

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6700

PETITION OF HUGO AND MARISA DIAZ

OPINION OF THE BOARD
(Hearing Date: June 2, 2021)
(Effective Date of Opinion: June 11, 2021)

Case No. A-6700 is an application by Hugo and Marisa Diaz (the "Petitioners") for two variances needed for the proposed construction of a sunroom and deck. The proposed sunroom requires a variance of four (4) feet as it is within sixteen (16) feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance. In addition, the proposed deck requires a variance of five (5) feet as it is within six (6) feet of the rear lot line. The required setback is eleven (11) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance, after application of the exemption from controls set forth in Section 59-4.1.7.B.5, which allows a deck to extend nine (9) feet into the rear setback.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on June 2, 2021. All participation was done via Microsoft Teams. Petitioners Hugo and Marisa Diaz participated in support of the requested variances, along with Adam Ford of Maryland Sunrooms.

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

EVIDENCE PRESENTED

1. The subject property is Lot 8, Block 2, Cullinanes Addition to Westgate Subdivision, located 5009 Jamestown Road in Bethesda, Maryland, 20816, in the R-60 Zone. The property is a four-sided, interior lot located on the east side of Jamestown Road. The property has an angled rear lot line, and an area of 6,052 square feet.¹ See Exhibits 4 and 8.

¹ The Petitioners' Justification Statement indicates that the property has an area of 5,934 square feet, but the Site Plan and SDAT both show an area of 6,052 square feet. See SDAT data and Exhibits 3 and 4.

2. The Petitioners' variance application states that their property's narrowness, shallowness, and shape cause them a practical difficulty in comporting with the setbacks established in the Zoning Ordinance. See Exhibit 1. The Zoning Vicinity Map shows that the properties across Jamestown Road from the subject property are significantly larger and deeper than the subject property. See Exhibit 8.

3. The Petitioners' Justification Statement ("Statement") states that the Petitioners have owned and lived on the subject property since 1989. See Exhibit 3. SDAT indicates that their home was built in 1956. The Statement indicates that the subject property satisfies the first element of the variance test because of its exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to it, and because the proposed development substantially conforms with the established historic or traditional development pattern of the street or neighborhood. See Exhibit 3. The Statement states that the abutting property at 5011 Jamestown Road has an addition that "protrudes out," and that "all of the houses are in a row." The Statement notes that "[t]o build the room on any other part of the house would also require a variance." See Exhibit 3.

4. The Statement states that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties, as follows:

Granting the applicant's variance will not be adverse to the use and enjoyment of abutting or confronting properties because the proposed addition will be smaller than the existing deck footprint. It will be built at ground level so as not to be overbearing to any neighbor. The room will be at the bottom of a slight slope and there is an existing fence and landscaping all around.

See Exhibit 3. The Petitioners included photographs of the rear of their home, their existing deck, and the existing stockade fence with their application. See Exhibits 5(f) through (k).

5. At the hearing, Mr. Ford testified that the subject property is shallow, and that there is no location on the lot where the proposed sunroom could be constructed without variance relief. He testified that the Petitioners are also proposing a ground level deck with no rails. Mr. Ford testified that the Petitioners' back yard is at the bottom of a hill which limits the visual impact of the proposed sunroom for neighbors to the side and rear. He noted that the house next door has a rear addition that protrudes the same distance as the Petitioners' proposed addition.

Mr. Ford testified that the Petitioners' existing deck extends approximately 12 feet from the rear of the house, and that the proposed sunroom will only extend ten (10) feet, but that the proposed new ground level deck will extend beyond the existing deck.

6. Petitioner Marisa Diaz testified that their neighbors to the rear have tall trees that would obscure any view of the proposed sunroom. She described the proposed sunroom as "unobtrusive," causing a Board member to observe that Exhibit 5(f) shows the proposed sunroom is essentially an all-glass structure. Ms. Diaz testified that they have

spoken with some of their neighbors about the proposed construction, and have received no complaints.

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, based on the Application, Statement, Site Plan, and Zoning Vicinity Map, that the subject property barely exceeds the minimum square footage for the R-60 Zone, and while not substandard for the Zone, is relatively small and shallow, particularly compared to confronting properties, and has an angled rear lot line. See Exhibits 1, 3, 4, and 8. The Board finds that these conditions constrain the buildable envelope available to the Petitioners such that, per the Statement and testimony of Mr. Ford, a variance would be needed for the proposed construction anywhere on the property. The Board finds that this constitutes an unusual condition peculiar to this property, 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 the Petitioners are not responsible for the size or shape of their property or its buildable envelope, 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 tightly constrained area available for construction on the subject property poses a practical difficulty for the Petitioners in that it severely limits expansion in any direction without variance relief. The Board further finds that the requested variances are the minimum needed to overcome the constraints imposed on the property's buildable envelope by the application of the required setbacks to the property, on account of its shape and small size, and thus to allow the Petitioners to proceed with their proposed construction. Accordingly, the Board finds that the requested variances are the minimum needed 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 allowing the Petitioners to proceed with the proposed construction will continue the residential use of this home, and thus that the requested variances can be granted without substantial impairment to the intent and integrity of the Bethesda-Chevy Chase Master Plan.

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.*

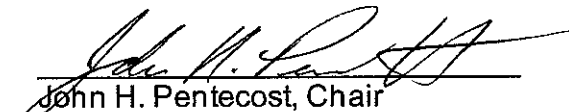
The Board finds, based on the evidence and the testimony of record, that the proposed construction will not be adverse to the use and enjoyment of abutting or confronting properties because the proposed sunroom will be constructed primarily of glass, minimizing its mass, and will be located at the bottom of a slight slope, minimizing its relative elevation, and because any view of the proposed sunroom will be mitigated by existing fencing, trees and other vegetation. With respect to the proposed deck, the Board finds that the proposed ground level deck without rails will have a very low profile, and that as was the case with the sunroom, any view of the proposed deck would be diminished by the existing fencing and vegetation. See Exhibit 5(g)-(i). Finally, the Board notes that the Petitioners have discussed their proposed construction with some of their neighbors, and that none voiced any objections.

Accordingly, the requested variances from the rear lot line are **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(a)-(e).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Mary Gonzales, with Bruce Goldensohn, Vice Chair, 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 11th day of June, 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.