BOARD OF APPEALS  
for  
MONTGOMERY COUNTY  
Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
http://www.montgomerycountymd.gov/boa/  
(240) 777-6600  

Case No. A-6688  
PETITION OF BRUCE CASWELL AND LAUREN DEICHMAN  

OPINION OF THE BOARD  
(Hearing Date: April 14, 2021)  
(Effective Date of Opinion: April 21, 2021)  

Case No. A-6688 is an application by Bruce Caswell and Lauren Deichman (the “Petitioners”) for a variance needed for the construction of an addition to a detached garage. The proposed construction requires a variance of 4.31 feet as it is within 0.69 feet of the left side lot line. The required setback is five (5) 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 April 14, 2021. All participation was done via Microsoft Teams. Petitioner Bruce Caswell participated in the proceedings in support of the requested variance. He was assisted by architect Lauren Clark of GTM Architects.  

Decision of the Board: Variance GRANTED.  

EVIDENCE PRESENTED  

1. The subject property is Lot 20, Block 3, Lts 21&22 Kensington Park Subdivision, located at 10221 Montgomery Avenue in Kensington, Maryland, 20895, in the R-60 Zone. It contains an existing detached garage that encroaches on the left side setback. See Exhibits 1, 3, and 4.  

2. The Petitioners’ Statement of Justification (“Statement”) indicates that the subject property contains an existing house and detached garage that were constructed in 1898, and that the Petitioners purchased the property in 2010. The Statement indicates that the property is a Contributing (Primary One) Resource in the
Kensington Historic District, and thus asserts that the proposed development contains a historically significant property or structure. The Statement states that the Historic Preservation Commission has approved the proposed modifications to the garage under Historic Area Work Permit #912864, approving two garage additions on May 27, 2020, and a 16-inch height increase on September 9, 2020. In addition, the Statement indicates that because the existing garage does not meet the required setback, it is a legal nonconforming structure. See Exhibit 3.

3. The Statement states that the existing dwelling on the subject property is located so close to the left side lot line as to render infeasible relocation of the existing garage to meet the required setback. It states that the requested variance is the minimum needed to allow the proposed improvements while continuing to allow passage between the garage and home. See Exhibit 3.

4. The Statement states that the requested variance can be granted without substantial impairment to the 2012 Kensington Sector Plan, the intent of which, the Statement notes, is "to promote a mixed-use Town Center with pedestrian-friendly connections to the vibrant neighborhoods that define Kensington." The Statement states that the proposed construction "seeks to preserve a contributing resource to the unique identity of the Kensington Historic District." See Exhibit 3.

5. At the hearing, Petitioner Bruce Caswell testified that he and his wife have owned the subject property since 2010, and have lived in Kensington since 1996. He testified that they are committed to the Town and its history. Petitioner Caswell testified that their current home was built in 1898, and was sited on the left side of the three lots that comprise the subject property. He testified that he was not sure when the garage was constructed, but that he believed it was sometime in the 1920s or 1930s. Petitioner Caswell testified that after exploring their options, he and his wife decided on the proposed garage renovation, which would raise the height of the structure by 16 inches and create two small bumpouts. In response to a Board question asking if he was aware of any neighborhood opposition to his request, Petitioner Caswell testified that his neighbors were excited because the proposed renovation, which he noted had been approved by the County's Historic Preservation Commission, would improve the look of the structure from the street.

6. The Petitioners' architect, Lauren Clark, testified that the existing garage is smaller than a standard two-car garage. She testified that moving the structure any significant distance is impossible because of the location of the existing home. Ms. Clark testified that while the proposed changes included two additions to the garage, the main portion of garage's existing 18 foot wide footprint was not being changed. In addition, she testified that the Petitioners were increasing the height of the garage by 16 inches to accommodate a proposed lift, but that even with the proposed increase in height, the garage would still be below the 15 foot height limit. In response to a Board question, Ms. Clark testified that the Petitioners were not adding a bathroom to the garage.
FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the variance from the left side lot line complies with the applicable standards and requirements set forth in Section 59-7.3.2.E.2, and can be granted, 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.iv. the proposed development contains a historically significant property or structure;

   Based on the Statement and the testimony of Petitioner Caswell, the Board finds that the Petitioners’ property is designated as a Contributing (Primary One) Resource in the Kensington Historic District, and that as a result, the Petitioners had to seek, and have received, permission from the County’s Historic Preservation Commission to undertake the proposed construction involving the existing garage. See Exhibit 3. Thus the Board finds that the proposed development contains a historically significant property or structure, 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;

   Based on the representations in the Statement and the testimony of Petitioner Caswell, the Board finds that the Petitioners purchased the subject property in 2010, long after it was constructed, and that they are not responsible for the location of the existing structures on the property or their historical significance and designation, in satisfaction of 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 compliance with the left side lot line setback imposed by the Zoning Ordinance poses a practical difficulty for the Petitioners with respect to their ability to expand their existing garage while maintaining its historic character and placement. The Board notes that because of the historic designation of the subject property, any changes to the existing garage must be reviewed and approved by the Historic Preservation Commission to ensure that they do not compromise the historic significance of this property, and that the HPC has approved the proposed changes. Thus the Board finds that the variance requested from the left side lot line is the minimum needed to overcome the Petitioners’ practical difficulty by allowing construction consistent with the historic nature of the subject property and its structures, as well as with the general location of the existing garage, in satisfaction of this element of the variance test.
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 has been approved by the Historic Preservation Commission, and would continue the residential use of the property. The Board thus finds the requested variance from the left side lot line can be granted without substantial impairment to the intent and integrity of the 2012 Kensington Sector Plan, which seeks, among other things, to protect Kensington’s stable residential neighborhoods and to preserve the Town’s historic character.

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 grant of the requested variance will not be adverse to the use and enjoyment of neighboring properties in that it would allow modest improvements, the design of which has been approved by the County’s Historic Preservation Commission, to an existing garage that has been located in what is now considered the left side setback since its construction more than (or, at the very least, nearly) a century ago. In addition, the Board notes that Petitioner Caswell has testified that the proposed construction will improve the appearance of the garage from the street, and that his neighbors welcome the improvements. In light of the foregoing, the Board finds that granting the variance to allow the proposed construction will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested 4.31 foot variance from the left side lot line is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record, to the extent mentioned in this Opinion; and

2. Construction shall be in accordance with Exhibits 4 and 5(a)-(b).

Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, Vice Chair, with Mary Gonzales, Richard Melnick, and Caryn Hines 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.

[Signature]

John H. Pentecost
Chair, Montgomery County Board of Appeals
Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st 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.