

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
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**Case No. A-6647**

**PETITION OF LEAH ARTHUR**

**OPINION OF THE BOARD**

(Hearing Held: March 4, 2020)

(Effective Date of Opinion: March 18, 2020)

Case No. A-6647 is an application by Petitioner Leah Arthur for three variances needed for the construction of a garage addition and porch. The proposed construction of a garage addition requires a variance of 0.60 feet as it is within 6.40 feet of the right side lot line. The required setback is seven (7) feet, in accordance with Section 59-4.4.7.B of the Zoning Ordinance. In addition, the proposed garage addition requires a variance of 5.6 feet as it is within 34.4 feet of the front lot line. The required setback is forty (40) feet, in accordance with Section 59-4.4.7.B of the Zoning Ordinance. Finally, the proposed porch requires a variance of 5.6 feet as it is within 25.4 feet of the front lot line. The required setback is thirty-one (31) feet, in accordance with Section 59-4.4.7.B of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, March 4, 2020. Petitioner Leah Arthur appeared *pro se* at the hearing in support of the requested variances.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 14, Block 2, Meadowood Subdivision, located at 12817 Baker Drive, Silver Spring, Maryland, 20904, in the R-200 Zone. The property is a rectangular lot, approximately 100 feet in width by 150 feet in length, with a total area of 15,000 square feet. The Petitioner purchased the subject property in 2012.
2. The Justification Statement ("Statement") indicates that the Meadowood Subdivision, including the subject property, was recorded in 1936. The Statement states

that the property contains an original house, built in 1950, which sits 32 feet off the front lot line at the front door, and 35 feet off the front lot line on the left and right side, and thus is nonconforming because it does not comply with the required 40 foot front lot line setback. The Statement further indicates that the existing attached garage sits 58 feet from the front lot line, but only six feet, four inches (6' 4") from the right side lot line, encroaching on the required seven foot (7') side lot line setback by eight inches (8"). See Exhibits 4, 7(c), and 9.

3. The Statement indicates that the Petitioner is seeking to add a porch to the front of her home, which will extend six feet, five inches (6' 5") from the front of the existing house. The Statement notes that this is just over two feet farther than the current porch, which the Statement says is "detaching from the home" and "needs to be replaced." The Statement notes that "[w]ithout a variance the front façade cannot be touched." See Exhibit 9.

The Statement further indicates that the Petitioner is seeking to "[e]xtend the garage over the current driveway towards the street," noting that this extension "will include a new second floor above both the new and old garage and will be the same width as the existing garage." The Statement makes clear that this extension will not bring the new structure any closer to the right side lot line than the existing structure, and that "[o]ffsetting the second floor of the garage side by 8" [so as to avoid the need for the side lot line variance] would not be aesthetically or structurally sound, or similar to any other home in the White Oak Neighborhood." Finally, the Statement states that "[t]he front of the new garage will be at 34' to the front property line which is very similar to the existing front of the house." See Exhibit 9.

4. The Statement states that the location of the existing house within the 40 foot front lot line setback is not unusual for homes on this side of Baker Drive, noting that "[s]ix of the 8 houses on Baker Drive do not meet the 40' setback," and that "[t]he two houses that do meet the setback requirements are corner lots." The Statement further states, by way of example, that the house on the property abutting the subject property is set back only 28 feet from the front lot line. See Exhibit 5(p). The Statement concludes that "[t]he proposed addition would preserve the front facades throughout the block and neighborhood." See Exhibits 7(b) and 9.

5. The Statement notes, in discussing the need to locate the proposed addition to the side as opposed to the rear of the property, that "the grade of the neighborhood produces significant water runoff in the back yard," such that the Petitioner has installed "2 sump pumps in the basement and 1 in the garage to help with invasive water issues, which would likely be exacerbated by locating the addition in the rear of the house." The Statement further notes that "[b]uilding a large structure in the backyard could cause water runoff issues for the abutting neighbors." In addition to water problems, the Statement notes that putting a two-story addition in the backyard area "would mean that large trees would have to be removed, that retaining walls would have to be removed and replaced, and that significant regrading may be required." See Exhibit 9.

6. In addressing the impact of the proposed construction on abutting and confronting properties, the Statement indicates that there is general approval for the variance in the neighborhood. The Statement further notes that "the home will have much better curb appeal and will not be disrupting the neighborhood look or layout." See Exhibit 9. The record contains a letter of support from the Petitioner's confronting neighbor, who notes that she has seen the Petitioner's plans and believes that the proposed construction "would enhance the look of the neighborhood and be an asset to our street." See Exhibit 10. In addition, the record contains a petition, signed by several neighbors, including the neighbor who shares the Petitioner's right side lot line, evidencing an understanding of the proposed construction and, as represented by the Petitioner, indicating support for the grant of the necessary variances. See Exhibit 11.

7. At the hearing, Petitioner Leah Arthur testified that she purchased the subject property in 2012. She testified that when her house was built in 1950, the side setback was seven (7) feet. She stated that the existing garage was built in violation of that setback, encroaching by a few inches. Ms. Arthur testified that the existing concrete stoop/front porch on the home has separated one (1) to two (2) inches from the house. Ms. Arthur testified that she is seeking to rebuild this porch and extend it towards the front lot line by approximately two and a half feet. She testified that she is also seeking to extend her existing garage forward, and that the proposed garage addition/second story construction will maintain the existing side setback, and will be behind the front of the existing home.

