

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6810**

**PETITION OF JACOB DENNEY**

OPINION OF THE BOARD

(Hearing Date: May 24, 2023)

(Effective Date of Opinion: June 2, 2023)

Case No. A-6810 is an application by Jacob Denney (the "Petitioner") for two variances needed in connection with the proposed construction of an accessory structure (garage). The proposed construction requires a variance of 23.92 feet as it is within 41.08 feet of the front lot line. The required setback is 65 feet, in accordance with Section 59.4.4.7.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance to be located in front of the rear building line. Accessory structures are required to be located behind rear building line of primary building, in accordance with Section 59.4.4.7.B.2.a of the Montgomery County Zoning Ordinance.

The Board of Appeals held a hearing on the application on May 24, 2023. Petitioner Jacob Denney appeared in support of the variance.

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

**EVIDENCE PRESENTED**

1.     The subject property is Block B, Lot 16, Charred Oak Estates Subdivision, located at 8904 Charred Oak Drive in Bethesda, Maryland, 20817, in the R-200 Zone. It is an interior lot with an area of 23,973 square feet, located on the south side of Charred Oak Drive. The Petitioner's variance Application states that the property is unusually shallow and has other extraordinary conditions that constrain its development, the latter presumably referring to the fact that the subject property was originally part of a larger estate, and that its development has an unusual history as a result. See Exhibits 1, 3, 4(a)-(b), and 7.

2.     The property contains an existing house and a circle driveway. The driveway and parts of the existing house formerly served the house on the larger estate. The

Petitioner's Justification Statement ("Statement") sets forth a history of the property, as follows:

The property is improved with a single-family home, which developed from a carriage house constructed in 1894 being combined with a guest house constructed in 1924, both on the original property of the Seven Locks estate home, known as Keys Farm (9012 Seven Locks Road). The subject property was split from the estate home with the neighborhood's subdivision into Charred Oak Estates in 1960 (Plat 5896) and was re-subdivided later that year (Plat 5983) to create a corner lot between the subject property and the estate home. As such, the home is the second oldest in the neighborhood and its construction and orientation in relation to the lot are unusual, creating practical difficulties in applying the current zoning standards for location of an accessory structure.

\* \* \*

This appeal is to allow the construction of an accessory structure at the most logical, useful, and historically consistent location on my property: along the existing circle driveway and at the same setback from the street as the principle building. The construction of the home at 8904 Charred Oak estates predates the subdivision of the neighborhood and creation of the street onto which the property now fronts. As a result, the house is situated in an unusual way, facing east towards Seven Locks rather than north towards Charred Oak, and aligned with a large circle driveway (Exhibit A). This orientation reflects the history of the property, and in a broader sense, the neighborhood.

The estate house at 9012 Seven Locks was completed in 1898, served by a circle drive and 20x20' stone carriage house constructed a few years prior. In 1924, that estate home added a two-story guest house in the same gabled, Dutch colonial style, using the same locally quarried stones with which it had been built. That 1924 guest house and carriage house have been added onto over the years, but the circle drive, orientation to the east, and relation to its sister home at 9012 Seven Locks has always remained (Exhibit B). The central landscaping feature of the subject property remains the wonderfully landscaped circle drive.

See Exhibit 3. The Statement further describes the property as having an "unusual width and shallowness" relative to the "original neighborhood subdivision," and states that the "unusual orientation of the house within the lot" causes the property's rear building line to be "exceptionally far back on the property." The Statement indicates that these conditions pose a practical difficulty for the Petitioner. See Exhibit 3.

3. The Petitioner includes a 1970 Washington Post article about his property, and specifically its landscaping, with his submission. See Exhibit 3(f). He notes in his submission that the area to the south of the house (i.e. behind the rear building line) contains a "formal, Japanese garden, created by the Cromer family and noted for its value by the Washington Post in 1970." The Petitioner states that this area "is marked by mature Japanese red maples, flowering azaleas, and defined by a flagstone path bordered by large Japanese cedar trees, all planted more than 50 years ago." His submission notes that placement of the proposed garage in this area "would not only destroy this tranquil portion of the property but would necessitate additional paving such

that all of the property's landscaping would seemingly be turned to the support of driveways, since there is not room for a driveway to be extended up the western side of the property." See Exhibit 3(b).

4. The Petitioner and his wife purchased the subject property in 2021. Per the Statement, "the establishment of the road and subdivision of the neighborhood ... followed the property's development and predated the applicant's ownership." See Exhibit 3.

5. The Statement states that the carriage house that the Petitioner is seeking to construct is "narrow," with a "20' in depth, rather than the more standard 22' or 24'." The Statement indicates that the style and positioning of the structure have been selected to "carefully match the setback of the primary structure and maintain the required side yard setback, while making effective use of the existing circle drive." The Statement notes that "[w]ithout the variance, the carriage house cannot be constructed in a location that further adds to the charm and character of this 127 year old property." See Exhibit 3.

6. The Petitioner has included two photographs with his submission that he indicates show that any view of the proposed accessory structure from Charred Oak Drive would be well-screened by existing, mature plantings. See Exhibits 3(d).

7. The Statement indicates that the Petitioner has talked with his neighbors about the proposed construction, and that all are supportive. See Exhibit 3. He includes a Petition of Support, signed by his neighbors, as "Exhibit G" to his submission. See Exhibit 3(g).

