

**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-6629**

**PETITION OF JENNIFER SCUPI AND ADAM WITWER**

**OPINION OF THE BOARD**

(Opinion Adopted January 8, 2020)  
(Effective Date of Opinion: January 16, 2020)

Case No. A-6629 is an application for two variances necessary for the proposed construction of a two-story side addition to an existing house. The proposed construction requires a variance of 1.33 feet as it is within 18.67 feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of two (2) feet as it is within five (5) feet of the side lot line. The required setback is seven (7) 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 January 8, 2020. Petitioner Jennifer Scupi appeared at the hearing, and was represented by Emily J. Vaias, Esquire. Grant Saller, AIA, the Petitioners' architect, was also in attendance.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot P1, Block 3, Chevy Chase Section 3 Subdivision, located at 6802 Delaware Street, Chevy Chase, Maryland, 20815, in the R-60 Zone. The property is rectangular in shape, with a width of 50 feet and a depth of 90 feet, for a total area of 4,500 square feet. See Exhibits 1, 11, and 12(b).
2. The Statement of Justification ("Statement") indicates that at 4,500 square feet, the subject property "is the smallest in the Block, and more than two times smaller than the average lot size on the Block." In addition, the Statement notes that at 90 feet deep, the subject property is shallow relative to the "majority of the properties on the Block," which "have a depth of 200 feet." See Exhibits 11 and 11(g) ("Lot Comparison Table"). The Statement states that "[t]his substandard lot size is the

result of a subdivision which pre-dated zoning requirements," and describes the property and its history as follows:

The Property is situated within Block 3 (the "Block") of the subdivision established by that certain Resubdivision of Section 3 Chevy Chase recorded on July 10, 1907 in Plat Book No. 1 at Plat 90 (the "Record Plat", attached as Exhibit E) [BOA Exhibit 11(d)] among the Land Records. The Block is bounded by residential neighborhood streets to the north, south and east (Shepherd Street, Raymond Street and Delaware Street, respectively) and a principal arterial to the west (Connecticut Avenue) (see Montgomery County Zoning Map attached hereto as Exhibit F, the "Zoning Map") [BOA Exhibit 16]. The Property has eastern frontage along Delaware Street, and abuts other single-family homes to the north (6806 Delaware Street), south (3801 Raymond Street) and west (3805 Raymond Street). According to records of the Maryland State Department of Assessment and Taxation ("SDAT"), the existing house was built in 1921, the same time as the houses to the north and south (see SDAT records attached hereto as Exhibit G) [BOA Exhibit 11(h)]. Property to the adoption of the 1928 Zoning Ordinance, there were no restrictions on conveying lots or parts of lots, or standards for setbacks, frontage or lot area. In June of 1925, Lot 1 (which then included the property now known as 3801 Raymond Street) was subdivided into two separate parcels and the Property was first conveyed in its current lot configuration by deed recorded in the Land Records at Liber 374 folio 394 (the "1925 Deed" attached hereto as Exhibit H) [BOA Exhibit 11(e)].

3. The Statement states that subsequent to its original construction, there have been "various changes and additions to the Property that have resulted in a haphazard evolution of living space over time," and indicates that based on photographic evidence, the home has existed in its current configuration since at least 1957. See Exhibits 11 and 11(f). Petitioner Scupi's family purchased the Property in 1970, and Ms. Scupi testified that her family did not change the outward configuration of the house.
4. The Statement states that "the existing structure is legally nonconforming with regard to the rear and side setbacks," later noting that "the existing house was constructed and the lot created prior to the existence of the Zoning Ordinance and are thus considered legally nonconforming with regard to all requirements, including the side and rear yard setbacks, established by the 1928 Zoning Ordinance (and all later incarnations)." See Exhibit 11. The Statement further notes that "[t]he Project will not alter the existing side and rear yard setbacks."
5. The Statement states that the Petitioners are proposing to increase the "gross floor area" of the home by a total of approximately 124 square feet, and that the variance relief requested "is limited to the approval of continued nonconformance with side and rear yard setback requirements at the Property." It notes that the current

configuration of the home is impractical for modern living, and that without the requested variances, the Petitioners "will not be able to make essential sustainability upgrades to the home or to accommodate their ability to age in place in the coming years." The Statement concludes that for these reasons, the requested variances are "the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose...." See Exhibit 11.

6. With respect to the impact of the grant of these variances on neighboring property owners, the Statement indicates that:

The Project will not adversely affect the use or enjoyment of abutting or confronting properties. To the contrary, the Project's new construction will not be visible from Delaware Street. The Project will also maintain the existing massing and spatial relationships with the surrounding properties that have been in place at the Property for more than a half century. Further, the Project will actually provide a more cohesive design that is more attractive and compatible with the Block.

See Exhibit 11. The proposed construction has received approval from Section 3 of the Village of Chevy Chase. See Exhibit 15.

