

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
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**Case No. A-6664
PETITION OF JUNAID KHAN**

OPINION OF THE BOARD
(Hearing Date: September 23, 2020)
(Effective Date of Opinion: September 30, 2020)

Case No. A-6664 is an application by Petitioner Junaid Khan for a variance of 14.09 feet, needed to allow the construction of a deck within 5.91 feet of the side lot line. The required setback is twenty (20) feet, in accordance with requirement in Section 59-4.3.3.B.2 of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on September 23, 2020. All participation was done via Microsoft Teams. Petitioner Junaid Khan participated in the proceedings in support of the requested variance.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 3, Parcel N926, Piedmont Acres Subdivision, located at 118 Hawkes Court, Clarksburg, Maryland, 20871 in the RC Zone. The subject property is an unusually shaped, elongated property with eight sides. The property is 1.83 acres in size, and is improved with a single-family home. The front of the subject property is encumbered a large septic reserve area, which occupies the center of the property and extends all the way to the front right (southeast) corner of the home. The subject property is also encumbered by an AT&T easement, which traverses the subject property just south of the septic field. See Exhibits 3 and 4.

2. The existing house is located on the northern end of the subject property. The left rear corner of the existing house and sunroom are located very close to the side setback imposed from the property's northern side lot line. The Petitioner's Statement of Justification ("Statement") notes that the placement of the existing house, at rear of the property, is a result of the presence and location of the AT&T easement and large septic field. See Exhibits 3 and 4.

3. The Statement notes that the existing house was the model home for the neighborhood, and that the west side of the existing sunroom includes a door intended to provide access to a deck that was not constructed, as follows:

This deck was supposed to be constructed by the builder at the time of home construction which is why a door was placed to allow access to the deck. The builder did not construct the deck on this model home due to financial concerns and placed the model home for sale as-is. The exit from the sunroom would be to the side of the house which requires a smaller deck to be in place to facilitate access to the main deck located at the rear of the sunroom. (See pictures of existing door and see the deck design on survey)

The Petitioner includes photographs of his sunroom, showing a door that is gated off on the exterior of the house, with his submission. See Exhibit 3.

4. The Statement and Site Plan show that the Petitioner is seeking to construct two decks, a smaller deck with access to the sunroom door, and a connected, larger deck to the rear of the sunroom. The Statement indicates that the "small deck needs to be constructed to facilitate existing access to the house via the pre-existing deck door," and that "[a]ny construction of the deck would require a way to traverse from the side of the house to the rear for the main deck. The traverse path (referred to as the small deck) needs to extend beyond the length of the sunroom to provide a passageway." The Site Plan shows that the left rear corner of the proposed small deck will be approximately five (5) feet, eleven (11) inches from the property's northern side lot line, and that the left rear corner of the proposed larger (main) deck will be approximately seven (7) feet from that same lot line. See Exhibits 3 and 4.

5. The Petitioner's application cites topography and other extraordinary situations or conditions peculiar to the property as reasons why the strict application of the Zoning Ordinance causes the Petitioner a practical difficulty. See Exhibit 1. The photographs included with the Statement show that the topography behind the Petitioner's home slopes away from the house (south to north), and also slopes down across the rear of the house, from west to east, such that one of the photographs submitted by the Petitioner appears to show not only that there is a room underneath the Petitioner's sunroom, but that there is walkout egress from that room on its east side. See Exhibit 3.

6. The Statement at Exhibit 3 indicates that the requested variance can be granted without substantial impairment to the intent and integrity of the applicable Master Plan, and without an adverse impact on the use and enjoyment of adjoining or confronting properties, as follows:

Piedmont acres community is subdivision of 7 homes that back into an active farm. The construction of this deck will remain within existing property lines and will not challenge the integrity of the masterplan. Other homes in this community already have decks constructed off their rear sunrooms.

* * * * *

The deck will not impact any abutting properties since most homes are constructed on large lots and this home is on a cul-de-sac. This deck will not impede property limits and will be connected to the existing rear sunroom of the house, overlooking a farm.