8. The Statement at Exhibit 3 concludes that the Petitioner's request meets the standards for the grant of a variance, as follows:

The petitioner submits that the application meets the evidentiary requirements of demonstrating the subject property's unique and unusual situation when compared to adjoining properties and requests the application be granted. The unusual layout of the house on the property, resulting from its construction prior to the subdivision of the neighborhood, creates an unusually deep rear building line relative to the lot's depth. This uniqueness, together with the historic character of the property and the location of the circle drive, causes the accessory structure zoning requirement to disproportionately impact the reasonable use and enjoyment of the property. The full application of the zoning requirement imposes practical difficulties as a result.

9. At the hearing, Mr. Denney testified that he and his wife purchased the subject property two years ago. He explained the evolution of the home, testifying that the circle drive originally served the main house, and that what is now his house was the carriage house for that house. Mr. Denney testified that the carriage house was later connected to the 1924 guest house to create his house. He testified that his house is therefore oriented towards Seven Locks Road rather than Charred Oak Drive, characterizing this orientation as "unusual." Mr. Denney testified that his home is the second oldest home in the neighborhood.

Mr. Denney testified that the proposed accessory structure will front on the existing circle drive, and will align with the abutting neighbors' garage. He testified that he has spoken with all of his neighbors about his proposed garage, and that all are supportive. Mr. Denney testified that mature landscaping, installed by a previous owner, would screen the view of the proposed accessory structure from the street, and noted that his property line is removed about 20 feet from the edge of the pavement on Charred Oak Drive.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and the evidence of record, the Board finds that the requested variances can be granted. The Board finds that the requested variances comply with the applicable standards and requirements set forth in Section 59.7.3.2.E.2 of the Zoning Ordinance, 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, based on the Statement and the testimony of the Petitioner, that the subject property was originally part the larger Keys Farm estate, and that the Petitioner's circle driveway and the bulk of his existing house, which is comprised of the estate's original carriage house and guest house, were developed in the late 1800s or early 1900s as part of this estate. Because of this, the Board finds that the improvements on the subject property were located in a manner that served the main "Keys Farm" house, and like that house, were oriented towards Seven Locks Road. The Board further finds that in 1960, the Keys Farm estate was subdivided to allow the development of its land as Charred Oak Estates, resulting in the current configuration of the subject property and the unusual placement of the existing house and driveway relative to the subject property's new lot lines and new frontage on Charred Oak Drive. See Exhibit 3.

The Board further finds, based on the Application, Statement, Subdivision Plats, and Zoning Vicinity Map, that the subject property is relatively shallow compared with most of the properties in the subdivision, and that because of the unusual orientation of the existing house, which, as part of the original estate, was built to "face" Seven Locks Road (east) instead of the new Charred Oak Drive (north), its rear building line is significantly farther back on the property than would otherwise be the case, constraining the area available for construction. In addition, the Board notes that the area behind the rear building line contains a mature Japanese garden that was planted by a previous owner and is more than half a century old. See Exhibits 1, 3, 3(b), 3(e), and 7. The Board finds that these circumstances, taken together, 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, based on the Statement, that the Petitioner's house was fashioned from a carriage house that was built in 1894 and a guest house that was built

in 1924, and that the Petitioner's circle driveway, which formerly served the estate house, was built prior to 1898. See Exhibit 3. The Board further finds that the Petitioner, who purchased the subject property in 2021, is not responsible for the depth and shape of the subject property that arose from the 1960 subdivisions of the larger estate and subject property, or for the location, orientation, or installation of the existing improvements on the subject property. Thus the Board finds that this element of the variance test is satisfied.

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 strict compliance with the requirement that the proposed accessory structure (garage) be located behind the rear building line of the house and 65 feet from the front lot line would cause the Petitioner a practical difficulty in that it would preclude construction in a location that is proximate to the 100+ year old circle driveway, and instead would require that this structure be located in the shallow area between the existing house and the estate house that it originally served, interfering with the historic relationship between those structures and necessitating substantial paving, including the potential paving of the noted Japanese garden. The Board further finds that the requested variances are the minimum necessary to overcome this practical difficulty, and to allow construction on an area of the property that respects its history and the broader history of the former estate, and minimizes the paving of currently unpaved, landscaped areas. Thus, the Board finds that this element of the variance test is satisfied.

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 proposed construction will continue the residential use of the property and can therefore be granted without substantial impairment to the intent and integrity of the Potomac Subregion Master Plan (2002). 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 photographs submitted by the Petitioner, that any view of the proposed accessory structure from Charred Oak Drive would be well-screened by existing, mature plantings. See Exhibit 3(d). The Board further finds that the Petitioner has discussed the proposed construction of a carriage house on his property, in the identified location, with his abutting and confronting neighbors, and that all are supportive, as evidenced by their signatures on the "Petition of Support from Neighboring Owners." See Exhibits 3 and 3(g). Finally, the Board finds that the property was properly posted, and that the record contains no letters of objection to the grant of the variance. On the basis of the foregoing, the Board finds that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variances are **granted**, subject to the following condition:

1. Petitioner shall be bound by the testimony and exhibits of record.
2. Construction shall be in accordance with Exhibits 4 and 5.

Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Laura Seminario-Thornton and Alan Sternstein in agreement, and with Caryn Hines necessarily absent, 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 2nd day of June, 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.