

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6656

PETITION OF ALEM MOGES

OPINION OF THE BOARD

(Opinion Adopted June 24, 2020)
(Effective Date of Opinion: July 8, 2020)

Case No. A-6656 is an application for a variance necessary for the proposed construction of a two-story addition on an existing house. The proposed construction requires a variance of 13.30 feet as it is within 11.70 feet of the front lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on June 24, 2020. All participation was done via Microsoft Teams. Petitioner Alem Moges participated in the hearing in support of the requested variance, assisted by her contractor, Donald Thrower.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot P9, Block 2, P and B Addition to Linden Subdivision, located at 2209 Michigan Avenue, Silver Spring, Maryland, 20910 in the R-60 Zone. The property is a rectangular corner lot, bordered by Michigan Avenue on the southeast side and Pennsylvania Avenue on the southwest side. It has a width of 43.9 feet and a depth of 150 feet, resulting in a long, narrow lot with a total area of 6,588 square feet. SDAT indicates that the existing house on the subject property was built in 1928. See SDAT printout and Exhibits 3, 4, and 10.

2. The Board of Appeals previously granted four variances for this property in Case No. A-6181, dated March 9, 2007.¹ See Exhibit 7. In that case, the need for the requested

¹ Two of the variances granted were for the existing house, and two were for proposed construction, as follows: (1) The existing single-family dwelling required a variance of 12.50 feet as it was within 17.50 feet

variances was informed by the testimony of Ms. Moges' project designer at the time, Alan Kinney. Although it seems that the width of the subject property may have further been reduced since the grant of the previous variances, because the practical difficulties that are posed by this property in complying with the Zoning Ordinance are substantially similar to those present in 2007, and therefore are still relevant, an excerpt from that Opinion, recounting Mr. Kinney's testimony, is reproduced below:

2. Mr. Kinney testified that the subject property is located at the intersection of Michigan and Pennsylvania Avenues and that the existing house is currently located in the required front and side yard setbacks. Mr. Kinney testified that the original plat of the property was recorded on April 3, 1894 and that at that time all of the lots in the subdivision were that same size. Mr. Kinney testified that over time the subject property's total area has been reduced and that it is a small, shallow lot. Mr. Kinney testified that the petitioner's lot is the smallest in the subdivision and is 6,750 square feet. Exhibits 4(a) [site plan], 9 [zoning vicinity map], and 12 [April 3, 1894 subdivision plat].

3. Mr. Kinney testified that in 1983 Pennsylvania Avenue was widen[ed] and that the subject property was reduced by 5 feet in the widening of the street, and that the lot is 45 feet in width. Mr. Kinney testified that the application of the required setbacks to the subject property results in a buildable footprint that is 13 feet in width. Mr. Kinney testified that the existing porch footprint is not being expanded, but that the porch is currently off-center of the house, and that the new construction will center the porch at the front of the house.

The unique configuration of this property led the Board to make the following finding in its 2007 Opinion, in the record at Exhibit 7:

The Board finds that the subject property is a small, shallow lot and that the application of the required setbacks to the lot result in a buildable footprint that is 13 feet in width. The Board finds that the existing house is currently located in the southern front yard setback and in the western side yard setback and that the proposed construction will not extend beyond the existing footprints. The Board finds that a 13 foot wide footprint is effectively unbuildable for a single-family residence.

The Board finds that these are exceptional conditions peculiar to the subject property and that the strict application of the zoning regulations will result in practical difficulties to and an undue hardship upon the property owners.

of the required 30-foot established front building line along Michigan Avenue, and a variance of 18.33 feet from the 25-foot streetline setback along Pennsylvania Avenue, since the existing house was within 6.67 feet of the property line along Pennsylvania. In addition, the Board granted a variance of 13.33 feet for the construction of a two-story addition that was within 11.67 feet of the required streetline setback along Pennsylvania Avenue, and a variance of 17.50 feet for the construction of an open porch that was within 12.50 feet of the established front building line along Michigan Avenue. See BOA Case No. A-6181, in the record as Exhibit 7.

3. The Revised Statement of Justification ("Statement"), in the record at Exhibit 9, states that the Petitioner is seeking to construct a two-story addition that will not extend any farther into the setback along Pennsylvania Avenue than the existing structure does. The Statement indicates that the property is very narrow, that the house is a corner home that does not meet the required setbacks, and that the proposed addition uses a non-conforming structure.

4. At the hearing, the Petitioner's contractor, Donald Thrower, testified that Ms. Moges is seeking to add a two-story addition to the rear of her home. He testified that the proposed addition will not extend any further towards the front lot line setback along Pennsylvania Avenue than the existing house, but rather will extend "straight back" from the existing house. In response to Board question noting that based on the Site Plan at Exhibit 4, it appeared that the addition would not be as close to the front lot line along Pennsylvania Avenue as the front of the existing house, but rather would extend along a line consistent with the narrower rear of the existing house, Mr. Thrower confirmed that that was correct.

In response to a Board question asking how deep the proposed addition would be, Mr. Thrower testified that it would be 15 feet deep. In response to a follow up question, Mr. Thrower confirmed that the roof of the addition would follow the roofline of the existing home and would not be taller than the roof of the existing home.

5. Petitioner Alem Moges testified that the addition that would have been permitted by the 2007 variance was never constructed. In response to a Board question asking about the current use of the detached garage, Ms. Moges testified that it was currently used for storage. Finally, when asked by the Board if she had shared her plans with her neighbors or if any of her neighbors had expressed any concerns to her since learning of her variance application, Ms. Moges answered in the negative.

FINDINGS OF THE BOARD

Based on the binding testimony and the 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;

Based on the Statement, Site Plan, and the findings in Case No. A-6181, the Board finds that the subject property is unusually narrow, and has an extremely narrow buildable envelope, approximately 13 feet in width. See Exhibits 4, 7, and 9. The Board finds that

this unusually constrained buildable area constitutes an extraordinary condition that is peculiar to this property, and satisfies this Section of the Zoning Ordinance.

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 narrow width of this property and the resultant constraints on the property's buildable envelope. Accordingly, the Board finds that the Petitioner took no actions to create the special circumstances or conditions peculiar to this property, in satisfaction of this Section of the Zoning Ordinance.

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 in the record at Exhibit 9, that the requested variance is the minimum necessary to allow the proposed construction to proceed. The Board finds that the requested variance is minimal in that it will allow the construction of an addition that aligns with the rear portion of the existing structure, and that will not extend as close to Pennsylvania Avenue as the closest portion (front) of the original house. The Board further finds that without the grant of the requested variance, any new construction would be severely limited by the property's unusually narrow buildable envelope. Thus the Board concludes that the grant of the requested variance is the minimum necessary to overcome the difficulties that full compliance with the Zoning Ordinance would impose, in satisfaction of this Section of the Zoning Ordinance.

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 Greater Lyttonsville Sector Plan, which seeks to preserve the integrity of existing residential 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 that the record contains no opposition to the proposed construction. In addition, the Board finds, per the Site Plan, Statement, and plans in the record, that the proposed addition will maintain the existing setback of the rear of this existing home from Pennsylvania Avenue, and will encroach less than the front of the original house encroaches. Finally, the Board notes that the Petitioner testified, when asked if any of her neighbors had expressed concerns about the proposed addition since learning about her variance request, that they had not. On the basis of the foregoing, the Board finds that the grant of the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this Section.

Accordingly, the requested variance necessary to allow the proposed construction of a two-story addition 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 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 8th day of July, 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.