

**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-6689

PETITION OF DAN-MY CHU

**OPINION OF THE BOARD
(Hearing Held April 7, 2021)
(Effective Date of Opinion: April 16, 2021)**

Case No. A-6689 is an application by Dan-My Chu (the "Petitioner") for two variances necessary for the proposed construction of a carport. The proposed construction requires a variance of 9.67 feet as it is within 2.33 feet of the left lot line. The required setback is twelve (12) feet, in accordance with Section 59-4.4.8.B.2 of the Zoning Ordinance.¹ In addition, the proposed construction also reduces the sum of both side yard setbacks to 15.33 feet, necessitating a variance of 9.67 feet. The required sum of both sides is 25 feet, in accordance with Section 59-4.4.8.B.2 of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, April 7, 2021. All participation was done via Microsoft Teams. The Petitioner's architect, Karen Pitsley, participated in the proceedings in support of the requested variances, assisted by her associate, Ashley Valenzuela. Per Ms. Pitsley, the Petitioner was out of the country on the hearing date and was therefore unavailable to participate in the proceedings.

Decision of the Board: Variances GRANTED.

EVIDENCE PRESENTED

1. The subject property is Block 8, Lot 2, Bel Pre Woods Subdivision, located at 14318 Blackmon Drive, Rockville, Maryland, 20853, in the R-90 Zone. The Site Plan shows that it is a 9,000 square foot rectangular lot, 75 feet wide and 120 feet deep. The

¹ Section 59.4.4.8.B.2 establishes an eight (8) foot minimum side setback and a 25-foot sum of both sides setback for properties in the R-90 Zone.

Zoning Vicinity Map shows that the property is a mid-block lot located on the west side of Blackmon Drive, and that properties in the immediate vicinity are similar in shape and size. See Exhibits 4 and 7.

2. The Petitioner's Statement of Justification ("Statement") indicates that the existing house on the subject property was constructed in 1962, and that the Petitioner purchased the property in 2003. The Statement indicates that the Petitioner is seeking to construct a carport over the driveway on the left side of her house in order to protect that side of the house by channeling water away from it, and in order to allow her family to "age in place by providing a safe access to the house during periods of inclement weather." See Exhibit 3.

3. The Statement describes the shape of the property as "more like a parallelogram than rectangle," and indicates that the house was placed on the property "such that there was more property in the front and back of the house with less property on the sides of the house." The Statement further states that "[t]he property resides on a hill with the left side of the house on the higher part of the hill than the right side of the house." See Exhibit 3. The Petitioner's application indicates that the property's "narrowness" and "shape" pose a practical difficulty for the Petitioner. See Exhibit 1.

The Statement indicates that without a variance, due to the narrowness of the property on the sides of Petitioner's house, the Petitioner cannot build anything on either side of her house, since the application of the required setbacks to the property would allow a maximum expansion of two feet. See Exhibit 3. The Statement further states that because the Petitioner's rear yard contains a "natural swale" that "allows water from the 2 neighbors on the left side of the property who are higher on the hill to drain through my property and then down the rest of the hill," construction of the proposed carport in the rear yard is not feasible since that would "interfere with the natural swale and cause water flow problems for both my neighbors on the left side of the property, my neighbor on the right side of the property, and me." See Exhibit 3. The Statement indicates that in addition to setback issues similar to those on the left side of the house, construction on the right side of the house is constrained because of electrical lines and Petitioner's air conditioner, and that construction in the front yard would not be consistent with the pattern in the neighborhood. Thus the Statement concludes that the left side of the house is the only practical location for the proposed carport, reiterating that this is the only location that would help control water. See Exhibit 3.

4. The Statement asserts that the proposed construction comports with the established development pattern in the neighborhood, as follows:

The neighborhood has a wide range of parking options including single family homes that have an attached carport or attached or detached garage. Many of the attached carports and attached or detached garages within the neighborhood do not appear to meet the required 8-foot setback specified for the R90 zone applicable to this neighborhood. A few examples of attached carports and attached

or detached garages that do not appear to meet the required 8-foot setback can be seen in Exhibit B.

Given that the proposed carport for my property conforms substantially with established historic or traditional development pattern of the neighborhood, I believe my request meets the requirement specified in *Chapter 59-7.3.2.E.2.a.v.*

See Exhibit 3. In support of this contention, the Petitioner includes photographs of numerous parking structures in her neighborhood that do not appear to meet the required side setback, including five attached carports, two attached garages, and three detached garages. See Exhibit 3(b).

5. The Statement at Exhibit 3 indicates that the special circumstances pertaining to the subject property are not the results of any actions she has taken, as follows:

The shape of the property, the shape of the house, the location of the house on the property, and the property boundaries have not changed since I purchased the house in 2003. I am not responsible for the narrowness of the sides of the property or the orientation or placement of the home on the property, all of which occurred prior to my purchase. The position of the house to the boundary lines have not changed since I purchased the house. In addition, I am not responsible for the development pattern on my street or in neighborhood as all of the houses and property lines were established before I bought the property.

