

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6501

PETITION OF SIRISH AND MANI KIRAN

OPINION OF THE BOARD

(Opinion Adopted October 5, 2016)
(Effective Date of Opinion: October 20, 2016)

Case No. A-6501 is an application for a variance from Section 59-4.4.8.C.3 of the Zoning Ordinance to allow the construction of a room addition within 8.75 feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59-4.4.8.C.3.

The Board of Appeals held a hearing on the application on October 5, 2016. Petitioner Sirish Kiran and his contractor, Ronnie Armstrong, appeared and testified in support of the request.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 29, Block A, 0024 Subdivision, located at 7409 Argus Court, Gaithersburg, Maryland, 20879, in the R-90 Zone. The Petitioners have owned this property since 1991. See Exhibit 3.
2. The subject property is 7,804 square feet, and was platted in 1983. See Exhibit 3. It has four sides, and opens from front to rear, such that it is much wider at the rear than at the front. The property has narrow, curved frontage on Argus Court; its rear lot line is approximately three times the length of the front lot line and is slanted, due to the fact that the side lot line on the west side of this property is one-third longer than the side lot line on the east side. The unusual shape and proportions of this lot cause it to have a shallow buildable envelope, and the existing house extends from the front to the rear of that envelope, with the northernmost corner of the house located on the rear setback line. The rear lot line, and hence the rear setback line, are at an angle to the rear plane of the house. See Exhibit 4(a).

3. One of the Petitioners' mothers, who uses a wheelchair for mobility, is coming to live with them. The Petitioners have included medical information substantiating their mother's need for mobility assistance with their application. See Exhibit 7. The Petitioners' existing kitchen is very small, and does not allow for free movement of a wheelchair. The Petitioners are seeking to construct a rear addition to make their kitchen wheelchair-accessible. See Exhibit 3.
4. The land behind the Petitioners' house is wooded and has a stream. It is not developed with houses. See Exhibits 3 and 9(b).
5. Mr. Kiran testified that his property has an unusual shape which causes the right-hand side of the rear of his home to be on the rear setback line. He testified that the proposed construction will not be visible from the street. He testified that the area behind his house is wooded with no houses, and that both his neighborhood (Hadley Farms) and his neighbors approve of the proposed construction. Indeed, the record contains a letter signed by all of his neighbors on Argus Court indicating that they do not object to the proposed addition because it is on the rear of the home, as well as a letter from the community's Architectural Control Committee indicating approval of the proposed design. See Exhibits 8(a) and (b). Mr. Kiran noted that many of the homes in his neighborhood have rear additions. See Exhibit 3. In response to a Board question asking why he could not expand his house on the right-hand (east) side instead of to the rear, Mr. Kiran testified that such an addition would be visible from the street and would be an eyesore; he added that because the additional space is intended to allow an accessible kitchen, it would also require totally reworking the existing plumbing in the house. He noted that even with the addition, his property would only be at 24.5% lot coverage.

CONCLUSIONS OF LAW

Based on Mr. Kiran'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. *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 an unusual shape, much wider at the rear than at the front, with a slanted rear lot line that is approximately three times the length of the (curved) front lot line. This unusual shape results in an abnormally shallow buildable envelope for a lot of this size and a constrained buildable area, with no room for expansion to the front or rear along the east side of the house, and only minimal room for expansion to the front or rear along the west side.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioners purchased this property after the property was platted (1983) and the house was built (1990), and are not responsible for the configuration of this lot or the resultant constrained buildable area. See Exhibit 3 and SDAT printout.

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 the constrained and shallow buildable area of this property, resulting from its unusual shape, creates a practical difficulty for the Petitioners in that the setbacks limit any meaningful expansion of this home in any direction other than along its east side, and expansion of this home to the east would be visible to and have the greatest impact on surrounding property owners. See Exhibits 8(a) [indicating neighbors do not object to the addition because it is at the rear of the house] and 9 [zoning vicinity map]. The Board notes that expanding this house to the rear, as the Petitioners have proposed, would have little if any impact on the surrounding property owners, and that even with the proposed expansion, the Petitioners' lot coverage would still be significantly less than the maximum for the R-90 Zone. The Board further notes that were it to have granted this variance on the basis of the disability of one of the Petitioners' mothers, granting such a variance to allow expansion to the rear would constitute a reasonable accommodation under Title II of the Americans With Disabilities Act (ADA), as amended by the ADA Amendments Act of 2008 (ADAAA), and the Fair Housing Amendments Act of 1988 (FHAA), necessary to allow Petitioners' mother an equal opportunity to use and enjoy this home.

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 the continued residential use of this home is consistent with goals of the applicable 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 finds that granting this variance, to allow a rear addition to this home, will not be adverse to the use and enjoyment of abutting and confronting properties, as demonstrated by the signatures of the neighbors indicating that they do not object to this addition "[s]ince it is at the rear side of his property." See Exhibit 9(a). The Board notes in furtherance of this conclusion that the addition will not be visible from the street, and that there are no homes in the wooded area immediately behind Petitioners' home.

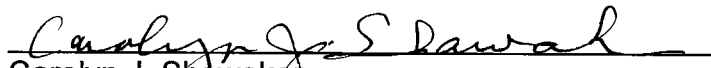
Accordingly, the requested variance to allow an addition within 8.75 feet of the rear lot line is **granted**, subject to the following conditions:

1. Petitioners shall be bound by their testimony and exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion; and

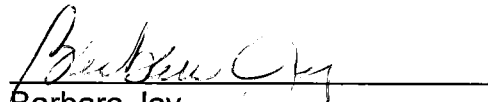
2. Construction shall be according to Exhibits 4 and 5.

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

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.


Carolyn J. Shawaker
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 20th day of October, 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.