

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**CASE NO. A-6585**

**PETITION OF AMY ROSS AND ROBERT WILKOFF**

**OPINION OF THE BOARD**

(Hearing Held: October 24, 2018)

(Effective Date of Opinion: November 2, 2018)

Case No. A-6585 is an application by Amy Ross and Robert Wilkoff (the "Petitioners") for a variance necessary for the proposed construction of a new single family dwelling. The proposed construction requires a variance of five (5) feet as it is within fifteen (15) feet of the rear lot line. The required setback twenty (20) feet, in accordance with Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, October 24, 2018. The Petitioners appeared at the hearing in support of the application.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 21, Block 10, Rosedale Park Subdivision, located at 4411 Maple Avenue, Bethesda, MD, 20814, in the R-60 Zone.
2. The Petitioners are seeking to construct a new single-family home in lieu of the existing home, "with all the required living spaces on the first floor for accessible living in place, accommodating potential wheel chair access to all first floor functions." See Exhibit 3.
3. The Statement of Justification submitted by the Petitioners states that the subject property was subdivided in 1908, and that the existing house was constructed in 1941. It notes that the Petitioners "are requesting a partial reduction of the rear yard setback from 20 feet to 15 feet for the basement and a small portion of the first floor, to accommodate minimum dimension for accessibility to all functions." The Statement goes on to state

that if this property had been subdivided when the house was built, a variance would not be needed:

Ironically, if the lot had been subdivided when the house was built, we would fall into the 1941 to 1953 window where this partial rear yard reduction would be permitted by right. The older lots built prior to 1941, are frequently much smaller than current standards, yet not included in this grandfathered option. Therefore our variance request is to allow us to build what would be allowable by right if the lot were subdivided within the window that the existing home was constructed.

See Exhibit 3.

4. The Statement of Justification describes the subject property as exceptionally small and narrow, as follows:

Exceptionally small lot size: Typically, the smallest lots in Rosedale Park, are 4,000 Sq. Ft., already only 67% of the minimum 6,000 Sq. Ft. lot size in the R-60 zone. Our lot is even smaller at only 3,735 Sq. Ft. or 62% the minimum 6,000 Sq. Ft. lot size in the R-60 zone, (one of the smallest in Rosedale Park).

Exceptional narrowness: Our lot is only 40 feet wide, 67% of the minimum lot width standards of 60 feet in the R-60 zone. This make accommodating our desire for one floor, accessible, aging-in-place living an extreme challenge. If granted, it will also allow us to have off-street parking for ourselves, family, guests and, in case we need live in care givers, in a neighborhood with strict on street parking regulations, (each house is allowed one resident parking sticker and one visitor pass).

See Exhibit 3.

5. The record contains three emails voicing support for the grant of this variance, one of which is not signed. See Exhibits 9(a) - (c).

6. At the hearing, Ms. Ross testified that her existing house and lot are small, and that she and Mr. Wilkoff would like to construct an accessible home where they can live and age in place. She testified that the proposed construction would encroach five (5) feet into part of the rear lot line setback. Ms. Ross testified that she had discussed her plans with her neighbors, and that they are all supportive.

7. Mr. Wilkoff testified that Ms. Ross has owned the subject property since 2012, and that they are requesting five (5) feet of relief over approximately one-third of the rear lot line setback. He testified that the subject property was subdivided in 1908, and that the existing house was built in 1941. He testified that at the time the house was built, the Zoning Ordinance allowed for an averaging of the rear yard setback. He stated that the proposed construction did not use the full width of the property and was designed in a sensitive manner to allow light and air to neighboring properties.

Mr. Wilkoff testified that at 3,735 square feet, the subject property is exceptionally small for the R-60 Zone, and is the smallest property on the block. In addition, he testified that the subject property is extremely narrow, only 40 feet in width. Mr. Wilkoff testified that the variance requested is the minimum needed to overcome the practical difficulties associated with designing a home for accessible one-floor living on this very small property, noting that the proposed second story was for use by their adult children when they come to visit.

Mr. Wilkoff testified that the grant of the requested variance will not have an adverse impact on adjoining and confronting property owners. He noted that the adjacent property was built all the way to the 20-foot rear setback line, and that it then has a large deck, and that the house behind the subject property has done "essentially the same thing."

### **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.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds, based on the Statement of Justification and the testimony of the Petitioners, that at 3,735 square feet, the subject property is not only significantly substandard for the R-60 Zone, but is also smaller than the typical "small" lot in this neighborhood, which is 4,000 square feet. Indeed, the Board finds, based on the Statement of Justification and the testimony of Mr. Wilkoff, that the subject property is one of the smallest lots in the Rosedale Park subdivision and the smallest on the block. In addition to being small, the Board finds, again based on the Statement of Justification and the testimony of Mr. Wilkoff, that at 40 feet wide, the subject property is narrow for the R-60 Zone, which has a minimum building width at the front building line of 60 feet. The Board finds that these unusual or extraordinary situations or conditions combine to limit the useable area of this property for the proposed construction, and satisfy Section 59.7.3.2.E.2.a 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 size and shape of this property, which, per the Statement of Justification, was subdivided in 1908, and which make this property unique for the purposes of Section 59.7.3.2.E.2.a, are not the result of any actions by the Petitioners.

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 Petitioners have stated in their Statement of Justification that if their property had been subdivided near the time when the original house was built (circa 1941), a variance would not be needed for the proposed encroachment into the rear lot line setback. The Board finds, based on the testimony of the Petitioners and the Statement of Justification, and based on the site plan in the record at Exhibit 4, that the small size and narrow shape of the subject property result in a buildable envelope that is constrained in terms of its width and in terms of its depth, and that the requested variance is the minimum necessary to overcome the practical difficulties inherent in designing an accessible house that adheres to the limits of the available buildable envelope. The Board further finds that the requested variance is the minimum needed to overcome these conditions and to allow this construction to proceed. Thus the Board finds that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual characteristics of this property.

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, and thus can be granted without substantial impairment to 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, based on the Statement of Justification and the testimony of the Petitioners, that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties. In support of this, the Board notes the testimony of Mr. Wilkoff that the proposed design was intended to allow light and air to neighboring properties. In addition, the Board notes the testimony of Ms. Ross that she has spoken with her neighbors, and that they support the proposed construction. The Board also notes that the record contains three letters of support and no letters of opposition. See Exhibits 5(a) and 9.


Accordingly, the requested variance of five (5) feet from the rear lot line setback, needed to allow construction of a new single-family dwelling, is **granted**, subject to the following conditions:

1. Petitioners shall be bound by their testimony and exhibits of record; and
2. Construction shall be according to Exhibits 4 and 5(a)-(e).

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

agreement, and with Edwin S. Rosado, Vice Chair, 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.

  
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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 2nd day of November, 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.