

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6679

PETITION OF WILLIAM GOODMAN

OPINION OF THE BOARD

(Hearing Date: January 20, 2021)

(Effective Date of Opinion: February 3, 2021)

Case No. A-6679 is an application by William Goodman (the "Petitioner") for two variances needed for the construction of an addition to an existing detached garage. The proposed construction requires a variance of 13.40 feet as it is within two (2) feet of the left lot line. The required setback is 15.40 feet, in accordance with Section 59-4.4.9.B.2.c of the Zoning Ordinance. In addition, the proposed construction requires a variance of 15.58% as it is 65.58% of the main structure's footprint. The maximum footprint of an accessory building is 50% of the footprint of the main building, in accordance with Section 59-4.4.9.B.2.d of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on January 20, 2021. All participation was done via Microsoft Teams. The Petitioner, who owns the subject property, participated in the proceedings in support of the requested variances.

Decision of the Board: Variance from the left lot line setback: **GRANTED.**

Variance from limitation restricting size of accessory structures to 50% of the footprint of the main building: **DENIED.**

EVIDENCE PRESENTED

1. The subject property is Lot P3, Parcel P603, Hermitage Subdivision, located at 3412 Anderson Road, Kensington, Maryland, 20895 in the R-60 Zone. It is a 15,000 square foot lot, roughly rectangular in shape, located on the south side of Anderson Road. See Exhibits 1, 4, and 7(a).

2. The Petitioner's Statement of Justification ("Statement") indicates that the Petitioner purchased the subject property in 2003. The Statement states that the detached garage that the Petitioner is now seeking to expand was present on the property at the time of his purchase, and that it is located two (2) feet from the east (left) side property line. The building permit denial issued by the County's Department of Permitting Services indicates that the existing garage is a nonconforming structure. See Exhibits 3 and 6.
3. The Statement indicates that the Petitioner is seeking to construct an addition to his existing detached garage, and to use the resultant structure as a woodworking hobbyist's shop. See Exhibit 3. The Statement states that the existing garage is located two feet from the side lot line, and that as a result, any expansion of that structure would require a variance, as follows:

Because of the location of the existing garage structure no addition to it would be compliant without a variance to the setback requirement. A modest (15.6%) variance in the footprint limitation would allow an addition sized suitably for its intended use as a woodworking hobbyist's shop.

4. The Statement states that the Petitioner's neighborhood includes a number of properties with accessory structures located on or very close to the property line, and that the Petitioner's structure comports with this neighborhood pattern. See Exhibit 3. The Petitioner includes a map with his variance submission on which he has marked other properties with accessory structures on or very near their property lines. This map also shows two properties with accessory structures that the Petitioner states have footprints that exceed 50% of the footprint of the house. See Exhibit 7(b). The Statement states that with the proposed construction, the Petitioner's accessory structure would "still be smaller than some nearby accessory structures." See Exhibit 3.
5. The Statement indicates that because the proposed construction would be consistent with the established pattern in the neighborhood, the requested variances would not be adverse to the use and enjoyment of abutting and confronting properties. The Statement further notes that granting the requested variances would avoid harm to a maturing Red Maple tree that would be occasioned by construction "more towards the interior of the lot." Finally, the Statement states that the Petitioner has discussed the proposed construction with his left side neighbors, who would be most impacted, and that they have no objection. See Exhibit 3.
6. The Statement states that the Petitioner's use of his garage as a hobby space is "wholly consistent with the residential zoning of my neighborhood." See Exhibit 3.
7. At the hearing, the Petitioner testified that his property is a double lot, and that the construction of his home predates the construction of the rest of the neighborhood "by some decades," stating that his house was built in the early 1920s.

The Petitioner testified that his property contains a small, detached garage that he uses for his woodworking hobby. He testified that this garage predates his ownership of the property, and that he is seeking to expand the garage 10 feet to the rear (south) and 10 feet towards the interior of the property (west). The Petitioner testified that there is a red maple tree on the subject property, located west of the right rear (southwest) corner of the garage and south of the left rear (southeast) corner of the house. He testified that while he could remove the existing garage and construct a new accessory structure closer to the center of his back yard, this would be more expensive than the construction he has proposed, and would likely result in the demise of the red maple tree.

The Petitioner testified that he had spoken to his left side neighbors, who would be most affected by his proposed construction, and that they have no objections. He indicated that he had spoken casually with his other neighbors, save his neighbors to the rear, and that none of those neighbors voiced concerns. Finally, the Petitioner testified that the proposed construction would generally not be visible from the street except to the most observant.

The Petitioner testified that other properties in the neighborhood contain accessory structures which are on, near, or straddling the property line, and that his accessory structure is similarly situated, comporting with this pattern. In response to a Board question asking if any of these accessory structures had footprints which were larger than 50 percent of the footprint of the associated house, the Petitioner testified that looking at aerial images would be the only way for him to determine that, and that while such a determination is not precise, it appears that one or two neighboring accessory structures exceed 50 percent of the main structure's footprint.

