

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>**

CASE NO. A-6591

PETITION OF BERNADETTE JOLLES

OPINION OF THE BOARD

(Opinion Adopted November 7, 2018)
(Effective Date of Opinion: November 15, 2018)

Case No. A-6591 is an application for a variance needed to allow construction of an attached garage. The proposed construction requires a variance of nine (9) feet as it is within eight (8) feet of the side lot line. The required setback is seventeen (17) feet, in accordance with Section 59-4.4.6.A.2 of the Zoning Ordinance.

The Board held a hearing on the application on November 7, 2018. Petitioner Bernadette Jolles appeared at the hearing in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Lot 42, Block A, Ancient Oak North Subdivision, located at 15804 Ancient Oak Drive, Gaithersburg, MD, 20878, in the RE-1 Zone. The subject property has an area of 36,719 square feet, substandard for the RE-1 Zone, which has a 40,000 square foot minimum. It is an elongated, five-sided lot, located on the west side of Ancient Oak Drive. The property's left side (southern) lot line is generally parallel to its right side (northern) lot line until it reaches the front of the house, at which point it angles sharply towards the right side (northern) lot line, causing the rear yard to narrow significantly from front to back. See Exhibits 3 and 4(a).

2. The Petitioner's Statement ("Statement") describes the unusual features of the subject property as follows:

The lots for houses around our property are rectangular and flat, for the most part, allowing the houses to be built closer to the road, yielding a smaller front yard and large back yard; our lot is the opposite, with a large front yard and smaller/narrow

back yard. In addition, the lot shape is peculiar because the property line on the left side draws to a narrow angle towards the back (Exhibits 12 and 13); it is shared with 3 different neighbors due to being in a court. No other nearby lot has this shape. The right side of the property cannot be used to build a garage due to the elevation/topography of the land; that side of the house is encumbered by a slope (Exhibit 3) that allows a walk-out exit from the basement. The odd shape of the lot, combined with the steep topography on the right side, unique placement at the top of the hill, and existing footprint of the house, pool, and patio, make it unreasonably difficult to place an attached 2-car garage anywhere else on the property.

In addition to the steep downward slope on the right side of the property, and the existence of the pool and patio to the rear, the Statement further cites the location of the septic tank and field in the front yard as support for its conclusion that the proposed location is the only place to build the proposed garage. It describes that location as the "flat area at the top of the driveway on the left side" where the Petitioner and her husband "currently park the[ir] cars on a flat asphalted pad (Exhibit 7)." See Exhibit 3. At the hearing, the Petitioner testified that both the septic tank and field, and the pool and patio, existed in their present locations when she and her husband purchased this property in 2006.

3. The Statement asserts that the proposed two-car garage would substantially conform to the established historic or traditional development pattern of the street or neighborhood, stating that the majority of the homes in the neighborhood, and all of the homes on Ancient Oak Drive, have two-car garages. The Petitioner attached photographs of many such homes to her Statement for inclusion in the record.

4. With respect to the impact of the proposed garage on neighboring properties, the Statement at Exhibit 3 notes that:

The garage will be visible from the street, comparable to neighboring properties' garages; it will barely be visible from neighboring properties, since it will be sited on the other side of an existing 6 ft fence between the side of our property and the rear of the adjacent property at 13005 Meadow View Drive. It will be finished with exterior siding to match the existing siding on the house. No major regrading or additional surface paving will be necessary. Existing trees on our property will be preserved, where possible; landscaping will be added as needed to complement the aesthetics of the street view.

5. At the hearing, the Petitioner testified that the subject property is pie-shaped, with a relatively square area in front of the house that tapers acutely along the left side lot line from the front of the house to the rear of the property. She testified that because of this narrowing width, there is inadequate space for a two-car garage on the side of the house. The Petitioner testified that a septic tank and field render the area in front of her home unbuildable, and that a pool and patio, which existed when she purchased the property, preclude construction to the rear of the home. The Petitioner testified that while most of the

houses in her neighborhood have two car garages, her property does not have a garage. She testified that a variance is needed for the back left corner of the two car garage she is proposing.

CONCLUSIONS OF LAW

Based on 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 that the subject property has a unique five-sided shape with a sharply angled left side lot line that constrains the ability to construct a garage that conforms to the required side lot line setback. The Board finds, in looking at the Location Survey and Zoning Vicinity Map in the record at Exhibits 4(a) and 7, that if the subject property's left side lot line had remained parallel to the right side lot line, as it is in front of the house and on the majority of properties in this neighborhood, instead of sharply angling towards that lot line, no variance would have been needed for the proposed construction. The Board observes in support of this finding that the front left corner of the proposed garage comports with the required setback, while the left rear corner encroaches. The Board further finds that the slope on the right side of this home, the septic tank and field in the front, and the existing swimming pool in the rear preclude construction in those areas and further constrain expansion on this property. The Board finds that these circumstances constitute an extraordinary condition that is peculiar to this property.

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 Petitioner is not responsible for the unusual five-sided shape of this property, or for its sharply angled left side lot line. Similarly, the Board finds that the Petitioner is not responsible for the location of the septic tank and field or for the location of the pool, and that she is similarly not responsible for the slope on the right side of 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 nine (9) foot variance is the minimum necessary to overcome the development constraints that would otherwise be imposed on this property by the Zoning Ordinance due to its unusual shape, sharply angled side lot line, slope, and other existing impediments.

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 Petitioner to proceed with the proposed construction is consistent with the residential uses contemplated by the Potomac Subregion Master Plan (2002).

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.*

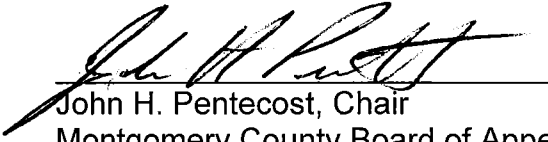
The Board finds that the proposed garage addition will not be adverse to the use and enjoyment of abutting or confronting properties. In support of the finding, the Board finds that the Statement asserts that the proposed garage will be comparable to neighboring properties' garages, and will "barely be visible from neighboring properties, since it will be sited on the other side of an existing 6 ft fence between the side of our property and the rear of the adjacent property at 13005 Meadow View Drive." The Board further notes that the Petitioner indicates that existing trees will be preserved where possible, and that "landscaping will be added as needed to complement the aesthetics of the street view."

Accordingly, the requested variance of nine (9) feet from the side lot line setback 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 Katherine Freeman, seconded by Edwin S. Rosado, Vice Chair, with John H. Pentecost, Chair, and Stanley B. Boyd in agreement, and 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 15th 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.