

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6793**

**PETITION OF FRANK AND BONNIE LLOYD**

**OPINION OF THE BOARD  
(Opinion Adopted February 22, 2023)  
(Effective Date of Opinion: March 3, 2023)**

Case No. A-6793 is an application for a variance needed to allow the modification and expansion of an existing two-car carport into a three-car garage. The proposed construction requires a variance of requires a variance of 8.68 feet as it is within 31.32 feet of the side street lot line. The required setback is forty (40) feet, in accordance with Section 59.4.4.7.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on February 22, 2023. Petitioners Frank and Bonnie Lloyd appeared in support of the requested variance, represented by Sean Hughes, Esquire.

Decision of the Board: Variance **DENIED**.

**EVIDENCE PRESENTED**

1. The subject property is Lot 5, Block K, Mill Creek Towne Subdivision, located 17605 Park Mill Drive in Rockville, Maryland, 20855, in the R-200 Zone. It is a five-sided corner property, bordered on its western side by Park Mill Drive and on its northern side by Cliffbourne Lane, the latter of which ends at Park Mill Drive to form a "T-shaped" intersection. The property has an area of 19,766 square feet. The property contains an existing house, built in 1966, that faces on Park Mill Drive. The house has an attached two-car carport on its left side when facing the property from Park Mill Drive; the carport also faces Park Mill Drive and is accessed via a driveway from that road. See Exhibits 3, 4(a)-(c), and 8(a).

2. The Petitioner's variance application describes the property as having an unusual shape, and cites the property's narrowness and shallowness as unique features. See Exhibit 1. The Petitioner's Statement of Justification ("Statement") describes the property as an "oddly shaped 5 sided comer lot," with a truncated corner facing the intersection, and no two sides being parallel to one another. The Statement notes that the property's rear (eastern) lot line is longer than its front (western) lot line along Park Mill Drive, and that its right side (southern) lot line is longer than its side street (northern) lot line along Cliffbourne Lane. See Exhibits 3 and 4(a).

3. The Petitioners' existing carport is "in significant need of repair due to its age and exposure to the elements the past 50 plus years." The Statement states that there are structural issues with the existing carport, including that it is pulling away from the main house, compromising its roof and putting downward pressure on the door jamb for an existing closet, which in turn makes the closet door difficult to open. The Statement also states that a "large section of the interior ceiling drywall dislodged completely and fell onto Mrs. Lloyds' vehicle." See Exhibit 3. The Petitioners have provided photographs showing the current state of their carport with their submission. See Exhibit 3(b).

4. The Petitioners are proposing to replace their existing carport with a three-car, attached garage. The Statement notes that the proposed garage would "provide a little additional necessary space" for the Petitioners' vehicles and storage, and would allow the Petitioners, who purchased their home in 1992, to "remain comfortably in their residence for many years to come versus having to consider moving from the residence they have called home now for thirty years." The Statement states that the proposed garage would provide the Petitioners with more "maneuvering room for their parked vehicles," and would also provide the Petitioners "enhanced safety and protection of getting in and out of their vehicles when it is dark or inclement weather is present by reducing the risk of slipping, tripping or falling." In addition, the Statement indicates that the proposed garage would provide more "secure surroundings." See Exhibit 3.

5. The Statement states that the proposed construction will "allow [the Petitioners] to have a garage like that the vast majority of their closest neighbors." Thus the Statement asserts that the proposed garage would substantially conform with the established historic or traditional development pattern of the neighborhood, which "includes previous carports transformed into enclosed garages for the homeowners," noting that the proposed garage "continues a well-established development pattern within the surrounding neighborhood and does not introduce a structure (garage) attached to the primary building (home) that is not already common in the neighborhood." See Exhibit 3.

6. The Statement states that the proposed location for the garage minimizes the variance relief that would be needed for the creation of the proposed garage, as follows:

Because of the unique shape and layout of the Lloyd's lot (which was built and designed back in the 1960s before they took ownership of it) and building

restrictions on it, including the exceptional narrowness of their lot, shape and other extraordinary conditions (corner lot) they are not able to meet setbacks in any direction on their property in order to modify and expand the carport into the desired garage layout. In all cases a Variance is needed and would require a greater variance than the one being requested here. Additionally, it would certainly be impractical to build the garage on the opposite (south) side of the house of where it and the driveway exist. To place the garage transformation and minor expansion to the front or rear yard directions would require a garage that is two bays deep and thus require the current and proposed width of the vehicle space to be expanded 28 feet further to the rear or front and thus placing the structure approximately 12 feet off of the rear property line, where 30 is required and approximately 15 feet from the front property line where 40 feet is needed. The rear expansion would be very close to the property line at approximately 12 feet versus the 31 proposed to the side in this application and would also back up very close to the neighbor's house in the rear.