7. At the hearing, Ms. Vaias explained the proposed construction to the Board and why the requested variances could be granted under the standard set forth in the Zoning Ordinance. She stated that the house was constructed in 1921 and that the property was subdivided in 1925, and that the house is a legal nonconforming building. She explained that the Petitioners are proposing to expand their kitchen and to use the existing garage as internal space. Ms. Vaias stated that the Petitioners are not proposing to expand the setbacks of the existing house, and that the subject property is the smallest lot on the block. Ms. Vaias noted that she explains in her Statement how the requested variances meet each of the criteria needed under the Zoning Ordinance; she stated that the proposed construction will not impair the General Plan, which seeks to preserve residential neighborhoods, or the applicable master plan, which also seeks to protect existing residential character. She stated that Petitioner Scupi has agreed not to do the green roof or deck shown on the construction plans, in light of the approval given by Section 3 of the Village of Chevy Chase. She noted that there may be other minor adjustments to the constructions plans, such as one known adjustment needed to address a fire escape issue, but that none will affect the requested variances.
8. At the hearing, Petitioner Scupi testified that she grew up in this house, and that it is "pretty much the same" now as it was then. She testified that people in front of the house will not see the proposed construction, and that those to the sides will appreciate the improvement. Ms. Scupi testified that she has spoken with her neighbors, and that the only objection to the proposed construction came from her

neighbor to the rear, who did not want the roof deck over what is now the garage. She testified that she no longer plans a green roof or roof deck because approval by Section 3 of the Village of Chevy Chase stated that they could not actively use a roof deck.

## FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variances can be granted. The requested variances comply 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;*

Based on the Statement, Site Plan, and Lot Comparison Table, the Board finds that at 4,500 square feet in size, the subject property is substandard for the R-60 Zone, and is the smallest property on the block. See Exhibits 11, 11(g), and 12(a). The Board further finds, based on the Statement and after a review of the Zoning Vicinity Map in the record at Exhibit 16, that with a depth of 90 feet, the subject property is shallower than the majority of properties on the block. Thus the Board finds that the small and shallow size of the subject property constitute an extraordinary condition that is peculiar to this property, in satisfaction of this Section.

*Section 59.7.3.2.E.2.a.ii. the proposed development uses an existing legal nonconforming property or structure;*

The Board finds, per the Statement and the representations of counsel, that the existing house on this property was originally built in 1921 (before the enactment of the County's first Zoning Ordinance) and does not conform to the required side lot line setback, making it a legal nonconforming structure. The Board further finds that the Petitioner is proposing to construct an addition to the existing house. Thus the Board finds that the proposed development uses an existing legal nonconforming structure, and satisfies this element of the variance test. See Exhibit 11.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

Petitioner Scupi's family, who purchased this property in 1970, did not construct or have control over the placement of the original house, which was built in 1921, and were not responsible for the small size or shallowness of the property on which the house was placed. See Exhibit 11. Thus the Board finds that the special circumstances or conditions applicable to this property were not the result of 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 Board finds, based on the Statement, that the grant of the requested variances would allow construction that would result in approximately 124 square feet of additional gross floor area, and would not increase the extent of the current incursion by the existing structure into the required side and rear setbacks. See Exhibit 11. Thus the Board finds that the additional space requested is minimal, and that the requested variances would not alter the existing spatial relationship between the existing home and neighboring properties. Accordingly, the Board finds that grant of the requested variances is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would otherwise 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;*

The Board finds that the proposed construction continues the residential use of the home, and is consistent with the Bethesda-Chevy Chase Master Plan (1990), which recommends "low-density single-family residential development" on the subject property. See Exhibit 11.

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.*

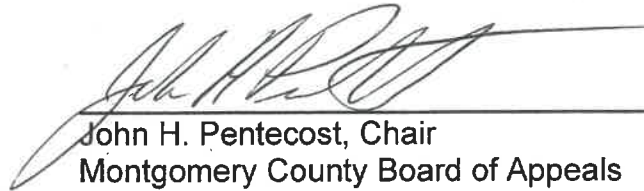
The Board finds that allowing the proposed construction will not infringe on the use and enjoyment of abutting or confronting properties, since it will maintain the existing side and rear lot line setbacks and, per the Statement and testimony of Ms. Scupi, will not be visible from Delaware Street. The Board further finds, per the testimony of Ms. Scupi, that she has spoken with her neighbors, and that other than an objection to the proposed roof deck, which is no longer proposed, they did not object to the proposed construction. Finally, the Board notes that the proposed construction, except the roof deck, has been approved by Section 3 of the Village of Chevy Chase. See Exhibits 11 and 15.

Accordingly, the requested side and rear lot line variances are **granted**, subject to the following conditions:

1. The Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be generally in accordance with Exhibit 13 (inclusive), except that the Board notes, per the representations of counsel and testimony of Petitioner Scupi, that the Petitioners need to make minor modifications to these plans in order to address fire safety egress and other possible issues, and that the Petitioners do not intend to construct the green roof and deck over the existing garage. None of the modifications to the plans of record shall increase the extent of the variances needed.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, Vice Chair, with Katherine Freeman and Mary Gonzales in agreement, and with Jon W. Cook 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 January, 2020.



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.