

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6547

PETITION OF TED MORGAN

OPINION OF THE BOARD

(Opinion Adopted January 24, 2018)
(Effective Date of Opinion: February 14, 2018)

Case No. A-6547 is an application for a variance from Section 59-4.4.9.A.2 of the Zoning Ordinance to allow the construction of a room addition within 20.3 feet of the front lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.9.A.2.

The Board of Appeals held a hearing on the application on January 24, 2018. The Petitioner's contractor, David Vogt of Case Design Remodeling, appeared with the permission of the Petitioner and testified in support of the requested variance. The Petitioner was unable to attend.

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

EVIDENCE PRESENTED

1. The subject property is Lot 1, Block 8B, Springfield Subdivision, located at 5401 Christy Drive, Bethesda, MD, 20816, in the R-60 Zone. The Petitioner applied for and was granted a variance to expand the existing house in 1992, but never undertook that construction. He is now seeking a 4.7 foot variance from the front lot line setback along Christy Drive (southwest property line) to allow a triangular encroachment of approximately 25 square feet total into that setback. See Exhibits 1, 3, 4(a) and 7.

2. Per SDAT, the subject property is 10,731 square feet in area. The property contains an existing house, built in 1955, which faces the corner of Cromwell Drive and Christy Drive. The Statement submitted with this variance application notes that this orientation, "while it presents toward the neighborhood nicely ... created difficulties for future renovation as the front corners of the original structure are set tight to the building line setbacks. This original placement of the house (angled) to the building area, creates pie shaped areas for expanding the original footprint of the house." The Statement further

indicates that "5401 Christy is a corner lot, although based on the street layout it presents as the end of a peninsula. This lot's configuration results in the shape that requires a very large amount of Front Yard (237.49 feet of front yard property line) with a Setback of 25'." See Exhibit 3. The Site Plan corroborates this description, depicting the property lines along Cromwell and Christy Drives as meeting at an acute angle with a rounded "corner," and the remaining two property lines, which are nearly perpendicular to their respective street frontages, meeting at an obtuse angle, resulting in a relatively shallow yard behind the existing home. See Exhibit 4(a).

3. In addition to the challenges posed by the shape of this property, the Statement indicates that the property has topographical difficulties, as follows:

The site is a sloping lot that has had a retaining wall built (prior to current Owner) along a large portion of the front property line, in order to reduce (control) the slope from the front of the structure to the street. The rear of the house (rear yard – not sure if it's rear or side) is not large and slopes up; the slope has been planted to control the storm water runoff/erosion toward the structure, not a good building location.

See Exhibit 3. The Petitioner submitted a Site Plan with topographical lines and photographs which further illustrate the slope on this property. See Exhibits 4(c) and 5(o) – (q).

4. The Statement emphasizes that the proposed construction is designed to maintain the look of the existing house and its existing roofline. It states that the Petitioner desires "to keep the character of this single story home," and notes, for a variety of reasons, including the existence of a "large green/curb area between the street curb and the property line" which "give[s] the appearance of a larger front yard," that "[g]ranted the variance does not severely impact the adjoining properties." See Exhibit 3. The record contains an email from the adjoining neighbors at 5402 Cromwell Drive indicating that they have no opposition to the proposed construction. See Exhibit 11.

At the hearing, Mr. Vogt testified that he had sent correspondence to nine neighbors describing the proposed construction and requesting that those neighbors send him a letter indicating that they had no objection to the project. He testified that he had received three such return letters, which he offered to the Board, but which the Board determined were unnecessary.

5. At the hearing, Mr. Vogt testified that the subject property has a peninsula-like shape and slopes in a downward direction from its rear to its front corner (i.e. north to south). He testified that the property is subject to a large front yard setback. He testified that the rear area slopes upward and is very confined due to the geometry of the property, noting that there is not much flat terrain behind the home. Mr. Vogt reiterated that the front corners of the house are on the front setback lines.

Mr. Vogt testified that the previously-granted variance for this property would have allowed an encroachment on the opposite side of the existing house for a second story addition and expanded garage. He described the current variance request as much more modest. Mr. Vogt testified that in designing the proposed addition, he had initially attempted to stay within the required setbacks, but that doing so had resulted in very choppy designs which had to be stepped in multiple times in order to conform to the setbacks. He testified that the addition ultimately proposed is only six feet wide and that only one corner of it—approximately 25 square feet total—will extend into the setback area. He testified that the design of the addition is as modest as it can be and still allow for the addition to have a regular shape. He explained that he had purposefully kept the design of the proposed addition very simple. Mr. Vogt testified that topography, shape, and reduced buildable envelope of this property make it hard to design a workable addition, and that the variance requested is the minimum needed to allow the proposed construction of an addition that has a regular shape and accomplishes the Petitioner's goals. Finally, Mr. Vogt testified that several variances have been granted in this community, and that most are for corner lots.

CONCLUSIONS OF LAW

Based on the binding testimony and 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 is a corner lot with a peninsula-like shape dictated by its two street frontages. In addition, the Board finds that the area behind the existing home is relatively shallow because of the geometry of the property, and that the entire property slopes from back to front, such that there are runoff issues in the rear, and a retaining wall is needed in the front. The Board finds that the sloping topography of this property places additional constraints on the area that would otherwise be available for construction after the application of the setbacks to the property's unusual shape, and thus finds that the shape and topography, taken together, constitute an unusual condition peculiar to this property.

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

The Statement notes that there is a "retaining wall built (prior to current Owner) along a large portion of the front property line, in order to reduce (control) the slope from

the front of the structure to the street." See Exhibit 3. Thus the Board finds that the Petitioner is not the original owner of this property, and is not responsible for its configuration or slope.

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, based on the testimony of Mr. Vogt, that the available buildable area on this property, resulting from its unusual shape and compounded by its sloping nature, creates a practical difficulty for the Petitioner in that the setbacks and slope limit the Petitioner's ability to construct an addition to his home that is regular in shape. The Board further notes that Mr. Vogt has testified that the variance requested is the minimum needed to allow the proposed construction on this property, that the proposed addition is only six feet wide, and that a corner of the proposed addition will encroach approximately 25 square feet into the setback area. Thus the Board finds that granting the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose.

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 an addition on the west side of this home, will not be adverse to the use and enjoyment of abutting and confronting properties because of the orientation of the existing house on the lot (facing the corner) and because of the modest nature of the proposed addition and resultant encroachment. In support of this finding, the Board also notes that, per the Statement, there is a "large green/curb area between the street curb and the property line" which "give[s] the appearance of a larger front yard...." See Exhibit 3. The Board finds that this further minimizes the impact of the proposed construction such that, per the Statement, "[g]ranteeing the variance does not severely impact the adjoining properties." See Exhibit 3. Finally, the Board notes that Mr. Vogt testified that he had informed the neighbors about the proposed construction, and that while he testified that he had received three letters from neighbors indicating that they had no objection to the proposed construction, he did not mention receiving any opposition. The Board notes here that it received no opposition to this variance request, and that none was voiced at the hearing. The record contains a letter from the abutting neighbors to the northeast of the subject property indicating that they do not object to the proposed construction. See Exhibit 11.

Accordingly, the requested variance to allow an addition within 20.3 feet of the front lot line along Christy Drive is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be according to Exhibits 4(a)-(c) and 5(a)-(n).

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



 John H. Pentecost
 Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
 of the Board of Appeals for
 Montgomery County, Maryland
 this 14th day of February, 2018.



 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.