

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**CASE NO. A-6580**

**PETITION OF BRADLEY AND JODY THAYER**

**OPINION OF THE BOARD**

(Opinion Adopted September 12, 2018)  
(Effective Date of Opinion: September 26, 2018)

Case No. A-6580 is an application for a variance of 1.90 feet, needed to allow the construction of a one-car garage within 3.10 feet of the rear lot line. The required setback is five (5) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance. The Petitioners intend to demolish their existing two-car garage, which is located 3.10 feet from their rear lot line, and replace it with the proposed one-car garage.

The Board of Appeals held a hearing on the application on September 12, 2018. Petitioner Bradley Thayer, who owns the subject property with his wife, appeared in support of the requested variance with Paul Vergara of Vergara Design/Build.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 17, Block B, Chevy Chase Sec 8 Subdivision, located at 4330 Leland Street, Chevy Chase, MD, 20815, in the R-60 Zone.
2. The Petitioners describe their request in their written statement as follows:

We are replacing an existing two-car garage with a reduced footprint one-car garage, and request a variance to maintain the existing placement of the garage's south wall at a distance of approximately 3.1 feet from the rear property line (less than that allowed under Section 59-4.4.9.B.2).

The Petitioners note in their statement that “[r]educing the capacity of the garage to one car will reduce the footprint of the garage significantly and widen the space between the house and the garage’s north wall, allowing currently distinct areas of the yard to flow together more continuously.” See Exhibit 3.

3. The site plan and the elevations included with the Petitioners’ application show that the proposed one-car garage will be 20 feet deep and 12 feet wide. See Exhibits 4 and 5.
4. The Petitioners have applied for and received the necessary variances from the Town of Chevy Chase for the construction of the proposed garage. See Exhibit 7.
5. The Petitioners include with their application letters of support from the abutting neighbors to the rear (4401 Walsh Street) and from the owners of the confronting property across East Street (7007 East Street), whose properties would be most affected by the proposed construction. See Exhibits 8(a) and (b). The Petitioners’ written statement notes that:

From the perspective of our rear neighbors ... the garage’s south wall currently is hardly visible from their lot as it sits behind a similarly situated one-car garage on their property. Their one-car garage is also out of conformance with the County Ordinance in terms of distance from our property line, so if their one-car garage were built today it would require the identical variance to our current request. As we plan to reduce the length of the garage, the garage’s new south wall actually will be less visible from the [rear neighbor’s] property, despite being placed the same distance from the rear property line as it currently stands. Separately, from the perspective of our across-the-street neighbors ... who face the garage (as well as the perspectives of other adjoining neighbors), the new garage will not only be more aesthetically pleasing, but its placement 3.1 feet from our rear property line will maximize their view of the expanded green space in our backyard.

See Exhibit 3. The Zoning Vicinity Map shows that numerous properties in the immediate vicinity of the subject property have accessory structures which are placed on or very close to the rear property line. See Exhibit 9.

6. At the hearing, Petitioner Bradley Thayer testified that he moved into the house on the subject property in February of this year. He testified that the existing two-car garage is not in good shape and needs to be replaced. He testified that the previous owner had constructed a rear addition on the house which left a 4’ 6” wide gap between the house and the garage. Mr. Thayer testified that he is seeking to replace the existing two-car garage with a new one-car garage that maintains the setbacks of the existing garage. He testified that the proposed construction is intended to accomplish two objectives: first, needed replacement of the existing garage, and second, the creation of a better “flow” through his back yard.

Mr. Thayer presented a site plan illustration which showed the difference that replacing the existing two car garage with the proposed one-car garage would make on the amount of available open space on the property. In addition, he showed the Board photographs of the existing garage, the gap between the house and the existing garage, and the proximity of the existing garage to his rear neighbors' garage. See Exhibits 12 and 13 (reductions).

## FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and the evidence of record, the Board finds that the requested variance can be granted. The variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E.2, as noted below:

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.v: the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*

The Petitioners' written statement notes, and their photographs illustrate, that like their existing garage, the garage on the property abutting the subject property to the rear is also closer to that property's rear lot line than would otherwise be allowable under the Zoning Ordinance. See Exhibits 3 and 13. Indeed, as illustrated on the Zoning Vicinity Map, the Board finds that the location of accessory structures very close to or on lot lines is very common on this block, and that in the immediate vicinity of the Petitioners' property, numerous properties appear to have accessory structures that are so situated. See Exhibit 9. Finally, the Board finds that traditionally, the subject property has contained a two-car garage in the location (relative to the rear lot line) that is proposed for the one-car garage. In light of the foregoing, the Board finds that the proposed garage, in the location proposed, would substantially conform with the established historic or traditional development pattern of this street or neighborhood.

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 earlier this year, and are not responsible for the location of the existing garage in the rear setback.

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 grant of the requested variance is the minimum necessary to allow a garage in the location of the existing garage on the subject property, and thus to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose in comporting with the established historic or traditional development pattern of this street or neighborhood.

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 construction of a smaller garage in place of the existing garage continues the residential use of the property and is consistent with the applicable master plan.

5. Section 59-7.3.2.E.e: granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

The Board finds that this variance is requested to allow the construction of a smaller, one-car garage in the same location as an existing two-car garage. The record indicates that the view of this garage from the abutting property which shares the rear lot line is obscured by a similarly-located garage on that property. Furthermore, the record contains letters of support for the grant of the variance from the owners of that abutting property to the rear, as well as from the owners of the property across East Avenue, whose property looks out on this garage. See Exhibits 8(a) and (b). Thus the Board finds that granting the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance of 1.90 feet from the required rear lot line setback is granted, subject to the following conditions:

1. The Petitioners shall be bound by their testimony and exhibits of record.
2. Construction shall be in accordance with Exhibits 4 and 5.

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 26th day of September, 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.