

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6713
PETITION OF JOHN AND SUSANNAH FIGURA**

OPINION OF THE BOARD

(Hearing Held: September 15, 2021)
(Effective Date of Opinion: September 29, 2021)

Case No. A-6713 is an application by John and Susannah Figura (the "Petitioners") for a variance necessary for the proposed construction of a second floor addition. The proposed construction requires a variance of 0.40 feet as it is within 6.60 feet of the left side lot line. The required setback is seven (7) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.¹

Due to COVID-19, the Board of Appeals held a remote hearing on the application on September 15, 2021. All participation was done through Microsoft Teams. Petitioners John and Susannah Figura participated in support of the requested variance.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 26, Block J, Section 2 North Hills Subdivision, located at in Silver Spring, Maryland, 20901, in the R-60 Zone. It is a narrow, unusually-shaped property with eight (8) sides. The subject property was recorded in 1941. See Exhibits 1, 3, and 4(a)-(b).
2. Per SDAT, the house on the subject property was built in 1941, and purchased by the Petitioners in 2000. See SDAT printout.

¹ Per the County's Department of Permitting Services ("DPS"), this lot was recorded on July 16, 1941, therefore pre-1954 setbacks apply.

3. The Petitioners' Application describes the subject property as both narrow and unusually configured, and states that without the grant of a variance, the Petitioners "would be required to 'cut' the back corner off of [their] addition, harming the aesthetic presence of the house, as well as making the new interior space much less usable." See Exhibit 1.

4. The Petitioner's Justification Statement ("Statement") reiterates that the subject property has a "very unusual shape," and notes that "[r]ather than having a straight line from the front edge of the property to the back edge," the subject property has "a property line that slants, and even changes directions before it reaches the back edge." See Exhibit 3.

5. The Statement indicates that the subject property contains an existing house with an attached garage that is original to the house and is located six feet, six inches (6'-6") from the side property line,² less than the required seven (7) feet. See Exhibit 3. The building permit denial indicates that the structure is nonconforming. See Exhibit 6. The Statement states that if the variance is not granted, the Petitioners "would either have to abandon the project, or redesign the room so that the back corner is cut off at the same angle as the property line." The Statement goes on to state that "[b]ecause the garage corner is already in place, it would look very strange to cut off the room corner," and reiterates that doing so would make the room "much less usable." See Exhibit 3.

6. The Statement states that the Petitioners' abutting neighbor has no objection to the proposed construction. See Exhibit 3. The record contains a letter of support from this neighbor, indicating that he has reviewed and has no objection to their plans, and that he supports approval of their variance request. See Exhibit 7.

7. At the hearing, Petitioner John Figura testified that he and his wife are seeking to build an addition over their existing garage, using the footprint of the existing garage. He testified that their property has an odd shape, and that the existing garage is approximately six and a half feet from the side lot line. He testified that their home, and the surrounding homes, were built in 1941. In response to Board questioning, Mr. Figura testified that the garage is a nonconforming structure, and that only one corner of the existing garage encroaches on the setback.

² The Site Plan submitted with the application appears to show that the garage is 6.6 feet from the property line, and the building permit denial issued by DPS indicates that the garage is 6.60 feet from the left side lot line, necessitating a variance of 0.40 feet. See Exhibits 4(a)-(b) and 6. Since the Board uses the building permit denials issued by DPS as the basis for its Notices, the Board noticed this as a request for a 0.40 foot variance, needed to permit construction within 6.60 feet of the property's left side lot line. That said, because the requested variance would allow construction directly on top of an existing structure, because the letter of support received from the neighbor most affected recognizes that the proposed construction will be directly on top of the existing structure, and because the difference between a 6.6 foot setback and a six foot, six inch (6'-6") setback is 1.2 inches, the Board hereby expresses its intent that if it turns out that the variance that is needed to allow the proposed construction directly on top of the existing structure is 0.50 feet (6 inches) instead of 0.40 feet (4.8 inches), that the larger variance should be deemed granted by this Opinion.

FINDINGS OF THE BOARD

Based on the binding testimony and 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 that the subject property is an unusually-shaped, narrow property, with eight (8) non-parallel sides. See Exhibits 1, 3, and 4(a)-(b). The Board finds that the unusual shape and narrowness of the property, taken together, significantly constrain the buildable envelope available on the property, and constitute an extraordinary condition peculiar to the subject 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 unusual shape and narrowness of the subject property, which was developed in 1941, is not the result of any actions by the Petitioners, who purchased the subject property in 2000. Accordingly, the Board finds that the special circumstances or conditions applicable to this property 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 without the grant of the requested variance, compliance with the setbacks in the Zoning Ordinance would prevent the Petitioners from being able to construct the proposed second floor addition directly on top of their existing garage, causing them a practical difficulty. The Board finds that the requested variance is the minimum needed to allow the proposed construction, and that the Petitioners' proposed addition will not change the footprint of the existing garage. Thus the Board finds that the requested variance is the minimum necessary to overcome the practical difficulty posed by full compliance with the setbacks set forth in 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;*

The Board finds that the construction of the proposed addition continues the residential use of the home, and is consistent with the Four Corners Master Plan (1996), which reconfirms existing single family residential zoning and is seeks to "[p]reserve and maintain the character and integrity of the existing, well-established Four Corners

residential neighborhoods as a foundation of the community by assuring that new development, infill development, and special exception uses are compatible with the existing residential character."

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.*

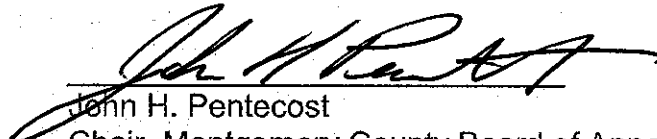
The Board finds that allowing the construction of the proposed second floor addition over the existing garage will not increase the footprint of the existing house, and will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test. In support of this, the Board cites the Statement, which indicates that the Petitioners' abutting neighbor has no objection to the proposed construction, and the letter of support from that neighbor, whose property shares the property line from which setback relief is requested. See Exhibits 3 and 7.

Accordingly, the requested variance from the left side lot line, to allow construction of the proposed second floor addition, is **granted**, subject to the following conditions:

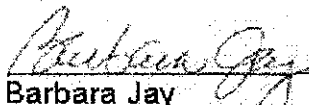
1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4(a)-(b) and 5(a)-(d).

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, 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 29th day of September, 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.