

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6570

PETITION OF ANTHONY DESTEFANO

OPINION OF THE BOARD
(Hearing Held: June 27, 2018)
(Effective Date of Opinion: July 17, 2018)

Case No. A-6570 is an application by Anthony DeStefano (the "Petitioner") for a variance necessary for the construction of a proposed second-story addition in place of an existing half-story. The proposed construction requires a variance of 1.90 feet as it is within 5.10 feet of the side lot line. The required side lot line setback is seven (7) feet, in accordance with Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance (2014).

The Board of Appeals held a hearing on the application on Wednesday, June 27, 2018. Mr. DeStefano and his wife Laura appeared at the hearing in support of the requested variance, along with Jerry Harman, Director of Design with Starcom Design/Build.

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

EVIDENCE PRESENTED

1. The subject property is Lot 11, Block 6, Pinecrest Subdivision, located at 6449 Kansas Lane, Takoma Park, Maryland, 20912, in the R-60 Zone. It is a rectangular interior lot, 42.86 feet wide by 150 feet deep, with an area of 6,429 square feet. The existing one and a half story home encroaches 2.9' on the required 25' front lot line setback (northwestern lot line), and 1.9' on the required 7' side lot line setback along the property's northeastern side. The subdivision in which the subject property is located was recorded in 1912, and the home on the subject property was built in 1939. See Exhibits 3 and 4.

2. In place of the existing half-story, the Petitioner and his wife are seeking to construct a full second story addition, which will be located on top of the first floor of the

original home and two previous conforming first floor additions. The Statement submitted with the variance application indicates that the proposed second story addition is stepped back from the front of the existing home so that it meets the front lot line setback, but that the side could not be stepped in from the footprint of the existing home because of its narrowness, as follows:

The existing home is narrow. Reducing the width of the Proposed 2nd Floor Addition would require re-sizing bedrooms, possibly the elimination of a bedroom, and added costs for plumbing as new bathrooms would not be able to be situated [to] take advantage of existing plumbing infrastructure. The project would not be economically feasible with the addition of only one bedroom to the existing two bedroom home.

See Exhibit 3.

3. The Statement describes the modest nature of the proposed construction, as follows:

- The Proposed 2nd Floor Addition replaces the existing ½ Story on the original home as well as being built on top of two previous conforming 1st floor additions;
- The front wall of the Proposed 2nd Floor Addition is setback 3'-1" from the existing 1st floor front wall to conform to the required 25' front setback;
- The Proposed 2nd Floor Addition is ~74 SF smaller than the existing 1st floor and will not expand on the existing footprint of the home;
- The side wall of the Proposed 2nd Floor Addition will align w/ the existing 1st floor and replaces the existing ½ story side wall. Said side wall will be 2.9' taller than the existing side wall to allow for normal 8' ceiling heights on the 2nd Floor and building code required attic insulation depth; (See Attachment A)
- The Proposed 2nd Floor Addition requires the height extension of the existing chimney to meet building code requirements; The extension will be built on top of the existing chimney and will not expand its footprint.

See Exhibit 3.

4. The Statement makes clear that the special circumstances are not the result of any actions by the Petitioner, since the house was built in 1939 and the Petitioner purchased the property in 2011. It states that the roof gable orientation was changed to eliminate any front lot line encroachment by the proposed second floor and to allow the "minimizing of Proposed 2nd Floor side wall." It notes that the proposed addition would continue the residential use of the property and would "not expand on the footprint of the existing legal nonconforming structure." Finally, the Statement makes clear that the granting of the variance would not be adverse to the use and enjoyment of abutting or confronting properties, noting that the house on the property to the northeast of the subject property had been torn down and was being redeveloped, and that the confronting property is a park which is at a "substantially higher elevation" than the subject home and from which there is "limited or no view of the subject home." See Exhibit 3.

5. At the hearing, the Petitioner's contractor, Jerry Harman, testified that the proposed second story addition was being built over an existing non-conforming structure, stating that at the time the house was built, the side setback requirement was five (5) feet.

FINDINGS OF THE BOARD

Based on the binding testimony of Mr. Harman 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 proposed development uses an existing structure, built in 1939, which does not conform to the standards set forth in the Zoning Ordinance. Thus 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 subject property was recorded in 1912, and that the existing house was built in 1939. Thus the Board finds that the Petitioner and his wife, who purchased this property in 2011, took no actions to create its unusual characteristics.

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 variance is minimal in that it allows the construction of a second story addition over an existing home, and would not extend any further into the side setback than the existing house already encroaches. The Board notes that the proposed second story addition has already been set back farther than the existing house from the front lot line in order to comply with that setback. The Board finds that without the grant of this variance, the Petitioner and his wife would also have to step their second story addition in from the side of the existing first story which, because of the narrow width of the house, would make the project unworkable. Thus the Board concludes that compliance with the required side setback would pose a practical difficulty for the Petitioner, and that the grant of this variance is the minimum necessary to overcome the 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 proposed construction will continue the residential use of this property, consistent with the recommendations of the Takoma Park Master Plan, which seeks to "[p]reserve existing residential character, encourage neighborhood reinvestment, and enhance the quality of life throughout Takoma Park."

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 will not be adverse to the use and enjoyment of abutting or confronting properties, noting in particular that the property which abuts the subject property's northeast side lot line is currently being redeveloped, that there is a park across the street from the subject property from which there is little if any view of the subject property, and that the new side wall will be less than three feet taller than the existing side wall. See Exhibit 3.

Accordingly, the requested variance of 1.90 feet from the side lot line, to allow construction of a second-story addition, is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony of his witness and by exhibits of record.
2. Construction shall be according to Exhibits 4 and 5(a) through (d).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Edwin S. Rosado, Vice Chair, with Stanley B. Boyd, 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 17th day of July, 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.