

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Rockville, Maryland 20850
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(240) 777-6600

Case No. A-6584

PETITION OF MARYSOL BONILLA

OPINION OF THE BOARD

(Hearing Held: October 10, 2018)

(Effective Date of Opinion: October 16, 2018)

Case No. A-6584 is an application by Marysol Bonilla (the "Petitioner") for a variance of five (5) feet from the rear lot line setback. The Petitioner is seeking to construct a second story addition on top of an existing house. The required setback is twenty (20) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, October 10, 2018. The Petitioner's architect, Carib Daniel Martin, appeared at the hearing in support of the variance application, along with Project Designer Gabriela Leniz.

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

EVIDENCE PRESENTED

1. The subject property is Lot 2, Block 4, Indian Spring Park Subdivision, located at 9504 Seminole Street, Silver Spring, MD, 20901, in the R-60 Zone. It is a four-sided lot, approximately 5,000 square feet in size, which is substandard for the R-60 Zone. The property's side lot lines are set at right angles to the front lot line, and are parallel to one another but vastly different in length (75 feet versus 125 feet), resulting in a severely angled rear lot line. See Exhibit 4.

2. The Statement of Justification details why the Petitioner's architect believes the subject property meets the standards for the grant of a variance, as follows:

1) The unusual existing conditions, including:

- a. The existing lot is an exceptional shape which does not meet the minimum lot size for a R-60 zone and is further hindered due to an angled rear lot line.
 - b. The existing 1-1/2 story residence, built in 1939, is an existing nonconforming structure built within the angled 20-foot rear yard setback.
 - c. The proposed rear-facing, shed-roof dormer maintains the existing scale, proportion, and detailing of the existing neighborhood.
- 2) The non-conforming rear yard setback condition existed prior to the applicant taking ownership of the property.
 - 3) The requested variance is the minimal necessary to overcome the practical difficulty of adding the needed space within the existing non-conforming residence.
 - 4) The variance will have no negative impact on the intent or integrity of the general master plan for the neighborhood.
 - 5) The proposed dormer addition will not have any adverse effect on the abutting or confronting properties as it is in character with the neighborhood, faces the rear yard, and does not exceed the existing ridge height of the current residence.

See Exhibit 3. The Site Plan shows that the left rear corner of the existing house, and thus of the proposed second story addition, is located 15 feet from the angled rear lot line, See Exhibit 4.

3. The Additional Information submitted with the variance application explains the practical difficulties that would arise from the denial of this variance application as follows:

The existing residence is a 1-1/2 story structure. The current owner is wanting to build a dormer to expand the second floor space in an economical manner that maintains the character of the neighborhood. If the current owner is not allowed to build the new rear dormer in line with the existing exterior structure walls it will necessitate a more complicated and expensive structural system and result in a space that is not large enough to provide the meager special requirements she is attempting to achieve.

In addition, it notes that the subject property has an angled rear lot line and "is smaller than the minimum lot requirements for its zone classification as well as most of the neighboring lots." See Exhibit 1(b).

4. At the hearing, Mr. Martin testified that the Petitioner is seeking to construct a small rear dormer on the second floor of her existing house. He testified that because of the angled rear lot line, the existing house protrudes into the rear setback. He testified that the proposed dormer would not expand the footprint of the existing house or increase its height. He testified that the construction would not be visible from the street except when

viewed obliquely through the (currently) vacant property next door, adding that once a house is built on that property, he did not believe the dormer addition would be visible from the street at all.

Mr. Martin testified that the subject property was subdivided in 1927, and that the existing house was built in 1939. He testified that the lot is below the minimum size for the R-60 Zone. In response to Board questions, he clarified that the proposed dormer would be located over the existing house and not over the existing screened porch, which would remain. He further clarified that shed dormers, such as the dormer proposed here, are a common type of expansion dormer.

FINDINGS OF THE BOARD

Based on the binding testimony of the Petitioner's architect and on the evidence of record, the Board finds that the requested 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, based on the Site Plan, Additional Information, and Statement of Justification, that the subject property has a severely angled rear lot line, that it is substandard in size for the zone at 5,000 square feet, and that it has a severely angled rear lot line. See Exhibits 1(b), 3 and 4. The Board finds that these aspects of this property make it unique and satisfy Section 59-7.3.2.E.2.a.i of the Zoning Ordinance.

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 extends approximately five (5) feet into the twenty (20) foot rear setback. Thus the Board finds that the Petitioner's existing home does not comply with the rear lot line setback required by the Montgomery County Zoning Ordinance, and is nonconforming. Accordingly, the Board finds that the application satisfies Section 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 house on the subject property was built in its current location in 1939, prior to the Petitioner's ownership of the property. Thus the Board finds that the Petitioner took no actions to create the special circumstances or conditions peculiar to this 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;*

As noted above, the existing house is nonconforming, with a rear corner that encroaches on the required setback from the rear lot line, due to the sharp angle of that lot line. The Board finds that the proposed construction uses this existing, nonconforming structure as a base for the proposed second story addition (dormer), and that this could not be done without the grant of the requested variance, causing the Petitioner a practical difficulty. Thus the Board finds that the requested variance is the minimum needed to allow construction on top of the existing, nonconforming structure (house), and to overcome the practical difficulty that full compliance with the Zoning Ordinance would impose. The Board further finds that the variance requested is minimal given that the proposed construction will not expand the footprint of the existing house or its height. Accordingly, the Board concludes that the grant of the requested five (5) foot variance is the minimum necessary to allow the proposed construction on top of the existing nonconforming structure and therefore 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 proposed construction will continue the residential use of this property, consistent with the recommendations of the Four Corners Master Plan, which seeks to "maintain and preserve the character and integrity of the Four Corners residential neighborhoods as the foundation of the community."

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.*

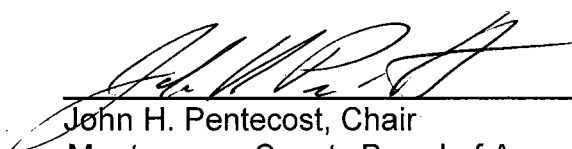
The Board finds that the record contains no opposition to the proposed construction, which again would continue the residential use of this home. In addition, the Board finds, per the Statement of Justification, that "[t]he proposed dormer addition will not have any adverse effect on the abutting or confronting properties as it is in character with the neighborhood, faces the rear yard, and does not exceed the existing ridge height of the current residence."

Accordingly, the requested variance to allow the proposed construction of a second floor addition is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

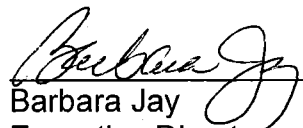
Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Edwin S. Rosado, Vice Chair, with Stanley B. Boyd and Katherine Freeman in agreement, and with Bruce Goldensohn necessarily absent, the Board adopted the following Resolution:

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 16th day of October, 2017.



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.