

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6697

PETITION OF OMAR AND MAYRA AMADOR

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

Case No. A-6697 is an application by Petitioners Omar and Mayra Amador for a variance needed for the proposed construction of an accessory structure (garage). The proposed construction requires a variance of nine (9) feet as it is within six (6) feet of the right side lot line. The required setback is fifteen (15) feet, in accordance with Section 59.4.3.4.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 Omar and Mayra Amador participated in support of the requested variance.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Parcel P762, Pembroke Subdivision, located at 26900 Howard Chapel Drive in Damascus, Maryland, 20872, in the RC Zone. The property is a four-sided interior lot, 31,295 square feet in size (approximately 0.71 acres), located on the north side of Howard Chapel Road. See Exhibits 3, 4, and 7.
2. The Justification Statement ("Statement") indicates that the Petitioners purchased the subject property in 2017. The Statement states that the property contained a house, built in 1950, and an accessory structure that is at least as old as the house. The Statement states that when the Petitioners purchased the property, the accessory structure had cracked cinder block walls and old, rotting wood supporting the roof. See Exhibit 3. The Petitioners submitted numerous photographs of this structure which

confirm this description. See Exhibits 5(c)-(g). The Statement indicates that the Petitioners renovated and rebuilt their accessory structure before learning that a building permit was needed for this work, and that the permit was denied because the structure is too close to the side lot line. See Exhibit 3.

3. The Statement states that the Petitioners' renovated accessory structure substantially conforms with the established pattern of accessory structures in the neighborhood. The Statement lists nine homes on Howard Chapel Road "within three minutes" of the subject property that have similar accessory structures that do not meet the required setbacks. It notes that six of these homes have an accessory structure that is similar in size to or larger than the structure for which the Petitioners are seeking variance relief. See Exhibit 3. The Zoning Vicinity Map confirms that a number of properties on the Petitioners' street have accessory structures that appear to be located very close to the property lines. See Exhibit 7.

4. The Statement indicates that there is, and always has been, an accessory structure in this location on the subject property. The Statement states that if the variance is not granted, the Petitioners "could not get a permit to be able to finish the Accessory Structure," and "the Accessory Structure would have to be demolished and relocated to meet the required side setback of 15.00ft. presenting a practical difficulty and unusual hardship." See Exhibit 3.

5. The Statement states that granting the variance to permit the proposed accessory structure will not be adverse to the use and enjoyment of neighboring properties, noting that "[t]he accessory Structure is far from all abutting or confronting properties and all but one of the adjoining property owners. The closest house to the Accessory Structure is about 30.00ft. and there is a 6.00ft. tall privacy fence between them." See Exhibit 3.

6. At the hearing, Petitioner Omar Amador testified that he and his wife purchased the subject property about three years ago. He described the house as "distressed," and testified that the accessory structure, which he said was built in 1950, had cracked walls and a wooden roof that was deteriorating. He testified that he had concerns about the safety of the accessory structure.

Mr. Amador testified that last year, he began work on the accessory structure. He testified that because he was just updating it and was using its existing foundation, he did not realize he needed permits, and did not know that the garage encroached on the required setback. Mr. Amador testified that the renovated structure is on the same footprint as the old garage, but that he had added a second story, resulting in a seven or eight foot increase in its height. He testified that he is friendly with the neighbor who would be most affected by the renovation, and that that neighbor does not seem bothered by it. Mr. Amador testified that one of the reasons he increased the height of the accessory structure was because neighbors on his street have accessory structures that are as large or larger than his renovated structure, and that are very close to their respective lot lines, so he assumed it would be ok to build something similar.

FINDINGS OF THE BOARD

Based on the binding testimony and 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.v. - the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

Per the Petitioners' Statement and the testimony of Mr. Amador, the Board finds that the existence and location of the Petitioners' renovated accessory structure substantially conform with the established historic or traditional development pattern on this street. The Statement lists nine similarly located accessory structures in close proximity to the Petitioners' property, and indicates that six of the nine are as large as or larger than the Petitioners' structure. See Exhibit 3. The Board further finds that the Zoning Vicinity Map confirms the existence of a pattern on this street of accessory structures being located in close proximity to the property lines. See Exhibit 7. Thus the Board finds that this element of the variance test is satisfied.

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 the Petitioners purchased the subject property in 2017, and therefore are not responsible for the location of the original accessory structure on their property. The Board further finds that the Petitioners are likewise not responsible for the location of other, similar accessory structures on Howard Chapel Drive. Thus the Board finds that the special circumstances or conditions are 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 testimony of Mr. Amador, that the requested variance is the minimum needed to allow the reconstruction of the existing accessory structure, on its existing foundation, in the location where it has existed since 1950. The Board further finds that the requested variance is the minimum needed to allow the proposed construction in conformation with the established development pattern on this street of properties having accessory buildings that are located close to lot lines. In addition, the Board finds that without the grant of a variance, the original accessory structure, which the Petitioners' Statement, photographs, and testimony indicate was in disrepair and was unsafe, could not have been reconstructed on its current foundation, constituting a practical difficulty for the Petitioner. Thus the Board finds that the requested

variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose, 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 proposed construction will continue the residential use of this property, and thus can be granted without substantial impairment to the intent and integrity of the Damascus Master Plan, 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, per the Statement and the testimony of the Petitioner, that the proposed renovation of the original accessory structure will remedy problems that made the former structure unsafe, and will use the foundation of the original structure, thus not increasing its footprint or the extent of its encroachment into the side setback area. In addition, the Board finds, per the Statement, that the renovated accessory structure is "far from all abutting or confronting properties and all but one of the adjoining property owners," and that there is a privacy fence between the structure and that adjoining property. See Exhibit 3. The Board further finds that the Petitioner testified that he is friendly with the neighbor who would be most affected by this construction, and that the renovation does not bother that neighbor. Thus the Board finds that the grant of the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance is **granted**, subject to the following condition:

1. Petitioners shall be bound by the testimony and exhibits of record.

Therefore, 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.



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.