

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6653

PETITION OF JUDAH AND MARILYN LIFSCHITZ

**OPINION OF THE BOARD
(Hearing Held May 20, 2020).
(Effective Date of Opinion: May 28, 2020)**

Case No. A-6653 is an application by Judah and Marilyn Lifschitz (the "Petitioners") for two variances necessary for the proposed construction of a garage. The proposed construction requires a variance of 3.40 feet as it is within 9.60 feet of the right lot line. The required setback is thirteen (13) feet, in accordance with Section 59-4.4.8.B.2 of the Montgomery County Zoning Ordinance (2014). In addition, the proposed construction also reduces the sum of both side yard setbacks to 21.60 feet, necessitating a variance of 3.40 feet. The required sum of both sides is 25 feet, in accordance with Section 59-4.4.8.B.2 of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, May 20, 2020. All participation was done via Microsoft Teams. The Petitioners' architect, Michael R. Minton, participated in the hearing in support of the requested variances.

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

EVIDENCE PRESENTED

1. The subject property is Lot 13, Block B, Kemp Mill Farms Subdivision, located at 936 Clintwood Drive, Silver Spring, MD, 20902, in the R-90 Zone. It is a five-sided property, almost three times as deep as it is wide, with a total area of 11,303 square feet. The variance application cites the property's narrowness as an unusual feature. The Zoning Vicinity Map shows that the shape of the subject property is deeper and narrower than most of the properties on the Petitioners' block. See Exhibits 1, 4(a), and 8.

2. The Petitioners are seeking to enclose an existing one-car carport, and to extend the width of the carport by three feet to allow for maneuverability around the parked car.

In order to do so, the Petitioners need a variance of 3.4 feet from the required side lot line setback on the west (right) side of their property. In addition, the Petitioners need a variance of 3.4 feet from the required 25-foot sum of both sides setback.

3. A similar variance was previously granted to allow the construction of an attached storage structure on the west side of this property, as noted in the Statement of Justification ("Statement") submitted with this application (Exhibit 3):

In 1993, a variance was requested and approved (case A-3901) for a small storage room attached to the existing west side of the residence. The storage room reduced the total side yard setback from 25 feet to 21.6 feet similar to the proposed garage extension.

In variance Case No. A-3901, the Board found that the narrowness of the subject property "restricts the buildable area of the lot" and "creates difficulties in the siting of any new construction at the side of the dwelling," causing the Board to conclude that "the strict application of the setback requirements would result in practical difficulty to the applicant if the variance is not granted." See BOA Case No. A-3901. The proposed garage extension would be located forward of the storage room for which variance Case No. A-3901 was granted, at a similar distance as the storage room from the right (west) side lot line. See Exhibit 4(a).

4. The Petitioners have lived in this house for 35 years, and are making improvements to their home to allow them to age in place, including but not limited to the proposed carport enclosure. See Exhibit 3. Per the Statement, the existing carport is exposed to the elements which "results in icy unsafe conditions during winter," and the proposed garage enclosure "will create a protected and safe means of accessing the residence from the vehicle." The Statement states that the requested increase in the width of the structure is needed to allow a person to "enter and exit the vehicle with the minimum clearance," and that "[i]f the existing carport footprint were enclosed without widening, the resulting available interior would only be 10'-8"," noting that "[i]t is not feasible to enclose the existing carport in its current width as it will not allow for adequate clearance inside the enclosed garage to maneuver around the vehicle." See Exhibit 3. This sentiment is echoed on the variance application, which notes that without the grant of a variance, "the carport cannot be enclosed in an operational manner which will allow for sufficient parking space and gaining access thereto." See Exhibit 1.

5. The Statement notes that the existing open carport "is part of the original construction of the residence" and is not the result of actions by the Petitioners. See Exhibit 3.

6. The Petitioners have submitted letters of support for the grant of the requested variances from the abutting and confronting neighbors who would be most impacted by the proposed construction. See Exhibits 7(a)-(b). In addition, with respect to the impact that the grant of the requested variances would have on neighboring property owners, the Statement states that "[t]he requested variance does not in any way create a substantial

impairment to the intent, purpose or integrity of the Homeowner's guidelines or general plan affecting the property, and will not be detrimental to the use or enjoyment of adjoining properties." See Exhibit 3.

