

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6788

PETITION OF THOMAS QUISPE

OPINION OF THE BOARD
(Opinion Adopted February 1, 2023)
(Effective Date of Opinion: February 10, 2023)

Case No. A-6788 is an application for variances needed to allow enclosure of an existing carport into a garage. The proposed construction requires a variance of 2.92 feet as it is within 9.58 feet of the right lot line. The required setback is 12.50 feet, in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of 2.92 feet because the proposed construction will reduce the sum of both side yard setbacks to 22.08 feet. The required sum of both side yard setbacks is twenty-five (25) feet, in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on February 1, 2023. Petitioner Thomas Quispe appeared in support of the requested variances, assisted by his architect, Adam Carballo.

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

EVIDENCE PRESENTED

1. The subject property is Lot 55, Block E, Rocky Brook Park Subdivision, located at 1540 Winding Waye Lane in Silver Spring, Maryland, 20902, in the R-90 Zone. It is an unusually shaped, four-sided property, with an area of 11,741 square feet. The property is deeper than it is wide, and significantly narrower at the front than at the rear. The property has a front lot line that curves inward along Winding Waye Lane (north side), a left side (eastern) lot line that meets the street at a right angle, a right side (western) lot line that is significantly longer than the left side lot line and that, while set at a right angle to the street, is angled away from the left side lot line due to the curvature of the street,

and an angled rear (southern) lot line that meets the left side lot line at an obtuse angle and the right side lot line at an acute angle. The property contains an existing house and single vehicle carport, built in 1970, that are set at an angle on the property, presumably due to curvature of the street and front lot line. See Exhibits 3, 4, and 8.

2. Per SDAT, the Petitioner purchased the subject property in 2014. He is now seeking to enclose the existing carport into a garage. He is also proposing to extend the area of the carport/garage structure to the rear by approximately 7.5 feet, so that the back of the new garage will be flush with the back of the existing house. The Petitioner is not proposing to expand the width of the existing carport in connection with its conversion to a garage. See Exhibits 3 and 4, and SDAT printout.

3. The Petitioner's Justification Statement ("Statement") indicates that the existing carport was built on the "building restriction line," and that the Zoning Ordinance has changed since its construction such that it no longer meets the setback requirement. The Statement states that this "prevents the homeowner from enclosing the carport and converting it into a garage without the approval from the Board of Appeals." See Exhibit 3.

4. The Statement states that "[n]umerous neighboring properties ... have received relief for a side yard setback variance" to enclose their carports or otherwise upgrade their parking, "due to the nature of undersi[z]ed lots in this development. The Statement lists three such properties on the Petitioner's street, and provides pictures of several homes on his street where the carport has been converted to a garage. See Exhibit 3.

5. The Statement states that in addition to "alleviat[ing] extreme weather conditions," enclosing the carport into a garage will also "improve the curb-appeal for the property and along the neighborhood." See Exhibit 3.

6. The record contains letters that the Petitioner's architect mailed to the Petitioner's neighbors informing them of his plans to enclose his carport and extend it to the rear. See Exhibits 7(a)-(e).

7. At the hearing, Mr. Carballo testified that the subject property is an unusual, wedge-shaped property located along a curve in the road. He testified that it contains an existing single-family dwelling that was built in 1970 and that has an existing, open carport on the right side. Mr. Carballo testified that the existing house/carport structure was legal when it was built, but that it does not meet the 25-foot sum of both sides setback that is currently required, making it an existing legal non-conforming structure.

Mr. Carballo testified that the Petitioner is seeking to enclose the sides of the existing carport and to extend it about seven feet to the rear. He testified that the proposed construction will not bring the carport any closer to the right side lot line than it is already. Mr. Carballo testified that the roof of the carport would not change, and that from the street, there would be no discernable change to the existing roofline.

8. Mr. Quispe testified that he had spoken with his abutting neighbor on the right about the proposed construction, and that she said she did not mind, but that she wanted

to check with her husband. He testified that he heard nothing further from these neighbors.

CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the variances can be granted. The requested variances comply 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.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds, based on the testimony of Mr. Carballo, that the Petitioner's existing home and carport, which were built in 1970 and were legal when they were built, are nonconforming because they do not comport to the required twenty-five (25) foot sum of both sides setback. The Site Plan confirms this. See Exhibit 4. The Board further finds that the proposed construction involves the enclosure and rear extension of the Petitioner's existing carport, which the Board finds is a legal, nonconforming structure. Because the proposed development uses this existing structure, 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;*

Based on the Statement, the Board finds that the Petitioner purchased this property in 2014, and is not responsible for the nonconforming nature of the existing house/carport structure, which was built in 1970, 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 compliance with the side lot line and sum of both sides setbacks imposed by the Zoning Ordinance poses a practical difficulty for the Petitioner with respect to his ability to enclose and extend his existing carport for use as a garage with storage, and that the requested variances, which would allow construction that would not bring the existing nonconforming carport any closer to the side lot line than is currently the case, are the minimum needed to overcome this practical difficulty. In support of this finding, the Board notes that the Petitioner is not proposing any increase to the width of the existing carport, and that the proposed rear extension, needed to provide storage, is very modest. See Exhibits 3 and 4. In light of the foregoing, the Board finds that the variances requested are the minimum needed to allow the Petitioner to enclose his nonconforming carport for use as a garage with storage, and thus to overcome the practical difficulty that full compliance with the Zoning Ordinance would entail, 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 Petitioner to proceed with the proposed construction is consistent with the residential uses contemplated by the Master Plan for the Communities of Kensington-Wheaton (1989), which seeks, among other things, to "protect and stabilize the extent, location, and character of existing residential and commercial land uses," and to "maintain the well established low- to medium-density residential character which prevails over most of the planning area."

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 the proposed construction will not be adverse to the use and enjoyment of abutting or confronting properties. In support of the finding, the Board notes, in accordance with the Statement and Site Plan, that the Petitioner is not seeking to increase the width of the existing carport, and thus that the proposed construction will maintain the existing separation of that structure from the right side property line. In addition, the Board notes that Mr. Carballo mailed letters to the Petitioner's neighbors informing them of the Petitioner's intent to enclose his carport and extend it to the rear, and that despite this mailing, the proper posting of the property, and the Board's mailed Notice of these proceedings, no objections to the grant of the requested variances have been received. See Exhibits 7(a)-(e). Finally, the Board notes, per the testimony of the Petitioner, that he has discussed his proposed construction with his abutting neighbor to the right, who would arguably be most affected by it, and that she had no objection.

Accordingly, the requested variances needed to allow the proposed enclosure and extension of an existing carport are **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5(e)-(i).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Richard Melnick, Vice Chair, Laura Seminario-Thornton, and Alan Sternstein 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 10th day of February, 2023.


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.