See Exhibit 3. In addition to the impracticality of locating the proposed garage on the south (right) side of the house, the Statement states that the elevation difference between abutting properties and the subject property results in water flow towards that part of the property, stating that "[t]he property also sits well below its neighbor to the east and even a bit lower than their neighbor to the south and as such as the lowest property in the area does have water flowing down onto it." See Exhibit 3.

7. The Statement states that "[t]he Petitioners are dealing with development constraints created at the time of the original platting of the lot in 1964, and the construction of the home in 1966," both of which predate the Petitioners' purchase of the subject property. Accordingly, the Statement states that the "extraordinary conditions that the Petitioners must deal with are not of their own making." See Exhibit 3.

8. The Statement at Exhibit 3 states that the requested variance is the minimum needed to overcome the practical difficulty posed by full compliance with the Zoning Ordinance, as follows:

The desired garage expansion has been designed to be as efficient as possible so as to minimize the amount of variance to 8.68 feet as requested by the Applicants, thus still resulting in a 31 plus foot side yard setback to the property line and being approximately 120 feet from the nearest neighbor's property to that northern direction. Additionally, as noted earlier a variance would be needed in any direction on the property based on the size and shape of the property as well as existing infrastructure and building restriction rules and regulations, in order to fix the failing structure and add the third garage bay via this design to keep the size as minimal as possible and to use the most logical location.

Historically, the existing carport currently in need of significant repair, has proven to be too small for the convenient parking of the family vehicles. Over the years, the Applicants have suffered hardships and minor damage to their vehicles entering and exiting the vehicles and moving them into and out of the existing structure. The proposal requests only a modest expansion and [modification] into a garage to overcome those constraints by also allowing the third bay to house all of the family vehicles.

9. The Statement states that the requested variance relief can be granted without substantial impairment to the intent and integrity of the Upper Rock Creek Master Plan (2004), noting that the proposed construction is “absolutely in character and fitting with the long established neighborhood in Rockville.” See Exhibit 3.

10. The Statement states that the Petitioners have discussed their proposed construction with their confronting neighbors across Cliffbourne Lane (17700 Cliffbourne Lane), and with their abutting neighbors along Cliffbourne Lane (17705 Cliffbourne Lane), both of whom support the grant of the requested variance. The Statement also explains why the grant of the variance would not be adverse to these property owners, stating that:

... The Lloyds do not have a house across from the front yard on Park Mill Road. Instead as the exhibits show the property across the street is the Mill Creek Town Elementary School, to the west. Since the proposed garage alteration is not designed to go any further back into the rear yard towards the Baghai-Vaji residence at 17705 Cliffbourne Lane, it will not be any closer to their property line. Regarding the Nagy property at 17700 Cliffbourne Lane, the proposed garage is moving slightly closer by 8 plus feet. However, it is still a great distance from the Nagy property, being about 120 feet to the Nagy property line (and 160 feet to the Nagy residence), with Cliffbourne Lane in between them as well as trees on both properties.

See Exhibit 3. The Statement further states that the proposed garage will not “adversely encroach on the use and enjoyment of [17700 Cliffbourne Lane] or any others,” and that construction of the proposed garage on the subject property “would have no material impact” on the use and enjoyment of neighboring properties. See Exhibit 3. The record contains letters of support for the grant of the requested variance from both of the neighbors whose properties are closest to the proposed construction. See Exhibit 7.

11. At the hearing, Mr. Hughes used the aerial photograph at Exhibit 3(c) to orient the Board to the property. He highlighted the 40-foot setback along Cliffbourne Lane that arises from the subject property being a corner lot. Mr. Hughes stated that the property is unique in that it has five (5) sides, one of which is very short; he noted that the rear (eastern) lot line is longer than the others. Mr. Hughes stated that the subject property is lower than the abutting properties to the east and to the south, and that water flows down from those properties onto the subject property.