7. Architect Michael R. Minton participated in the hearing in support of the requested variances. Mr. Minton testified that the existing house was constructed 12- and 13- feet from the property's side lot lines, thereby just satisfying the required 25-foot sum of both sides setback requirement.

Mr. Minton testified that the Petitioners are seeking to enclose their carport to provide them with safe access from their car to their home during periods of inclement weather. He testified that the carport faces north and west, which causes snow and ice to blow in, and asserted that this constitutes an extraordinary condition. Mr. Minton testified that a 3.4 foot variance is needed from the side lot line setback, as well as from the sum of both sides, in order to provide adequate clearance in the proposed garage enclosure for the Petitioners to open their vehicle doors and safely maneuver around their vehicle and into the house. Mr. Minton stated that the garage extension would adhere to the side lot line setback allowed by the 1993 variance.

Mr. Minton testified that the Petitioners' confronting and affected adjacent neighbors support the grant of the requested variances.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the 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;

The Board finds, based on the Statement, Zoning Vicinity Map, and other exhibits of record, and on the findings made in BOA Case No. A-3901, that the subject property is narrow for its size and has an elongated shape compared to other properties on the block. The Board further finds that the original house on the subject property was built out to the allowable side setbacks, that the house is oriented such that the carport has a northwest exposure, and that these conditions combine with the narrowness of the subject property to constitute an unusual or extraordinary condition peculiar to this property, 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 Petitioners are not responsible for the relatively narrow shape of the subject property, or for the orientation or placement of their home on the subject property, all of which occurred prior to their purchase.¹ Thus the Board finds that the Petitioners took no actions to create this property's unusual characteristics.

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 the testimony of Mr. Minton, that the requested variances are the minimum needed to allow for the extension and enclosure of the existing carport so that it can function as an operational one-car garage, and thus to overcome the practical difficulty that would be posed by full compliance with the setbacks in the Zoning Ordinance on account of the narrowness of the subject property. The Board further finds that the requested variances are minimal in that with the grant of the requested variances, the resultant distance between the enclosed garage and the right side lot line will be consistent with the distance between the existing attached storage room and that same lot line, as permitted by variance Case No. A-3901. In light of the foregoing, 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 granting the variance to allow the Petitioners to proceed with the proposed construction will continue the residential use of the property and will not substantially impair the intent and integrity of the Kemp Mill 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.*

Based on the Statement at Exhibit 3, and as confirmed by the letters of support in the record at Exhibits 7(a) and (b), the Board finds that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties. The Board notes in the regard that the proposed construction will enclose an existing carport, and while the carport will be extended slightly towards the right lot line, it will not extend beyond the closest point of the existing house (storage room). In addition, the Board finds that the record includes no opposition to the requested variances, and letters of support from the neighbor sharing the property line from which the variance is requested, and from the Petitioners' confronting neighbor.

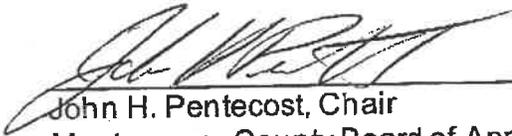
Accordingly, the requested variances needed for the proposed enclosure and extension of an existing carport are **granted**, subject to the following conditions:

¹ The variance application indicates that the property was subdivided in 1971; SDAT indicates that the existing house was built in 1971. If the Petitioners have owned the property for 35 years, as indicated in their Statement, that would indicate that they purchased the subject property around 1985.

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be according to Exhibits 4(a) and 5(a), (c), (d), and (f).

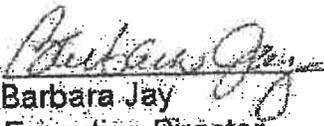
Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Mary Gonzales, with Bruce Goldensohn, Vice Chair, Katherine Freeman, and Richard Melnick in agreement, the Board adopted the following Resolution:

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.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 28th day of May, 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.