8. In response to a Board question asking if the size of the accessory structure he proposed needed to exceed 50 percent of the footprint of his house, the Petitioner testified that it was his desire to make the accessory structure as spacious as possible, and that its size could be reduced to eliminate the need for a variance from the footprint limitation.

FINDINGS OF THE BOARD

Based on the Petitioners' binding testimony and the evidence of record, the Board finds that the variance from the left lot line can be granted, but that the requested variance to permit an accessory structure footprint greater than 50% of the footprint of the main building must be denied. With respect to the variance from the left lot line, the Board finds that 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.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the proposed development uses an existing accessory structure which is located only two (2) feet from the left lot line, and which, per the DPS building permit denial, is nonconforming. See Exhibit 6. The Board notes that a "nonconforming building or structure" is defined by Section 59-1.4.2 of the Zoning Ordinance as "[a] structure that was lawful when constructed, that no longer conforms to the requirements of the zone in which it is located," and thus by definition is a legal nonconforming structure. Accordingly, the Board finds that the application 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;

Based on the Petitioner's testimony of record and Statement, the Board finds that the siting of the Petitioner's existing garage two (2) feet from the left lot line is consistent with a pattern in this neighborhood of siting accessory structures on or near the property line. See Exhibits 3 and 7(b). In light of the foregoing, the Board finds that the proposed addition to this garage would substantially conform with the established historic or traditional development pattern of this street or neighborhood.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioner's testimony and Statement indicate that the garage he is seeking to expand was located on the property when he purchased the property, and thus the Board finds that the special circumstances or conditions relating to this property and structure are not the result of actions by the Petitioner, 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 compliance with the left lot line setback imposed by the Zoning Ordinance poses a practical difficulty for the Petitioner with respect to his ability to expand his existing nonconforming garage and comport with the historic development pattern in the neighborhood. The Board further finds that the variance requested from the left lot line is the minimum needed to overcome this difficulty by allowing construction consistent with the setback of the existing garage, as well as to allow construction that comports with the established historic or traditional development pattern of the neighborhood. Thus the Board finds that the requested relief from the left lot line is the minimum necessary to overcome this practical difficulty, in satisfaction of this Section.

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;*

The Board finds that the proposed construction continues the residential use of the property, and that the requested variance relief from the left lot line can be granted without substantial impairment to the intent and integrity of the Master Plan for the Communities

of Kensington-Wheaton (1989), the objectives of which include the protection and stabilization of existing residential and commercial land uses, and the maintenance of the well-established low- to medium-density residential character that prevails over most of the planning area.

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.*

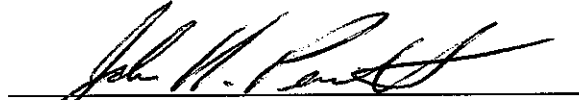
The Board notes, per the testimony of the Petitioner and his Statement, that he has discussed his proposed construction with the neighbors most impacted, and that they have no objections. The Board further notes that the Petitioner has casually mentioned his proposed construction to other neighbors, and is not aware of any objections. Finally, the Board finds, in accordance with the testimony of the Petitioner, that the proposed construction will not be very visible from the street except to the "most observant" passersby. In light of the foregoing, the Board finds that the proposed construction will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this Section.

Accordingly, the requested variance from the left lot line, needed for the construction of an addition to the Petitioner's existing garage, is **granted**.

With respect to the requested variance from the 50% footprint limitation set forth in the Zoning Ordinance, the Board finds that the Petitioner has not demonstrated that the subject property has any unusual or extraordinary situations or conditions, for the purposes of meeting Section 59-7.3.2.E.2.a of the Zoning Ordinance, that would prevent the construction of an addition to the existing garage that complies with this limitation, and in fact, has testified that such an addition could be constructed, and that the size of the structure he requested was based on his desire to make the resultant structure as spacious as possible. Having found that an addition to the existing garage that complies with the footprint limitation could be constructed on this property, the Board finds that the strict application of the footprint limitation does not cause the Petitioner a practical difficulty due to an unusual condition of the property and would not unreasonably prevent him from using his property for a permitted purpose. In addition, the Board finds that the size of the proposed addition to the existing garage was determined by the Petitioner and is for his convenience, to provide space for his hobby. The Court of Appeals has previously noted that the need sufficient to justify a variance "must be substantial and urgent and not merely for the convenience of the applicant." Carney v. City of Baltimore, 201 Md. 130, 137 (1952). Accordingly, the Board finds that in addition to failing to meet Section 59-7.3.2.E.2.a of the Zoning Ordinance, the requested variance from the footprint limitation also fails to meet Section 59-7.3.2.E.2.c, and must be **denied**. Having found that the requested variance fails to satisfy these Sections of the variance test, the Board will not address the remaining Sections, since the variance test is conjunctive, and all parts of the test must be met if a variance is to be granted.

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 3rd day of February, 2021.



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.