Mr. Hughes stated that the home's existing two-car carport is almost 60 years old and is leaning. Mr. Hughes stated that he has visited the subject property, and that the pictures of the carport, in the record at Exhibit 3(b), do not adequately convey its poor condition. Mr. Hughes stated that in conjunction with making needed repairs, his clients are seeking to enclose their carport into a garage and expand it to make room for three cars. He explained that the enlarged, enclosed garage would make it easier to maneuver in the space, would provide additional storage, and would enhance the Petitioners' safety at night and during episodes of inclement weather. Mr. Hughes stated that the Petitioners are seeking a 31+ foot setback from Cliffbourne Lane instead of the forty (40) foot setback that would otherwise be required. He stated that the Petitioners have letters of support from their abutting neighbor to the rear and from their confronting neighbor across Cliffbourne Lane. Mr. Hughes stated that the proposed garage will not be any closer than the existing structure to the Petitioners' rear neighbor, and that the garage will be more than 100 feet from the neighboring property across Cliffbourne Lane. Mr. Hughes also stated that Mr. Lloyd has talked with his abutting neighbor to the south (right side), and that that neighbor is also supportive of the Petitioners' request.

Mr. Hughes stated that the proposed garage will fit with the house and with the neighborhood. He stated that the subject property is unique, and that the neighbors support the grant of the variance.

In response to a Board question, Mr. Hughes stated that the Petitioners are seeking to extend the existing structure by approximately fifteen (15) feet towards Cliffbourne Lane. He stated that without a variance, the Petitioners could only add about seven (7) feet, which would not be enough to accommodate three cars. Mr. Hughes stated that based on the size and shape of the property, the Petitioners would need a setback variance no matter where the garage was located. He stated that placement of the garage as proposed, on the left side of the house, would necessitate a smaller variance than location of the garage on any other side of the house. In response to a Board assertion that granting the variance would interfere with the established building line along the south side of Cliffbourne Lane, Mr. Hughes again referred to Exhibit 3(c), and stated that the proposed garage would only come out half again as far as the existing carport, and would not interfere with the line of sight down Cliffbourne Lane. Mr. Hughes also noted the presence of trees in this area, as shown on the aerial photograph. He characterized the proposed construction as a "fairly modest expansion."

In response to a Board question asking if variances were needed for the enclosure of other carports in the neighborhood, Mr. Hughes stated that he did not know.

12. In response to a Board question asking if there were any other three-car garages in the neighborhood, Mrs. Lloyd testified that she had not seen any, but that there were houses with garages that were as long (wide) as the garage being proposed, but that had only two bays, the space that would have been the third bay being otherwise used. In addition, she testified that they were seeking a three-car garage because they have more than three cars, and have had a car stolen from their property in the past.

13. In response to a Board question asking about the height of the proposed garage, Mr. Lloyd testified that the first bay would be about the same height as the existing carport, and that the second and third bays would be about 14 feet higher, but still less than the height of the house. See Exhibit 5(a). He testified that the additional height would be used for storage.

## FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variance from the side street lot line setback must be denied. Section 59.7.3.2.E of the Montgomery County Zoning Ordinance, "Necessary Findings," provides that in order to grant a variance, the Board must find that:

- (1) denying the variance would result in no reasonable use of the property; or
- (2) each of the following apply:
  - a. one or more of the following unusual or extraordinary situations or conditions exist:
    - i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;
    - ii. the proposed development uses an existing legal nonconforming property or structure;
    - iii. the proposed development contains environmentally sensitive features or buffers;
    - iv. the proposed development contains a historically significant property or structure; or
    - v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;
  - b. the special circumstances or conditions are not the result of actions by the applicant;
  - 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;
  - d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and
  - e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Section 59.7.1.1 of the Zoning Ordinance provides that the applicant has the burden of production and has the burden of proof by a preponderance of the evidence on all questions of fact.

The Board notes that there was no attempt in this case to argue the standard in Section 59.7.3.2.E.1 of the Zoning Ordinance. For that reason, the Board must analyze the instant case under Section 59.7.3.2.E.2 of the Zoning Ordinance. Section 59.7.3.2.E.2 sets forth a five-part, conjunctive ("and") test for the grant of a variance, and

thus the Board cannot grant a variance if an applicant fails to meet any of the five elements required by this Section.