7. At the hearing, Petitioner Junaid Khan testified that he and his wife purchased the subject property and existing home "as is" from the builder. Mr. Khan testified that the builder had planned to construct a deck on the home, as evidenced by the door in the sunroom that is currently gated off, but did not do so for financial reasons.

Mr. Khan testified that although the subject property is 1.83 acres in size, the area available to the builder to place the home was very constrained due to a large septic reserve area and an AT&T easement, and that as a result, the existing home was placed very close to the side property line. Mr. Khan testified that this side property line is set at a diagonal. He testified that the northwest corner of the house is 19.1 feet from this side property line, and that the northwest corner of the sunroom is 23 feet away. He shared several photographs with the Board showing the relationship of the house and proposed construction to this property line. See Exhibits 9(a)-(e). Mr. Khan testified that as a result of the proximity of the existing house to the property line, it was not possible to construct code-complaint passage from the existing sunroom door to the proposed main deck.

Mr. Khan testified that his home is one of seven houses in the community, and that it backs to a working farm. He testified that two of the seven homes already have decks, including his closest neighbor, that the owners of one other house in the neighborhood are in the process of constructing a deck and patio, and that a fourth neighbor is consulting with a contractor about having a deck built. In response to a Board question asking about the distance from his proposed deck to the closest home, Mr. Khan estimated that the closest home would be 40 to 50 feet away. Finally, in response to a Board question asking about the topography of the subject property, Mr. Khan testified that the area in front of his house was fairly level, but that there was a "pretty steep" decline in back of the house, as shown in some of the photographs.

FINDINGS OF THE BOARD

Based on the evidence of record, the Board finds that the 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 that the subject property has a unique elongated, eight-sided shape that includes a side lot line that is behind and set an angle to the rear of the house.

The Board further finds that the front portion of the subject property is encumbered with a utility easement and a very large septic reserve area that extends to the front corner of the house and, per the Statement and the testimony of the Petitioner, dictated the placement of the home. The Site Plan in the record at Exhibit 4 shows that as a result of these conditions, the buildable envelope around the house is very constrained. In addition, the photographs at Exhibit 3 and testimony of the Petitioner indicate that the portion of the property located behind the house has sloping topography. The Board finds that these circumstances combine to constitute an extraordinary condition that is peculiar to this property, in satisfaction of this Section. See Exhibits 3 and 4.

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 topography or unusual shape of this property, for the presence of the AT&T easement and septic reserve area, or for the resultant constraints on the property's buildable envelope, in satisfaction of this Section.

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 variance is the minimum necessary to overcome the practical difficulties associated with the construction of a deck on this property due to the constrained nature of the property's available building area, owing to the application of the Zoning Ordinance to this property and its large septic field, utility easement, topography and unusual shape. Accordingly, the Board finds that the requirements of this Section are 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 Petitioner to proceed with the proposed construction will continue the residential use of the home, and accordingly that the requested variance can be granted without substantial impairment to the intent and integrity of the applicable master plan. Thus the Board finds that the requirement of this Section is satisfied.

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.*

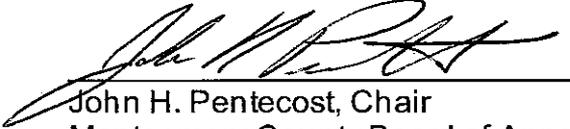
The Board finds that the properties in this subdivision are relatively large, which allows for some separation between residences. The Board further finds that the proposed deck addition on the subject property will be located to the rear of/behind the existing house, and will overlook farmland. Finally, the Board notes that the record contains no letters of opposition to the grant of this variance, and that other houses in the neighborhood have decks. Accordingly, the Board finds that granting the variance to allow the proposed construction will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this Section.

Accordingly, the requested variance from the side lot line setback is **granted**, subject to the following conditions:

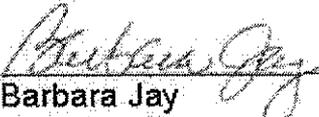
1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5(a)-(f).

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 30th day of September, 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.