

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6695

PETITION OF CATHY AND CHARLES FAUGHNAN

**OPINION OF THE BOARD
(Opinion Adopted May 5, 2021)
(Effective Date of Opinion: May 14, 2021)**

Case No. A-6695 is an application for a variance necessary for the proposed construction of an addition. The proposed construction requires a variance of 2.40 feet as it is within 22.60 feet of the front lot line. The required setback is twenty-five (25) 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 Wednesday, May 5, 2021. All participation was done via Microsoft Teams. Petitioners Cathy and Charles Faughnan (the "Petitioners") participated in support of the requested variance, assisted by their architect, Valerie Frank.

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

EVIDENCE PRESENTED

1. The subject property is Block 8, Lot 10, Ridgewood Village Subdivision, located at 7506 Wyndale Road in Chevy Chase, Maryland, 20815, in the R-60 Zone. The property is a corner lot, located on the northwest side of the intersection of Wyndale Road and Wyndale Lane, which meet at a rounded "corner." The Site Plan shows that the property is subject to a 25-foot setback along both streets, and that the property's frontage along Wyndale Lane is not straight but rather is curved inward towards the house. The Site Plan further shows that the existing house faces on Wyndale Road with a side garage that is accessed from Wyndale Lane. Finally, the Site Plan shows that the existing house

is located close to the setback line along Wyndale Road, and that it encroaches approximately 1.6 feet (+/-) into the setback along Wyndale Lane. See Exhibit 4(b).

2. The Statement of Justification ("Statement") states that the "existing garage is non-conforming in that it is within 23.4 feet of the setback requirement," and that the Petitioners "are asking for the smallest amount of variance to the original garage on the house." It confirms that the property's frontage along Wyndale Lane "has a curve 'inward'," which the Statement indicates "creates a problem maintaining the setback at both sides of the proposed two car garage." Finally, referring to the encroachment of the existing garage, the Statement states that "[t]he house was built this way many decades ago and was not altered by the current homeowners." See Exhibit 3.

3. Sheet A-1 of the proposed plans (Cover Sheet and Site Plan) indicates that the Petitioners are proposing to construct a garage addition and a second floor bathroom/closet addition. See Exhibit 5(r).

4. At the hearing, Valerie Frank, the Petitioner's architect, testified that the subject property is a corner lot, subject to two front yard setbacks, that the area available for expansion to the rear (west) is five feet or less, and that the area available for expansion on the right side (north) is also very limited. See Exhibit 4(b). Ms. Frank testified that the existing garage is nonconforming, and that the Petitioners are seeking to extend it 8.5 feet towards their rear lot line.

5. Petitioner Charles Faughnan testified that the house on the subject property is almost 100 years old, and that he understood that the existing garage was built in the 1920s. He testified that it is a one car garage that was built for a very small car, and that he and his wife are seeking to have a two-car garage that will hold modern vehicles. Mr. Faughnan testified that the southwest corner of the garage extension would encroach on the required setback from Wyndale Lane because of the curvature of the front lot line along that street. He testified that the second story already exists but that it would be made a little larger, and that the roof would be raised about one and a half feet. Mr. Faughnan testified that the garage extension would be made of painted brick, and that it would conform with the style of the house and the character of the neighborhood. Finally, Mr. Faughnan testified that he had talked with all of their neighbors, and that all were supportive.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested 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's front (south) lot line along Wyndale Lane has an unusual inward curve that constrains its buildable area and that causes the southwest corner of the existing garage to encroach on the required setback, whereas the southeast corner of the existing garage is compliant. See Exhibit 4(b). The Board finds that this constitutes an extraordinary condition that is peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 3 and 4(a)-(b).

Section 59.7.3.2.E.2.a.ii the proposed development uses an existing legal nonconforming property or structure;

The Board finds, based on the Statement and the testimony of Ms. Frank, that the main structure on this property, and specifically the existing attached garage, encroaches on the required setback from Wyndale Lane, and is a legal nonconforming structure. See Exhibit 3. The Board finds that this finding is supported by the testimony of Mr. Faughnan, who indicated that the existing garage was built in the 1920s. The Board further finds that the Petitioners are proposing to add to this existing structure. Thus the Board finds that the proposed development uses an existing legal nonconforming 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;*

The Board finds, based on the Statement and the testimony of Mr. Faughnan, that this property is very old, and that the Petitioners are not responsible for the unusual shape of the property, including its inwardly-curved frontage along Wyndale Lane. The Board further finds, based on the Statement, that the Petitioners have not altered the exterior of their home, and are not responsible for its existing encroachment into the setback along Wyndale Lane. See Exhibit 3. Thus the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioners, 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, based on the Statement and the Site Plan, that the requested variance is the minimum needed to allow the proposed construction of an addition that will extend the southern face of the Petitioners' existing home (garage), which already encroaches 1.6 feet into the required setback, approximately 8.5 feet towards the rear of the home (west). The Board further finds that the proposed addition will maintain the existing southern plane of this house, and that the increase in the encroachment (2.4 feet versus 1.6 feet) is due to the curvature of the property's front lot line along Wyndale Lane. In addition, the Board finds that the requested variance is the minimum necessary to allow the proposed addition to follow the lines of the existing legal nonconforming house. The

Boards notes that in addition to extending the southern face of this home towards the west, the proposed construction will also result in an increase of the height of that face of the home, but that no variance is needed for the additional height. Finally, the Board notes that the proposed construction will not encroach on the required setback from the property's rear (western) lot line, but rather will maintain the plane established by the western side of the existing house. Thus the Board finds that the requested variance is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would otherwise impose, and that this element of the variance test is 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;*

The Board finds that the construction of the proposed addition continues the residential use of the home, and thus can be granted without substantial impairment to the intent and integrity of the applicable Bethesda-Chevy Chase Master Plan (1990), in satisfaction of this element of the variance test.

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.*

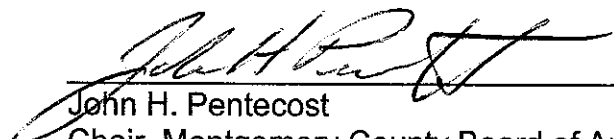
The Board finds that allowing the construction of the proposed addition, a portion of which will be incrementally (0.8 feet) closer to Wyndale Lane than the existing home due to the curvature of Wyndale Lane, will not infringe on the use and enjoyment of abutting or confronting properties as it will maintain the plane established by the home's existing garage, in satisfaction of this element of the variance test. See Exhibit 4(b). The Board notes, in further support of this finding, the testimony of Mr. Faughnan that he has spoken with all of his neighbors, and that they do not object to the proposed construction.

Accordingly, the requested front lot line variance to allow the construction of the proposed addition is **granted**, subject to the following conditions:

1. The Petitioners shall be bound by the testimony and exhibits of record; 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 Richard Melnick, with Bruce Goldensohn, Vice Chair, Mary Gonzales, 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 May, 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.