

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6802

PETITION OF DAVID DAILY AND JULIA SAMPSON

OPINION OF THE BOARD
(Opinion Adopted April 12, 2023)
(Effective Date of Opinion: April 21, 2023)

Case No. A-6802 is an application for a variance needed for the construction of a sunroom addition. The proposed construction requires a variance of five (5) feet as it is within twenty (20) feet of the front lot line. The required setback is twenty-five (25) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on April 12, 2023. Petitioners David Daily and Julia Sampson participated in the hearing in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Lot 1, Block 2, Cameron Heights Wootons Addition Subdivision, located at 1813 Eldon Lane in Silver Spring, Maryland, 20902, in the R-60 Zone. It is an unusually shaped, four-sided corner lot, located on the north side of Eldon Lane and the east side of Glenhaven Drive. The two streets are joined by a sweeping arc that continues the convex curvature of Glenhaven Drive which borders the west side of the subject property. The property has an area of 7,452 square feet. It was recorded in 1948, and contains a house that was built in 1950. See Exhibits 1, 3 and 4, and SDAT Printout.

2. The Petitioner's Statement of Justification ("Statement") states that due to the property's "exceptional shallowness and shape," and the fact that it is a "corner lot with a large curved arc," the existing house was positioned at an angle on the property. The Statement notes that the front corners of the existing house are on the front setback lines. This assertion is supported by the Site Plan. See Exhibits 3 and 4. The Statement states that the shallowness of the property and the angled siting of the house create the need for the requested variance. See Exhibit 3.

3. The Petitioners are proposing to construct a 15' x 20' sunroom on the right side of their house. The Statement states that the proposed sunroom was located as far back on the side of the house as possible to minimize the variance needed, and that while it will be located behind the front façade of the house, the "angle [of the house] actually places a small corner of the [sun]room beyond the setback." See Exhibit 3. The Site Plan shows the front corner of the proposed sunroom that is located in the setback. It also shows that the right rear corner of the proposed sunroom extends to the rear setback line, thus supporting the Petitioners' claim that the sunroom addition was positioned as far towards the rear as possible without triggering a need for additional variance relief. See Exhibit 4.

4. The Statement at Exhibit 3 states that the property's shallowness and 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 uniformed front 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 a corner lot with a large curved arc, clearly a unique shape 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. Upon review of the allowed building envelope based on the existing house position reveals that the house was placed right up to both front setback lines at the corners of the house. Thus, despite this sunroom being *behind* the front facade of the house, the angle actually places a small corner of the room beyond the setback.

The owner has proposed to construct the sunroom on the part of the side facade that is furthest away from the front property line in an effort to reduce the variance need. The other side of the house would create a larger variance request. Furthermore, the proposed sunroom was slide down the side of the house toward the rear as much as possible in another effort to limit the variance need. As you can see from the site plan, only a very small portion of the proposed sunroom goes

beyond the setback and needs the variance. The only other remedy to avoid this would be to plan a very odd angle in the addition that would follow the restrictive angle of the setback.

5. The Statement states that the Petitioners were not the developers of this property, and are not responsible for the “peculiar shape of the lot and positioning of the dwelling.” See Exhibit 3. Per SDAT, the Petitioners purchased the subject property in 2016. See SDAT Printout.

6. The Statement states that the proposed sunroom is very “modest in size,” and that without the requested variance, the sunroom would have to be an unusual shape because its front corner would have to be removed. The Statement further states that other locations on the property would necessitate greater variance relief. Thus the Statement concludes that the requested variance is minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would cause, as follows:

The requested variance is 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 15' 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 would have to have a completely peculiar shape (considering the angle of the house positioning). Clearly there is no practical use for a sunroom whose front corner is cut off.

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 other side or most of the rear of the house would actually necessitate a *larger* variance request....” (emphasis in original).

7. The Statement states that “[g]ranting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.” The Statement goes on to explain this, noting that the existing house is positioned “oddly” on the lot, and that because the proposed sunroom is not coplanar with the front façade of the existing house, the house with the sunroom addition will have no more impact on neighbors than the existing house has. The Statement further states that “[i]f it were not for having two front lot lines and this was actually a side lot line (like all other neighbors), this sunroom would meet setbacks without a variance,” and that “if it were not for the odd angle [of the existing house], the front corner of this sunroom would meet setbacks just as the vast majority of the rest of the sunroom already does.” The Statement states that “as a small sunroom amenity, it will not loom or impact other properties in any way.” Finally, the Statement 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.

8. At the hearing, Petitioner David Daily testified that the subject property is an unusually-shaped corner lot with two front setbacks. He testified that the existing house is positioned at an angle on the property, which he stated is "not ideal" for allowing expansion. Mr. Daily testified that he had worked with a construction company to plan an addition for the largest available area on the property that would have the minimum impact on neighboring properties while providing needed space for his family. He testified that the proposed addition was pulled back four (4) feet from the front of the house to help reduce its impact, but could not be moved back any farther because of an existing window. Mr. Daily testified that the roofline of the proposed "Cathedral Style" sun room would follow and almost match the roofline of their existing house.

9. Petitioner Julia Sampson testified that their house directly faces the corner, and does not line up with the houses on either side of it; she testified that this will not change. Ms. Sampson testified that they are proposing a "Cathedral Style" sunroom. She testified that the variance sign had been properly posted, and that while neighbors had asked what they intended to build, none had objected.

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 the subject property is shallow and has an unusual shape, with arced frontage along Glenhaven Drive. See Exhibits 3 and 4. The Board further 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 Petitioners purchased this property in 2016, long after it was developed and built. Thus the Board finds that the unusual shape and shallowness of the 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 due to the property's unusual shape and shallowness, full compliance with the setbacks imposed by Zoning Ordinance would cause the Petitioners a practical difficulty because adherence to the required setbacks forecloses the ability of the Petitioners to construct a modest addition to their home without variance relief. The Board further finds, based on the Statement and Site Plan, that the proposed sunroom addition has been moved as far back from the front façade of the house as possible without triggering the need for variance relief from the rear lot line, and that the size of the proposed sunroom addition is the minimum needed to make construction practical. The Board notes that most of the proposed sunroom will comport with the required setbacks, and that it is only the front right corner that needs variance relief. 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 shallowness, 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 Petitioners to proceed with the proposed construction will continue the residential use of this home, and therefore the Board finds that the variance can be granted without substantial impairment to the intent and integrity of the Kensington-Wheaton Master Plan, 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." Accordingly, the Board finds that this element of the variance test is satisfied.

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 away from the front façade of the house to minimize its impact on neighboring properties. In addition, the Board notes that the property has been properly posted, that at least some of the Petitioners' neighbors have inquired about their project, and none have not expressed objections. 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 five (5) feet from the front lot line 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 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 21st 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.