6. The Statement states that the width of the requested carport is the minimum needed to allow for the opening of car doors inside of the carport, and to provide clearance for the existing two step entry to the house's side door. See Exhibit 3.

7. The Statement states that the proposed carport "will make the house look very similar to other houses with attached carports in the neighborhood," and cites the examples provided of "attached carports and attached or detached garages that do not appear to meet the required 8-foot setback..." See Exhibits 3 and 3(b). Thus the Statement concludes that the requested variances can be granted without impairing the intent or integrity of the general plan and the applicable master plan.

8. The Petitioner has submitted letters from three of her neighbors (the abutting neighbors to either side and the confronting neighbor across Blackmon Drive). All understand that the Petitioner intends to construct a carport on the left side of her home, and support the proposed construction, including the grant of the necessary variances. See Exhibit 3(a).

9. At the hearing, Karen Pitsley testified that the Petitioner is seeking to construct a two-car tandem garage on the left side of her home. She stated that the proposed construction will alleviate water problems that have caused the Petitioner's basement to flood three times in the past two years, and will provide safe access to the home for the Petitioner's mother, who lives with the Petitioner. Ms. Pitsley testified that there are

several similarly sited carports and garages in the neighborhood, and walked the Board through the photographs included in Exhibit 3(b). Ms. Pitsley testified that while she did not know the actual distances of these structures from their side property lines, and did not know if they had been granted variances, it appeared, based on the location of fencing, landscaping stairs, retaining walls and other markers shown in the photographs relative to the parking structures, that the carports and garages depicted in the photographs were less than eight (8) feet from the property line.

Ms. Pitsley testified that the width of the proposed carport was the minimum needed to allow clearance needed to open car doors, and that its depth would not exceed the depth of the existing house. She testified that the carport will be built over the existing driveway.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply 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.v. - the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Petitioner's Statement states that the surrounding neighborhood includes single family homes that have attached carports or garages (attached and detached) that do not appear to meet the required 8-foot setback, and the Petitioner included photographs of many such structures with her submission. Accordingly, the Petitioner's Statement concludes that the proposed construction would conform with the traditional development pattern in her neighborhood. See Exhibits 3 and 3(b). At the hearing, the Petitioner's architect reviewed many of the photographs in the record at Exhibit 3(b) with the Board, and explained, with respect to each, why she believed the depicted parking structure was less than eight (8) feet from the side lot line, just as the Petitioner's proposed carport would be less than eight (8) feet from Petitioner's left side lot line. Based on the foregoing evidence of record and the testimony of Petitioner's architect, the Board finds that the proposed construction of a carport less than eight feet from the side lot line would substantially conform with the traditional development pattern in the neighborhood, 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 Board finds that there is no evidence in the record to suggest that the Petitioner, who purchased her 1962 home in 2003, is responsible for the development

pattern in the neighborhood, and that her Statement affirmatively states that she is not responsible for this pattern. See Exhibit 3. Thus the Board finds that this element of the variance test is satisfied.

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 variances are the minimum necessary to allow the Petitioner to construct an attached tandem carport of sufficient width to allow for the opening of car doors, and thus to comport with the established development pattern in the neighborhood and overcome the practical difficulties posed by full compliance with the Zoning Ordinance, 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; and*

The Board finds that the construction of a carport continues the residential use of the home, and thus can be granted without substantial impairment to the intent and integrity of the Aspen Hill Master Plan (1994), which seeks, among other things, to "protect and reinforce the integrity of existing residential neighborhoods," and to "encourage the protection, enhancement and continuation of current land use patterns."

5. *Section 59-7.3.2.E.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

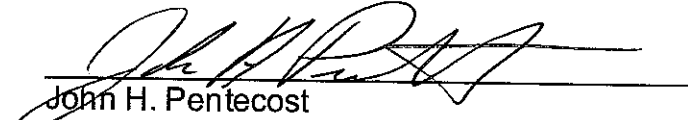
The Board finds that granting the requested variances would allow construction of an attached carport that would conform with the established development pattern in this neighborhood. Thus the Board finds that the grant of the requested variances will not be adverse to the use and enjoyment of abutting or confronting property owners. The Board notes, as further support for this finding, that the record contains letters of support for the proposed construction from the Petitioner's abutting and confronting neighbors. See Exhibit 3(a).

Accordingly, the requested variances described herein are GRANTED, subject to the following conditions:

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

Therefore, based upon the foregoing, on a motion by Richard Melnick, seconded by John H. Pentecost, Chair, with Bruce Goldensohn, Vice Chair, Mary Gonzales, 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.


John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 16th 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 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.