

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
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**Case No. A-6799**

**PETITION OF MARK GLANDER**

**OPINION OF THE BOARD  
(Opinion Adopted April 12, 2023)  
(Effective Date of Opinion: April 19, 2023)**

Case No. A-6799 is an application for a variance needed for the construction of a sunroom addition. The proposed construction requires a variance of seven (7) feet as it is within thirteen (13) feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59.4.4.9.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on April 12, 2023. Petitioner Mark Glander participated in the hearing in support of the requested variance.

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

**EVIDENCE PRESENTED**

1.        The subject property is Lot 8, Block F, Forest Estates Subdivision, located at 1902 Everest Street in Silver Spring, Maryland, 20902, in the R-60 Zone. The property is an irregularly shaped, five-sided lot, located at the corner of Everest Street and Alcan Drive. These streets meet at an obtuse angle with an "arced" corner; the lot lines along both of these streets are considered front lot lines. Two of the property's three remaining lot lines are set at right angles to these front lot lines, with the lot line that is set perpendicular to Alcan Drive forming the property's rear lot line, and the other forming one of the property's two side lot lines. The property's remaining (fifth) lot line meets the rear lot line at a right angle and the side lot line from Everest Street at an obtuse angle. The property has an area of 5,680 square feet, which is substandard for the R-60 Zone. It was recorded in 1946, and contains a house that was built in 1947. See Exhibits 1, 3 and 4, and SDAT Printout.

2. The Petitioner's Statement of Justification ("Statement") indicates that due to the shallowness and unusual shape of the lot, the existing house on the property was positioned at an angle. See Exhibit 3. The Petitioner's variance application states that "the house positioning creates an extremely shallow condition – one that leaves the ex[ist]ing house not meeting [the] setbacks." See Exhibit 1. The Statement states that because of the positioning of the house, "[t]here is no room for any improvement in the rear without requesting a variance."

3. The Statement indicates that in 1988, variances were granted for this property for the existing house, which was too close to the rear lot line, and for the construction of an open deck. See BOA Case No. A-2217. The Statement states that the deck that was built pursuant to the grant of that variance was "in the exact place the proposed sunroom in this case is going," but that the deck projected one foot closer to the rear property line than the proposed sunroom will project. See Exhibit 3.

4. The Petitioner is proposing to construct a "11'-0" x 17'-9" sunroom addition, with a 3'-0" x 6'-0" landing and steps," at the rear of his existing house. The Statement states that "[t]he steps off the landing are 6' wide and are positioned to run parallel to the existing house," and that "[t]he closest part of the sunroom results in a 13' setback to the existing rear property line." The Statement notes that the rear of the existing house, at its closest point, is eleven (11) feet from the rear lot line, and that the sunroom was positioned on the opposite side of the house to minimize its encroachment. See Exhibit 3. The Site Plan shows the location of the proposed sunroom, as well as the distance of the proposed sunroom and existing house from the property lines. See Exhibit 4.

5. The Statement at Exhibit 3 states that the property's shallowness and unusual shape make it unique for the purpose of satisfying Section 59.7.3.2.E.2.a.i of the Zoning Ordinance, as follows:

The unusual or extraordinary situation or condition that exists in this case is the exceptional shallowness and shape of this specific property. A review of the official vicinity map of this area reveals that a vast majority of the residential lots are rectangular in shape. A more normal shape such as this allows for more rear yard in a generally uniform overall square footage or size of land.

In this case, the odd shape of this lot is due to it being one of the few corner lots in the subdivision. This creates a situation where there are two front yard setbacks with one side, and one rear. The exceptional shallowness combined with the required multiple front yard setbacks created a situation where the existing house was positioned at an angle. This positioning in conjunction with the shallowness creates the need for the variance. In fact, a review of the site plan just for existing conditions reveals a nonconforming situation even prior to this application. This non-conforming rear setback to the existing house, as well as the open deck that exists in the location of this proposed sunroom, were both approved in a previous

variance hearing. Again, the proposed sunroom here will actually improve the previously granted setback variance by 1'.

The owner has proposed to construct the sunroom on the part of the rear façade that is furthest away from the rear property line in an effort to reduce the variance need. However, the opposite corner of the rear of the existing house currently sits 11'-0" from the rear property line. That in itself should have required a 9' variance by today's zoning standards; whereas this request is only 7'. In other words, the proposed sunroom is not only NOT going any closer to the rear property line than current conditions, it is actually staying 2' further away.

6. The Statement states that the Petitioner was not the developer of this property, and is not responsible for the "peculiar shape of the lot and positioning of the dwelling." See Exhibit 3. Per SDAT, the Petitioner purchased the subject property in 1992. See SDAT Printout.