*Section 59.7.3.2.E.2.a: one or more of the following unusual or extraordinary situations or conditions exist:*

*i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Petitioners assert in their Statement and through counsel that the subject property has an unusual, five-sided shape, with no parallel sides, and that it is shallow/narrow. They further indicate in their Statement that the subject property is unique because it is a corner lot and is therefore subject to larger setbacks than an interior lot would be. The Petitioners indicate, through their Statement and through counsel, that this makes their property unique for the purpose of satisfying the test in Section 59.7.3.2.E.2.a.i of the Zoning Ordinance. The Board finds, based on the evidence of record, including the Site Plan and Zoning Vicinity Map, that despite having a fifth side that faces the intersection, the subject property is generally regular in shape, and that its corner location is not unusual for this neighborhood. See Exhibits 4(a) and 8(a). Accordingly, the Board cannot find that Section 59.7.3.2.E.2.a.i of the Zoning Ordinance is satisfied.

*iii. the proposed development contains environmentally sensitive features or buffers;*

The Petitioners assert in their Statement and through counsel that the subject property is unique because it sits at a lower elevation than abutting properties to the south and east, causing water to flow onto it. They indicate that this constitutes an unusual condition for the purpose of satisfying the test in Section 59.7.3.2.E.2.a.iii of the Zoning Ordinance. The Board finds that while the lower elevation of the property and resultant runoff may complicate construction on the property, particularly to the south (right) and east (rear) of the existing house, the Petitioners are not requesting to construct their garage in these areas, and have indicated that variance relief would be needed if they were to do so. The Board further finds that the record contains no evidence quantifying the elevation differences, which the Statement indicates is greater to the east (rear) than to the south, or indicating why the resultant topographical condition should be considered an environmentally sensitive feature. Finally, the Board finds that to the extent that the property's rear yard is visible in the photographs at Exhibit 3(b), the elevation difference between the subject property and the abutting property to the east (rear) does not appear to be significant. Accordingly, the Board cannot find that Section 59.7.3.2.E.2.a.iii of the Zoning Ordinance is satisfied.

*ii. the proposed development uses an existing legal nonconforming property or structure;*

*iv. the proposed development contains a historically significant property or structure; or*

The Petitioners did not assert or provide any evidence to indicate that the variance request satisfies Sections 59.7.3.2.E.2.a.ii or iv of the Zoning Ordinance. Accordingly, the Board cannot find that these Sections of the Zoning Ordinance are satisfied.

*v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*

The Petitioners have asserted, in their Statement, that the proposed carport enclosure and resultant garage would substantially conform with the established development pattern of their neighborhood, and that other carports in the neighborhood have been converted to garages. See Exhibit 3. Their submission does not include photographs of these converted garages or a map to show their locations. When asked if there were any other three-car garages in the neighborhood, the Petitioners testified that they did not know of any, but that other houses in the neighborhood had enclosures/extensions that were as large as a three car garage, but that only had two garage bays. Given this testimony and the lack of other evidence to show that the proposed construction would comport with the neighborhood pattern, the Board cannot find that Section 59.7.3.2.E.2.a.v of the Zoning Ordinance is satisfied.

Having found that the requested variance fails to satisfy Section 59.7.3.2.E.2.a of the Zoning Ordinance, the Board finds that the application must be denied, and that it need not address the remaining elements of the variance test, since the variance test is conjunctive, and all parts of the test must be met if a variance is to be granted. That said, because the Board found at the hearing that the variance did not meet Section 59.7.3.2.E.2.c of the Zoning Ordinance, in addition to failing to meet Section 59.7.3.2.E.2.a, the Board explains that finding below.

*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 Site Plan and the representations of counsel, that the Petitioners' existing carport could be enclosed and extended about seven (7) feet to the north, towards Cliffbourne Lane, without the need for a variance. Thus the Board finds that because there is room on this property for the Petitioners to construct a garage of reasonable size (two-plus cars), commensurate with the neighborhood, without the need for a variance and in compliance with the established setbacks, full compliance with the Zoning Ordinance does not pose a practical difficulty for the Petitioners and the requested variance cannot be granted. The Board notes in this regard that the need for a variance "must be substantial and urgent and not merely for the convenience of the applicant." See Carney v. City of Baltimore, 201 Md. 130, 137 (1952). Accordingly, the Board finds that this variance request does not satisfy Section 59.7.3.2.E.2.c of the Zoning Ordinance.



On a motion by John H. Pentecost, Chair, seconded by Alan Sternstein, with Richard Melnick, Vice Chair, Caryn Hines, and Laura Seminario-Thornton in agreement, the Board voted to adopt 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 3rd day of March, 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.