

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>**

**CASE NO. A-6686
PETITION OF MATTHEW BORKOSKI**

**OPINION OF THE BOARD
(Opinion Adopted March 31, 2021)
(Effective Date of Opinion: April 14, 2021)**

Case No. A-6686 is an application for a two (2) foot variance, necessary for the proposed construction of a room addition within twenty-eight (28) feet of the rear lot line. The required setback is thirty (30) feet, in accordance with Section 59-4.4.7.B of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, March 31, 2021. All participation was done via Microsoft Teams. Petitioner Matthew Borkoski participated in support of the requested variance. His contractor, Jim Cabral of Elevate Design, as also present.

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

EVIDENCE PRESENTED

1. The subject property is Block W, Lot 21, Stonegate Subdivision, located at 14613 Pebblestone Drive in Silver Spring, Maryland, 20905 in the R-200 Zone. It is a five-sided corner property bordered on the north by Pebblestone Court and on the west by Pebblestone Drive. The property is roughly rectangular in shape with a truncated corner facing the intersection of the two streets. Per SDAT, the subject property is 19,326 square feet in size, substandard for the R-200 Zone, which has a 20,000 square foot minimum lot size. See SDAT and Exhibits 4(b) and 8(a).

2. The Petitioner's application notes that the subject property is shallow and has an unusual shape, and that the existing house is set askew on the property. See Exhibit 1. The Zoning Vicinity Map confirms that the subject property is shallower from front to rear than surrounding properties. See Exhibit 8(a). The site plan shows that the existing house is built almost to the limits of its buildable envelope on three sides, such that the only area available for expansion within that allowable envelope is to the rear of the existing house, and that this area is constrained due to the shallowness of the lot. See Exhibits 1 and 4(b).

3. The Petitioner's application states that the subject property was recorded in 1966. See Exhibit 1. Per SDAT, the existing house was constructed in 1968, and the Petitioner purchased the property in 2007.

4. The Petitioner's Statement of Justification and Supplement to the Statement of Justification (collectively referred to as the "Statement") indicate that the proposed addition is being constructed to provide an accessible bedroom, sitting room, and bathroom for Petitioner's mother, who relies on a walker for ambulation. The Statement states that the proposed addition is as small as it can be and still be navigable by a person with disabilities. See Exhibits 3(a) and (b).

5. The Statement states that the encroachment is due to the non-parallel siting of the house on the property relative to the front and rear property lines, that it is less than 10 percent of the setback, and that it will be almost undetectable. See Exhibits 3(a) and (b). The Site Plan shows that only the northeast corner of the proposed addition encroaches into the setback, and states that the total area of encroachment is about 14 square feet. See Exhibit 4(b).

6. The Statement states that the abutting property that would be most affected by the grant of the variance and resultant construction is separated from the subject property by a steep incline, a fence, and a number of trees. See Exhibits 3(a) and (b). The Petitioner submitted a letter of support for the grant of the requested variance from that neighbor. See Exhibit 7.

7. At the hearing, the Petitioner testified that he is seeking to construct an addition to provide an accessible bedroom, bathroom and sitting room for his nearly 89-year old mother, who has sold her home and will be moving into his house. He testified that his mother can no longer live on her own, and that she has to use a walker full-time to get around. He testified that at some point he expects she will need to use a wheelchair, and that the proposed construction has been designed to be wheelchair accessible.

The Petitioner testified that his house is askew relative to his property lines, causing a corner of the proposed construction to encroach on the rear setback. He testified that encroaching corner contains the proposed bathroom, and that its size cannot be reduced if it is to remain accessible. The Petitioner testified that the requested variance is the minimum necessary to allow construction that meets his needs and those of his mother.

CONCLUSIONS OF LAW

Based on the binding testimony and 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 substandard in size for the R-200 Zone, which has a 20,000 square foot minimum lot size, and that it is unusually shallow relative to surrounding properties. See SDAT and Exhibits 1 and 8(a). The Board finds that these factors combine to significantly constrain the available buildable area on this property, and constitute an 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 Petitioner purchased this property in 2007, after the property was recorded (1966) and the existing house was sited askew and constructed (1968), and is therefore not responsible for the size or shallowness of this lot, or the resultant constrained buildable area. See Exhibit 3 and SDAT printout.

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 application of the setbacks to this property constrain its buildable area and preclude expansion of the existing home except towards the rear. The Board further finds that the shallowness of the property significantly limits expansion in that direction as well, causing a practical difficulty for the Petitioner and preventing him from being able to create an accessible space of minimum size for his mother. The Board notes that only one side of the proposed addition would encroach, and that at only 14 square feet, the extent of the proposed encroachment is minimal. Thus the Board finds that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the setbacks set out in the Zoning Ordinance would entail on account of the shallowness of the subject property, in satisfaction of this element of the variance test. The Board further notes that were it to have granted this variance on the basis of the disability of Petitioner's mother, granting such a variance to allow expansion to the rear would constitute a reasonable accommodation under Title II of the Americans With Disabilities Act (ADA), as amended by the ADA Amendments Act of 2008 (ADAAA), and the Fair Housing Amendments Act of 1988 (FHAA), necessary to allow Petitioners' mother an equal opportunity to use and enjoy this home.

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 the home and thus can be granted without substantial impairment to the intent and integrity of the applicable Cloverly Master Plan (1997).

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.

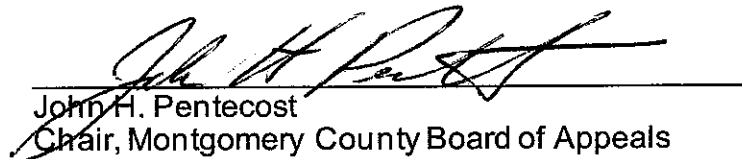
The Board finds that granting this variance, to allow a rear addition to this home, will not be adverse to the use and enjoyment of abutting and confronting properties, in satisfaction of this element of the variance test. In support of this, the Board notes that per the Statement, the affected abutting property is separated by a steep slope, a fence, and several trees. See Exhibits 3(a) and (b). The Board further notes that the record contains a letter of support from this property owner. See Exhibit 7.

Accordingly, the requested variance to allow an addition within 28 feet of the rear lot line is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion; 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, Richard Melnick, and Caryn Hines in agreement:

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 14th day of April, 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.