

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6660

PETITION OF VICTORIA W. PIERCE

OPINION OF THE BOARD
(Opinion Adopted July 22, 2020)
(Effective Date of Opinion: July 29, 2020)

Case No. A-6660 is an application for a variance needed to allow construction of a rear addition. The proposed construction requires a variance of 3.20 feet as it is within 16.80 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.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on July 22, 2020. All participation was done via Microsoft Teams. Petitioner Victoria Pierce participated in the hearing in support of the requested variance, assisted by her architect, Jeffrey Hains.

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

EVIDENCE PRESENTED

1. The subject property is Lot 14, Block F, South Woodside Park Subdivision, located at 501 Pershing Drive, Silver Spring, Maryland, 20910 in the R-60 Zone. The primary structure on this 8,015 square foot property was built in 1934, and the property was purchased by the Petitioner in 1996. The variance application describes the property as a corner lot with an "irregular triangular quadrilateral shape." The Site Plan confirms this description, showing that the property is located on the western side of the intersection of Dale Drive and Pershing Drive, which meet at an obtuse angle to form the northeast and southeast lot lines of the subject property, and that the property's side (southwest) and rear (northwest) lot lines converge at an acute angle behind the functional rear of the existing house. See Exhibits 1, 3, and 4(a).

2. The Statement of Justification ("Statement") at Exhibit 3, submitted with the variance request, refers to the shape of the property as an "irregular shaped triangle," and states with respect to the uniqueness of the property that:

The position of house is set deep into the property; and at an angle to the lot lines such that the back of the house is wedged between the rear & side setback. Furthermore, the south-west corner is built tight to the (south) side yard setback line. The result creates a small triangular rear yard area that, practically speaking, limits the ability to build a modest addition off the back of the house.

The Statement notes that "[t]he shape of the property and house position on lot is original to the 1934 construction and has not been altered in any way by the current owner." See Exhibit 3.

3. The variance application states that "[t]ypical neighborhood lots are rectangular w/ deep rear yards (deeper than 20' setback) and have sizable building area in rear yard." See Exhibit 1. The Statement at Exhibit 3 notes that most of the additions in the neighborhood are to the rear because of the deep rear yards and shallow side yards, and that the proposed addition would comport with this established pattern, as follows:

An addition off the rear of the house is consistent with the majority of additions in the neighborhood due to the typically deep rear yards and shallow side yards. As such the proposed addition conforms with established development patterns of the neighborhood. Furthermore, the rear addition will, practically speaking, be unseen from the street views.

4. The Statement states that the encroachment for which the variance is sought is minimal, noting that the rear setback line crosses diagonally through the corner of the proposed addition, resulting in a total area of encroachment of approximately nine (9) square feet. In addition, the Statement indicates that the variance requested is the minimum needed to allow a modest rear addition on this existing house, consistent with the pattern in the neighborhood. See Exhibit 3.

5. In discussing the impact of the variance requested on abutting and confronting neighbors, the Statement notes that "the house position is at an angle to the abutting neighbor homes such that the proposed addition will not face either abutting home." The Statement further states that the addition is not very deep, is offset from the corners of the house, and "will, practically speaking, be unseen from the street views." See Exhibit 3.

6. At the hearing, Petitioner Victoria Pierce testified that the existing house is modest, and explained that she was seeking, among other things, to expand the existing first floor bedroom to accommodate two people more comfortably and to add a closet. She testified that the rear setback line cuts across the proposed closet. Ms.

Pierce confirmed, in response to a Board question, that the variance was only needed for the small triangular area at the rear of the house. See Exhibit 4(a).

7. The Petitioner's architect, Jeffrey Hains, testified that as shown on the Zoning Vicinity Map, the side and rear lot lines of the subject property come to a point. He testified that the existing house is wedged way back on the property, such that it is difficult to expand the existing house without variance relief. Mr. Hains testified that the proposed addition is modest, is consistent with the established pattern in the neighborhood, and is of a scale commensurate with other houses in the neighborhood. He testified that the houses adjacent to his client's house are set at an angle to her house, so that when those neighbors look into their back yards, they will not be able to see the proposed addition. See Exhibit 7(a).

CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the requested variance can be granted. The 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 is an unusually shaped corner property, with side and rear lot lines that converge at a sharp angle to create a small, shallow, triangular-shaped buildable envelope behind the functional rear of the home. The Board further finds that this unusually shaped and tightly constrained buildable envelope is distinct from the buildable envelope behind most of the houses in the neighborhood, which are located on deeper lots that have a more regular shape. The Board finds that these factors, taken together, constitute an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 1, 3, 4(a), and 7(a).

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 the testimony of Mr. Hains, the Board finds that most of the additions in this neighborhood are to the rear because of the deep rear yards and shallow side yards, and that the proposed addition would comport with this established pattern, in satisfaction of this element of the variance test. See Exhibit 3.

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 this property in 1996, long after its 1934 construction, and thus is not responsible for the shape of the property, the

placement of the existing house on the property, or the constrained buildable area behind the existing house. The Board further finds that the Petitioner is not responsible for the development pattern in the neighborhood. Thus the Board finds that the Petitioner has satisfied this element of the variance test.

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 3.20 foot variance is the minimum necessary to overcome the practical difficulty that full compliance with the setbacks imposed by Zoning Ordinance would cause due to the constrained nature of the buildable envelope that results from the application of the setbacks to the property on account of its unusual shape. The Board notes, in further support of its conclusion, that the grant of this variance would only allow the proposed construction to encroach approximately nine (9) square feet into the setback, which the Board finds is the minimum needed to overcome the challenges posed by the small, shallow, and unusually-shaped buildable envelope behind the existing house, and to allow an addition consistent with the existing pattern in the neighborhood.

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 granting of this variance will continue the residential use of the home, consistent with the applicable 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.*

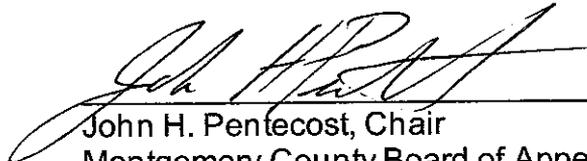
The Board finds, based on the Statement, that the grant of this variance will allow construction that is stepped in from the rear face of the house, and that will generally not be visible from the street. See Exhibit 3. The Board further finds, based on the testimony of Mr. Hains, that because the houses on either side of the Petitioner's house are set at an angle to her house, those neighbors should not be able to see the proposed construction when they look into their back yards. Thus the Board finds that granting this variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance of 3.20 feet from the rear lot line setback is **granted**, subject to the following conditions:

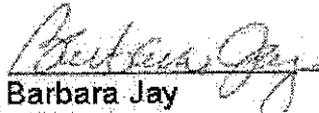
1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4(a)-(b), 5(b), and 5(d).

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 29th 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.