

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6698
PETITION OF JASON AND KATHERINE YANUSHONIS**

**OPINION OF THE BOARD
(Opinion Adopted April 28, 2021)
(Effective Date of Opinion: May 5, 2021)**

Case No. A-6698 is an application for a variance needed to allow construction of an addition. The proposed construction requires a variance of 5.20 feet as it is within 19.80 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 Montgomery County Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on April 28, 2021. All participation was done through Microsoft Teams. Petitioners Jason and Katherine Yanushonis participated in support of the requested variance.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Block 14, Lot 97, Glen Echo Heights Subdivision, located at 6001 Massachusetts Avenue in Bethesda, Maryland, 20816, in the R-60 Zone. It is an irregularly shaped, six-sided property, located at the intersection of Massachusetts Avenue, Sangamore Road, and Onondaga Road, the last of which is unbuilt in that location. The subject property has an area of 7,996 square feet. See Exhibits 3 and 4(a).
2. On June 17, 2005, in Case No. A-6064, the Board of Appeals granted variances to a previous owner of this property for the existing dwelling and for the construction of a one-story addition. At that hearing, the Petitioner's agent testified that the subject property was unique because (1) the property fronts on three roads, one of which is unimproved; (2) the property is bounded by six distinct line segments, none of which are parallel or equal in length, resulting in the property having an odd shape; (3) the property is uneven and has varying degrees of shallowness; and (4) the total buildable area on the property is 1,588 square feet, or about 20% of the total area of the property. Following

the hearing in that case, the Board found that the subject property was unique, and that this posed a practical difficulty for the Petitioner, as follows:

The petitioner's lot is not small for the R-60 Zone, but the lot is irregularly shaped. The irregular shape of the lot and the application of the established building line requirement severely reduce the buildable area of the petitioner's lot. The application of the zoning regulations would result in a buildable area that is approximately twenty percent of the total area of the lot. This is significantly less (more than forty percent less) than the thirty-five percent coverage allowed by the Zoning Ordinance in the R-60 Zone.

The Board finds that these are exceptional circumstances peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

3. The Petitioners' Justification Statement ("Statement") indicates that the Petitioners are seeking to construct a 122 square foot, one-story addition on the side of their home which borders Sangamore Road (i.e. the east side). See Exhibit 3. The Statement notes that only one corner of the proposed addition encroaches on the 25-foot setback from Sangamore Road. See Exhibits 3 and 4(a)-(b).

4. The Statement echoes several of the points made in connection with the 2005 variance in asserting that the property is extraordinary, as follows:

The lot is oddly shaped and is bound by six (6) distinct line segments, none of which are parallel or equal in length. This is evidenced by the fact that the setback demarcation line off Sangamore Road does not run parallel with the house itself, making it very difficult to pursue an addition along the east side of the property without a variance.

Additionally, the lot is uneven and has varying degrees of shallowness. The house is positioned towards the rear of the property due to an unusual right of way. As shown on the survey, the lot fronts on three (3) roads, one of which is unimproved - the front setback is measured from Onondaga Road although the road itself doesn't exist in front of the house. Instead, the house fronts Massachusetts Avenue. The home's proximity to the rear setback line would make any addition on the rear of the house impossible. And due to the home's proximity to the neighboring house at 6003 Massachusetts Avenue, an addition along the west side of the property similarly cannot be pursued. The rear and opposing side yard are restricted by setbacks and limitations to an even greater degree given the home's location on the property.

Overall, the shape of the property and orientation of the house are abnormal and, as such, "create an unusual or extraordinary situation which result in practical difficulties to and an undue hardship" [*sic*].

See Exhibit 3. The Statement further states that the size of the buildable envelope on the subject property remains significantly below the allowable envelope in the R-60 Zone:

Due to the irregularities noted above, the buildable area on the property is currently 1,924 SF, which is only 24% of the total area of the lot. The maximum allowable by code is 35%, or 2,799 SF. The proposed addition is only 122 SF, which would increase the building coverage to 25.58% - still well below the aforementioned 35% cap.

