

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/boa/>**

**CASE NO. A-6593**

**PETITION OF THOMAS E. SKILTON**

OPINION OF THE BOARD

(Opinion Adopted November 28, 2018)  
(Effective Date of Opinion: December 6, 2018)

Case No. A-6593 is an application for a variance needed to allow construction of a two-story addition. The proposed construction requires a variance of 0.82 feet, as it is within 6.18 feet of the right side lot line. The required setback is seven (7) feet, in accordance with Section 59-7.7.1.D.2 of the Zoning Ordinance.

The Board held a hearing on the application on November 28, 2018. Applicant Thomas E. Skilton appeared at the hearing, in support of the application.

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

**EVIDENCE PRESENTED**

1.        The subject property is Lot 27, Block 1, Locust Hill Estates Subdivision, located at 9306 Elmhirst Drive, Bethesda, MD, 20814, in the R-60 Zone. The subject property is located on the north side of Elmhirst Drive. It is a four-sided property, with an area of 9,982 square feet. See Exhibits 3 and 4.

2.        The Justification Statement ("Statement") indicates that the existing house on the subject property was built in 1947, and that "[n]o structural work, additions or improvements (beyond painting/general maintenance, updating utilities and replacing enclosed porch screens with windows) have been made to the structure since its original construction." It states that "[d]ue to exceptional shape, topographical and other extraordinary conditions peculiar to the Subject Property, Applicant requires a small triangular variance (constituting approximately 3.98 total square feet and a maximum encroachment of less than 10 inches) from the right side setback." See Exhibit 3.

3.        The Statement states that the property's side lot lines "converge at a substantially greater rate (256%) than that of similar properties on Applicant's block," and that the

existing house was “built on an angle tilted towards the right side property line,” exacerbating “difficulties for renovations on the rear right side of the original structure.” See Exhibit 3. In addition, the Statement indicates that the topography of the property also hinders construction, as follows:

[T]he topography of the lot also restricts an addition beginning from the back side of the house. The Subject Property is located on the north side of Elmhirst Drive across from a Rock Creek tributary. The property slopes up from the road to the house, and then continues an upward slope through the backyard to the rear property line. See Exhibit E. The slope in the backyard includes retaining walls that pre-date Applicant’s ownership of the Subject Property, as well as plantings designed to control the storm water run-off and erosion toward the structure. In summary, the configuration and slope of the back yard does not make it a good building location.

4. The Statement at Exhibit 3 indicates that the improvements desired are consistent with improvements made to the other houses in the neighborhood, and have been designed to minimize any encroachment into setbacks:

Applicant and his architect have made significant efforts in designing the addition to minimize the size of the required variance and to ensure that it will not be adverse to the use and enjoyment of neighboring properties. For example, the right wall of the proposed additional is both stepped-in and then angled-in (at a 45 degree angle). Also, the back right corner of the existing structure will be demolished so that the family room can utilize this space and be positioned as far to the left as possible without sacrificing the only window of an existing upstairs bedroom. The roofline and style of the addition are designed to maintain the look and style of the existing structure so that it continues to conform with the existing character of the neighborhood.

5. Regarding the elements of the variance test, the Statement notes that the subject property is unique because of its convergent side lot lines, which inhibit the ability to construct an addition to the right side of the existing structure, and because the “relatively steep incline of the backyard make[s] an addition solely to the back or to the left side of the existing structure impractical.” See Exhibit 3. The Statement indicates that the shape and slope of the property have existed since the original layout of the neighborhood, and details how the addition has been designed to minimize any encroachment, noting that the area of total encroachment is 3.98 square feet, and that the proposed addition extends no more than 10 inches into the setback. It states that the addition is designed to conform with the character and style of the existing neighborhood, and that “[a]ll of the owners of abutting properties support the requested variance to enable Applicant to construct the proposed addition.” See Exhibit 3.

6. At the hearing, the Applicant explained that he purchased the house in 1999, and was its third owner. He testified that he had not made any improvements to the house, and that the prior owner had not done so either, except to replace the screens in the porch

with windows. Thus he testified that the house remained largely as it was when it was built in 1947, and that it lacked many of the attributes now common to houses in his neighborhood.

The Applicant testified that in 2016, he decided to renovate his house, and hired an architect. After learning of the constraints posed by his property's setbacks, and after considerable work with his architect to minimize the extent of any encroachments into those setbacks, the Applicant testified that he decided to apply for a variance. He testified that he had discussed his plans with all of his neighbors, and that they all support the grant of the relief requested. See Exhibit 3. He characterized his proposed construction as consistent with other development in his neighborhood.

The Applicant testified that, for the reasons set out in his written submission, his request meets the standards for the grant of a variance. He testified that his side lot lines converge at 256 percent of the rate of convergence of lot lines on neighboring properties, and that it is this angling of the lot lines, coupled with the fact that his house is not set square on the lot, that causes the minor encroachment for which he is seeking relief. He showed the Board a piece of paper that was cut to the actual size and shape of the encroachment, which he reiterated was less than four (4) square feet total. He testified that his rear yard is encumbered by a steep slope.

## 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 uniquely convergent side lot lines which, when coupled with the property's slope, constrain the ability to expand this home while still meeting the required setbacks. The Board finds that these circumstances constitute an extraordinary condition peculiar to this property. See Exhibits 3 and 4.

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 Applicant is not responsible for the shape or slope of 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;*

The Board finds that the requested 0.82 foot variance from the right side lot line, resulting in an overall encroachment of 3.98 square foot which extends no more than 10 inches into the setback, is the minimum necessary to overcome the development constraints that would otherwise be imposed on this property by the Zoning Ordinance on account of its convergent side lot lines and slope. The Board further finds that the Applicant has gone to great lengths to design his proposed addition in a way that minimizes its encroachment and the extent of the variance requested.

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 granting the variance to allow the Applicant to proceed with the proposed construction will continue the residential use of the property is and will not substantially impair the intent and integrity of the Bethesda Chevy Chase 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 that the proposed addition will not be adverse to the use and enjoyment of abutting properties, and that the confronting property is not developed. In support of this finding, the Board cites the Statement for its assertion that all neighbors who have seen the plans have reacted positively to them, and that “[a]ll of the owners of abutting properties support the requested variance to enable Applicant to construct the proposed addition.” See Exhibit 3 (including Attachment A, letters of support).

Accordingly, the requested variance of 0.82 feet from the right side lot line setback is **granted**, subject to the following conditions:

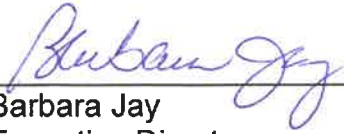
1. Applicant shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5.

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

  
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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 6th day of December, 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.