

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**CASE NO. A-6543**

**PETITION OF PUI AND TING CHEUNG WOO**

**OPINION OF THE BOARD**

(Opinion Adopted February 21, 2018)  
(Effective Date of Opinion: February 23, 2018)

Case No. A-6543 is an application for a variance needed to allow construction of a screened enclosure over an existing deck. The proposed construction requires a variance of five (5) feet, as it is within fifteen (15) feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board held a hearing on the application on February 21, 2018, after the original January 17, 2018, hearing date was cancelled for weather. Gerardo F. Perez of Great Day Improvements appeared at the hearing in support of the application, pursuant to written authorization from Petitioners Pui Woo and Ting Cheung Woo. Charles Harris of Patio Enclosures also appeared at the hearing in support of the application.

Decision of the Board:                      Variance **GRANTED**.

**EVIDENCE PRESENTED**

1. The subject property is Lot 1, Block 4, Randolph Hills SEC 2 Subdivision located at 4800 Wyaconda Road, Rockville, MD, 20852, in the R-60 Zone. The subject property is a corner lot located at the southwest corner of Wyaconda Road and Wilwyn Way. It is a four-sided lot with an angled rear (southern) lot line. It has an area of 7,338 square feet. See Exhibits 1(a), 3, 4, and 7.

2. The Justification Statement states that the subject property contains a 1,200 square foot house, built in 1957, which is located approximately 29 feet from the front property line, 30 feet from the side property line, and 20 feet from the rear property line.

See Exhibit 3. The Site Plan verifies that the home on this property is located 29 feet from the front property line along Wyaconda Road (25 foot setback required per Section 59-4.4.9.B.2 of the Zoning Ordinance), 30 feet from the property line along Wilwyn Road (25 foot side street setback required), and 20 feet from the rear (southern) property line (20 foot setback required). See Exhibit 4.

There is an existing 16' x 9' deck attached to the rear of the home, part of which extends into the rear setback. The Petitioners are seeking to install a screened enclosure over this existing deck. The roof of the proposed enclosure will be attached to the existing dwelling. See Exhibits 3 and 4.

3. The Justification Statement describes the existing dwelling on the subject property as a one-story, single-family home. It notes that "[t]he current rear setback is 20' and the house was built at the 20' restriction line. A variance is requested for relief from the 20' rear yard setback to allow the 5' encroachment, thereby reducing the setback to 15' due to the fact that a portion of the deck was built beyond the rear setback." See Exhibit 3.

4. The Justification Statement states that "[t]he subject property has exceptional shallowness, hence the need for the request to modify the rear yard setback. The proposed screen enclosure will be 15' from the rear property line, and per ordinance, the minimum required rear yard setback is 20'. It notes that the "current footprint of the existing deck in relation to the rear property line will remain the same." See Exhibit 3.

5. With respect to the impact of the proposed construction on neighboring properties, the Justification Statement notes the following:

- The proposed enclosure will be in character with the existing structures on the lot and will in no way adversely affect the integrity of the subject property. ...
- The proposed enclosure will be harmonious with the existing structures on the subject property, as it will be directly attached to the side of the home and the framing of the proposed structure will match the color of the existing house. The proposed enclosure will in no way affect the existing vegetation or trees of the property.
- The proposed enclosure will not adversely impact the use or enjoyment of any neighboring properties in regard to issues such as noise, light, air, erosion and storm water run-off.

See Exhibit 3.

6. At the hearing, Mr. Perez confirmed that the proposed porch would not extend further into the setback than the existing deck. He testified that the angled rear (southern) property line creates the unique, shallow condition of this property, and that the total encroachment into the setback, if the variance is granted, will be approximately 80 square feet.

## CONCLUSIONS OF LAW

Based on 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 angled rear lot line which causes it to have an unusually shallow buildable envelope, constraining the ability to expand this home in a manner consistent with the Zoning Ordinance. The Board finds that this constitutes an extraordinary condition that is peculiar to this property. See Exhibits 3 and 4.

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

The Board finds that the angled rear lot line and shallow buildable envelope are not the result of actions by the Petitioners.

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 as described in the Justification Statement and at the hearing, the requested variance is necessitated by the shallowness and constrained nature of the buildable envelope, occasioned by the property's angled rear lot line. The Board finds that the requested five (5) foot variance is the minimum necessary to allow the proposed improvements to the existing house and to overcome the practical difficulty that full compliance with the setbacks imposed by Zoning Ordinance would cause because of this shallow buildable envelope.

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 allowing the Petitioners to proceed with the proposed construction is consistent with the residential uses contemplated by the North Bethesda/Garrett Park Master Plan (1992).

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 the proposed screened porch addition will not be adverse to the use and enjoyment of abutting or confronting properties. In support of this, the Board notes that the "current footprint of the existing deck in relation to the rear property line will

remain the same.” In addition, the Board cites the Justification Statement for its assertions that the proposed enclosure will be in character with the existing structures on the lot, that the framing of the proposed structure will match the color of the existing house, that the proposed enclosure will in no way affect the existing vegetation or trees on the property, and that the proposed enclosure will not adversely impact the use or enjoyment of any neighboring properties in regard to issues such as noise, light, air, erosion and storm water run-off. See Exhibit 3.

Accordingly, the requested variance of five (5) feet from the rear lot line setback is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5(a)-(b).

Therefore, based upon the foregoing, on a motion by Edwin S. Rosado, Vice Chair, seconded by Katherine Freeman, with John H. Pentecost, Chair, Stanley B. Boyd, and Bruce Goldensohn 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.

  
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John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 23rd day of February, 2018.

  
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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.