5. With respect to the impact of the proposed construction on neighboring properties, the Statement notes that the property's elevation and tree cover limit views and hence the impact on those properties, as follows:

6001 Massachusetts Avenue sits at a materially higher elevation than Sangamore Road and there is heavy tree coverage that provides a buffer between the house and the public rights of way. Therefore, the addition would have very little if no impact on views and would not in any way disrupt the current streetscape along Sangamore Road. Neighbors are very supportive of this addition, as evidenced by the letters of support included with this submission.

See Exhibit 3. The record contains letters of support for the grant of the requested variance from two of the Petitioners' neighbors, with both indicating that the property's fencing and tall landscaping will limit views. See Exhibits 7(a)-(b).

6. At the hearing, Petitioner Jason Yanushonis testified that he and his wife moved into their house about three years ago. He testified that their property is located at the corner of Massachusetts Avenue and Sangamore Road, and that it has an irregular shape comprised of six boundary lines. In addition to its irregular shape, Mr. Yanushonis testified that the subject property is shallow, and that there are also topographical issues, noting that his house sits on top of a hill. He testified that the only direction to expand the existing house is towards Sangamore Road, and that an addition in this area will not impact their neighbors, later noting that his property is fenced along Sangamore Road.

7. Petitioner Katherine Yanushonis testified that the existing house was built in 1948, and that it is challenging to improve the home given its position on the property and the buildable area allowed by the setbacks. She testified that she and her husband are proposing to add a one-story addition to their home, approximately 120 square feet in size, and that only one corner of the proposed addition would encroach into the setback. Ms. Yanushonis testified that even with this addition, their home would still be "well under" the lot coverage limitations set forth in the Zoning Ordinance.

CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the 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, as it had in 2005, that the subject property has an unusual, six-sided shape, and that the application of the required setbacks to this property results in a severely constrained buildable envelope, such that despite being located in a zone that allows 35% lot coverage, only 24% of the subject property is available for construction without variance relief. The Board finds that these circumstances constitute 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).

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 are not responsible for the unusual shape of the subject property, or for the constrained nature of its buildable envelope after application of the required setbacks, as evidenced by the fact that the Board granted a variance to a different owner to overcome these constraints in 2005, and that Mr. Yanushonis testified the Petitioners moved into the property about three years ago. Accordingly, 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 that the requested 5.20 foot variance is the minimum necessary to overcome the practical difficulty that full compliance with the setbacks imposed by Zoning Ordinance would cause because of the constrained buildable envelope that results from the application of the required setbacks to this property, on account of its unusual shape. The Board notes that only one corner of the proposed 122 square foot addition encroaches on the setback, and that even with the proposed addition, the total lot coverage would be 25.58%, which is still significantly below the 35% allowed in the R-60 Zone. See Exhibit 3. Thus the Board finds 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; and*

The Board finds that the Petitioners' proposed addition will continue the residential use of the home, and thus that the variance necessary for the construction of that addition 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.

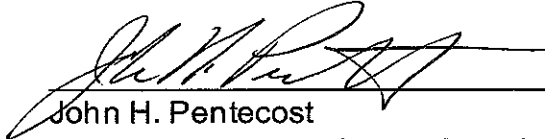
The Board finds, based on the Statement and the letters of support, that the proposed addition would have very little, if any, impact on the views of the home, and would not disrupt the streetscape along Sangamore Road. See Exhibits 3 and 7(a)-(b). Thus the Board finds that granting the variance will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance of 5.20 feet from the front lot line setback is **granted**, subject to the following conditions:

1. 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 Caryn Hines, seconded by Richard Melnick, with John H. Pentecost, Chair, Bruce Goldensohn, Vice Chair, and Mary Gonzales 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 5th 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.