7. The Statement states that the proposed eleven (11) foot deep sunroom is the smallest size that would be practical to build, and that without the grant of the requested variance, the sunroom could only be five (5) feet deep, causing the Petitioner a practical difficulty. Thus the Statement concludes that the requested variance is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would cause, as follows:

The requested variance is the absolutely the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual conditions in that the structure is very modest in size. At only 11' in projection, there is no smaller size that would render the proposed sunroom as practical to even build. In fact, if the setback were met to avoid the variance, the sunroom could only be 5' in projection (considering the angle of the house positioning). Clearly there is no practical use for a 5' sunroom.

See Exhibit 3. The Statement goes on to state that "[t]here is no better location on the dwelling that the sunroom could go in order to avoid the variance," and that "anywhere else on the rear of the house would actually necessitate a larger variance request...."

8. The Statement states that "[g]ranting the variance will not be adverse to the use and enjoyment of abutting or confronting properties." It notes that the proposed sunroom "is a three-season room made almost entirely of glass," and that "[t]his was intentional as it is not a full addition and aims to allow more light and visibility through the structure." See Exhibit 3. The Statement further states that the existing house is two (2) feet closer to the rear lot line and abutting property than the proposed sunroom. The Statement states that because of this, the proposed sunroom "will have no more impact to that property than this existing house has." The Statement notes that the proposed sunroom "is planned for the location that was previously granted a variance" for a deck, that the "deck was a foot further out in projection so this sunroom will improve upon that situation while remaining behind the closest point of the existing structure to the rear property line,"

and finally that “as a small sunroom amenity, [the proposed sunroom] will not loom or impact other properties in any way.” See Exhibit 3.

9. At the hearing, Petitioner Mark Glander testified that he is seeking to replace an existing deck with a three-seasons room that has a “peaked” roof. He testified that his back yard is very small, and that his existing deck comes very close to the property line. He testified that the requested variance is the minimum reasonably necessary because the proposed sunroom will be in the same space as the existing deck, and might be slightly smaller than the deck. Mr. Glander testified that the existing house is non-conforming, and that in 1988, a variance was granted because the (then-) forty year old house was noncomplying and a variance was needed for any new construction.

In response to a Board question asking if he had discussed the proposed construction with his neighbors, Mr. Glander testified that after he signed a contract with his contractor, he spoke to his neighbors on either side, and neither objected to the proposed construction. In addition, Mr. Glander testified that his neighborhood has a listserv that monitors and posts happenings in the neighborhood, and solicits opinions. Finally, he testified that the variance sign was properly posted on the property.

## 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 that with an area of 5,680 square feet, the subject property is substandard for the R-60 Zone. The Board further finds that the subject property has an unusual, five-sided shape, as described herein and in the Statement, and as shown on the Site Plan. See Exhibits 3 and 4. The Board finds that these circumstances, taken together, constitute an extraordinary condition, peculiar to this property, that uniquely constrains its buildable envelope, 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 Petitioner purchased this property in 1992, long after it was developed and built. Thus the Board finds that the small size and unusual shape of the property are not the result of actions by the Petitioner, 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 due to the property's unusual shape and small size, full compliance with the rear lot line setback imposed by Zoning Ordinance would cause the Petitioner a practical difficulty because adherence to that setback eliminates the possibility of expanding the existing home to the rear on its right side, due to the encroachment of the existing house on that setback, and on its left side where, per the Statement, an addition could only extend five (5) feet without variance relief. The Board further finds, based on the Statement, that the proposed sunroom has been sited to minimize its projection towards the rear lot line, and that at eleven (11) feet deep, its size is the minimum needed to make construction practical. The Board notes that the proposed sunroom will not be as close to the rear lot line as the existing house, and will not extend as far towards the rear lot line as the deck for which variance relief was granted in 1988. Thus, the Board finds that the requested variance is the minimum needed to overcome the practical difficulty posed by full compliance with the Zoning Ordinance on account of the property's unusual shape and small size, 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 granting this variance to allow the Petitioner to proceed with the proposed construction will continue the residential use of this home, and thus the Board finds that the variance can be granted without substantial impairment to the intent and integrity of the general plan and applicable master plan, 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 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 has been sited to minimize its projection towards the property's rear lot line. In addition, the Board notes that the sunroom will not extend as close to that lot line as the existing house or as the previously approved deck, and that the Petitioner has discussed the proposed construction with neighbors on both sides, who have no objections. Finally, the Board notes that the property has been properly posted, and that the record contains no objections to the grant of the requested variance. Accordingly, the Board finds that granting this variance, to allow construction of the proposed sunroom, will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance of seven (7) feet from the rear lot line is **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.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, 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 19th day of April, 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.