his knowledge, his is the only home that requires a variance to allow a garage. In response to a Board question asking if he had anything to show that his lot was unusually narrow, Mr. Chou testified that he had gone to Park and Planning and had used their mapping tool, which he testified shows that most of the lots have 5 feet more than his. He then testified that his lot is the smallest on the block.

4. The Petitioner has provided letters from several neighbors indicating that the proposed garage will not have a detrimental impact on surrounding properties. See Exhibits 8(a) – (c).

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 59-7.3.2.E as follows:

1. *7.3.2.E.2.a.i. ...exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

Based upon Mr. Chou's testimony and on Exhibit No. 3, the Board finds that the subject property is the smallest on the block, and is narrower than most of its neighbors. The Board further finds that the rear yard of the subject property is encumbered by a very steep slope which precludes construction of a garage without significant engineering (retaining wall, fill).

2. *7.3.2.E.2.a.v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*

Based upon Mr. Chou's testimony, the Board finds that the enclosure of his existing carport such that it becomes an attached garage substantially conforms to the established historic or traditional development pattern of his neighborhood.

3. *7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

Mr. Chou is not responsible for the size, shape or topography of his property.

4. *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 the requested two-foot variance from the sum of both sides setback is minimal. The Board notes that the proposed garage is an enclosure of an existing carport, and that even with this variance, the remaining side setback on the southwestern side of the property is in excess of the minimum side setback for the zone.

5. *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 the enclosure of this carport into a garage continues the residential use of the property and is consistent with the applicable master plan.

6. *7.3.2.E.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that the enclosure of this existing carport into a garage, similar to many others in the neighborhood, will not impact abutting or confronting properties. The Board notes that the record contains letters from the abutting property owners on either side of this property supporting the requested variance and indicating that the proposed construction will not have a detrimental effect on the surrounding properties or the neighborhood. See Exhibits 8(a) – (b). The Board further notes that a school confronts the subject Property. See Exhibit 9.

Accordingly, the requested two-foot variance from the sum of both sides setback is granted subject to the following conditions:

1. The Petitioner shall be bound by all of his testimony and exhibits of record, 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 and 5(a) through 5(f).

Therefore, based upon the foregoing on a motion by Edwin S. Rosado, seconded by Stanley B. Boyd, with John H. Pentecost, Vice Chair, and Bruce Goldensohn in agreement, and with Carolyn J. Shawaker, Chair, necessarily absent, 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.



John H. Pentecost, Vice Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for

Montgomery County, Maryland
This 8th day of March, 2016.


Barbara Jay
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. 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 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.