

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6557

PETITION OF KEVYN ORR AND DONNA NEALE

OPINION OF THE BOARD
(Hearing Held: April 4, 2018)
(Effective Date of Opinion: April 12, 2018)

Case No. A-6557 is an application by Kevyn Orr and Donna Neale (the "Petitioners") for a three (3.0) foot variance from the rear lot line setback, necessary to allow the construction of a second floor addition over an existing dwelling. The required rear lot line setback is twenty (20) feet, in accordance with Section 59-7.7.1.D.2.c of the Montgomery County Zoning Ordinance (2014).

The Board of Appeals held a hearing on the application on Wednesday, April 4, 2018. David Merrick, MCR, President of Merrick Design and Build, appeared at the hearing in support of the requested variance, along with Robert Weesner, Village Manager for the Village of North Chevy Chase.

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

EVIDENCE PRESENTED

1. The subject property is Lot P7, Block 1, Kenilworth Subdivision located at 3800 Montrose Driveway, Chevy Chase, MD, 20815, in the R-90 Zone.

2. The subject property is a triangular-shaped, corner lot with frontage on Montrose Driveway and Jones Bridge Road. See Exhibit 4(a). The Justification Statement indicates that "Montrose Driveway has been permanently blockaded at Jones Bridge Rd since the early 1960's ... [t]he roadway has been dug up and shrubs planted," and that "no traffic has used this as a corner since the road was blockaded." It further states that "[t]his is an unusually shaped lot that at some point [in] its history has been subdivided," a sentiment echoed by the testimony of Mr. Merrick. See Exhibit 3.

3. The Justification Statement states that "it is not clear that the house has ever been in conformance with the zoning requirements for a corner lot." Indeed, per the Justification Statement and the testimony of Mr. Merrick, the existing house on the subject property does not conform with the side and rear lot line setback requirements, and any proposed renovation of the existing house will require a variance. The Justification Statement indicates that because of this, a variance was granted for this property in 1991 to allow an addition in the side yard (BOA Case No. A-3298). The Justification Statement further indicates that the owners are "propos[ing] to construct a new second floor addition ... on the rear portion of the house without changing the footprint," and that "[t]he existing house falls within the current rear yard setback by 3 feet. The proposed addition will not change or increase the existing non-conformance of the existing structure." See Exhibit 3.

4. At the hearing, Mr. Merrick testified that this is an unusually shaped corner lot with a very sharp corner, a description borne out by the Site Plan. See Exhibit 4(a). He testified that Montrose Driveway is blocked at Jones Bridge Road to prevent cut-through traffic. Mr. Merrick testified that no part of the house meets the setbacks, and that anything done to this house would need a variance. With respect to the impact of the proposed second story addition on neighboring properties, Mr. Merrick stated that both adjoining properties are two stories.

5. At the hearing, Mr. Weesner testified that the Village of North Chevy Chase is not opposed to the proposed construction. He testified that in connection with BRAC-related construction on Connecticut Avenue, the State Highway Administration has indicated that it may require the construction of a storm water retention area where the landscaped barrier between Montrose Driveway and Jones Bridge Road currently exists. He testified that if this happened, the subject property would no longer be a corner lot.

FINDINGS OF THE BOARD

Based on the Petitioners' 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.ii. - the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the existing house does not meet the required setbacks and is a legal nonconforming structure. The Board further finds that the proposed construction is a second story addition on top of this structure. Therefore, the Board finds that the application satisfies Sections 59-7.3.2.E.2.a.ii of the Zoning Ordinance.

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 Petitioners, who per SDAT purchased this property in 2006, are not responsible for the non-conforming nature of the existing structure on the subject property.

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 requested three (3) foot variance is the minimum necessary to overcome the practical difficulty that full compliance with the setbacks imposed by Zoning Ordinance would cause because of the non-conforming nature of the existing house. The Board notes that the proposed second story addition will sit atop the existing home, and will not increase its footprint or the extent of its existing encroachment into the rear lot line setback.

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 granting of this variance will continue the residential use of the home, consistent with 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 the grant of this variance to allow the construction of a second story addition will not increase the incursion of the footprint of the existing home into the rear setback, and that the abutting homes to either side of the subject property are already two stories in height. The Board notes as an aside that Mr. Weesner testified that the Village of North Chevy Chase was not opposed to the grant of the variance, and that the record contains no letters of opposition. Thus the Board finds that granting this variance, to allow a second story addition, will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance of three (3) feet from the rear lot line setback is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion; and
2. Construction shall be in accordance with Exhibits 4(a)-(b) and 5(a)-(f).

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, 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, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 12th day of April, 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.