In response to Board questions, Ms. Arthur testified that a lot of the houses in her neighborhood are closer to the front lot line than the required 40 feet, specifically mentioning the houses to the left of hers and the houses behind her house on New Hampshire Avenue. Ms. Arthur noted that there is a 14-foot right-of-way along her side of Baker Drive, which gives the impression that the homes are set back farther than they actually are.

In describing the topography of her property, Ms. Arthur testified that her house sits up from the street. She testified that her driveway is bordered on the right side by a retaining wall, about three feet in height, because her property is lower than the property to her right. She testified that she has sump pumps in her basement and garage to address water issues at the rear of her property that are caused by the hills in her neighborhood. The existing elevations submitted by Ms. Arthur show the slope of her property. See Exhibit 5(a).

Finally, when asked about the impact of the proposed construction, and in particular the proposed garage addition/second story, on the neighbor to the right of the subject property, Ms. Arthur testified that that neighbor's view would not change much, that there were trees between the two properties, and that because her property sat lower than her neighbor's property, her proposed second floor would be "about even" with the neighbor's house.

## FINDINGS OF THE BOARD

Based on the binding testimony and 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 Statement and the testimony of the Petitioner, that the topography of the subject property relative to surrounding properties has caused water problems on the subject property, particularly to the rear, and that locating the proposed construction behind the existing house would require the removal and replacement of existing retaining walls, and could result in new water problems and cause runoff issues for neighboring properties. See Exhibit 9. The Board finds that this constitutes an exceptional or extraordinary condition peculiar to the subject property, and accordingly finds that the property satisfies this element of the variance test.

*Section 59-7.3.2.E.2.a.v. - the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*

Per the Statement and testimony of record, the Board finds that a number of the homes on Baker Drive and along New Hampshire Avenue do not conform to the front lot line setback, and that the proposed construction would maintain this pattern. The Board further finds that while the grant of the requested front lot line variances will bring the front porch slightly closer to the front lot line than the existing front stoop/porch and will allow construction of a garage addition at a similar distance, that even with the grant of the requested front lot line variances, the house on the subject property still would still not be as close to the front lot line as one of the abutting neighbors' houses. In addition, the Board finds that the requested side lot line variance would allow construction that maintains the current distance between the existing garage and the right side lot line. Thus the Board finds that the proposed development would substantially conform with the established historic or traditional development pattern of this street or neighborhood, in satisfaction of this element of the variance test.

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 purchased the subject property in 2012, and therefore is not responsible for the location of the existing 1950 home on this property, or for the property's topography and water issues. The Board further finds that the Petitioner is similarly not responsible for the location of the other houses on Baker Drive and elsewhere in the neighborhood within the front lot line setback.

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 and on the testimony of the Petitioner, that the requested variances, which would allow a proposed porch and garage addition that conform with the established development pattern on this street and in this neighborhood, and that avoid construction in an area of this property that would likely exacerbate water problems because of existing topography, are the minimum needed. The Board finds that without the grant of a variance, the existing front porch/stoop, which is pulling away from the house, cannot be repaired, which constitutes a practical difficulty. The Board further finds that the porch the Petitioner is proposing will extend just over two feet farther than the existing porch/stoop, which the Board finds is modest and is the minimum needed for the proposed porch. In addition, the Board finds that the proposed side lot line variance is the minimum needed to maintain the setback of the existing garage from that lot line, and that per the Statement, construction of the garage addition eight inches farther away from the side lot line, so as to be in compliance with the required setback, would constitute a practical difficulty in that it "would not be aesthetically or structurally sound, or similar to any other home in the White Oak Neighborhood." Thus the Board finds that this element of the variance test is satisfied.

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 White Oak Master Plan, which seeks to protect and reinforce the integrity of the existing neighborhoods.

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.*

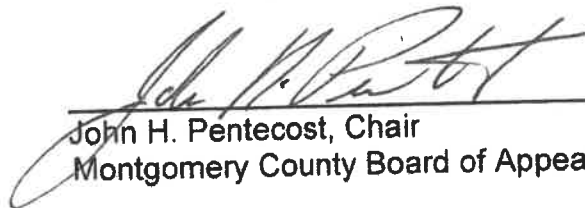
The Board finds, per the testimony of the Petitioner, that because of an elevation difference and existing trees, the proposed construction, and particularly the garage addition, will not substantially change the view of Petitioner's neighbor to the right. The Board further notes that Petitioner's confronting neighbor submitted a letter of support, and that several other neighbors, including Petitioner's neighbor to the right, signed a petition that, per the Petitioner, evidences support for the grant of the requested variances, and at a minimum indicates an awareness of the proposed construction. See Exhibits 10 and 11. Finally, the Board notes that no one appeared in opposition to the requested variances at the hearing. Accordingly, the Board finds that granting the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variances are **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.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Bruce Goldensohn, Vice Chair, and Mary Gonzales 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 18th day of March, 2020.



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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.