

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600**

<http://www.montgomerycountymd.gov/boa/>

**CASE NO. A-6824**

**PETITION OF TIMOTHY AND JOANN RYAN**

**OPINION OF THE BOARD**

(Opinion Adopted September 13, 2023)  
(Effective Date of Opinion: September 22, 2023)

Case No. A-6824 is an application for variance needed to allow construction of a proposed one-story rear addition. The proposed construction requires a variance of eighteen (18) feet as it is within two (2) feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance. In addition, with the proposed construction, the property will have a lot coverage of 37.26%, necessitating a variance of 2.26% from the maximum lot coverage of 35% established by Section 59.4.4.9.B.1 of the Zoning Ordinance.

The Board held a hearing on the application on September 13, 2023. Petitioners Timothy and JoAnn Ryan appeared at the hearing, assisted by their attorney, Jody S. Kline, Esquire, and their architect, Charlie Jones.

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

**EVIDENCE PRESENTED**

1. The subject property is Block F, Lot P12, Sligo Park Hills Section 1 Subdivision, located at 126 Hilltop Road in Silver Spring, Maryland, 20910, in the R-60 Zone. It is a four-sided property with an area of 5,950 square feet. The property's left side lot line is ten (10) feet longer than its right side lot line, causing the property to have an angled rear lot line and giving it a trapezoidal shape. See Exhibits 4(a)-(b).
2. The subject property was platted in 1928. At that time, the property had an area of 6,375 square feet. In 1932, a portion of the property along its rear lot line was deeded to the Maryland-National Capital Park and Planning Commission, decreasing the size of the property to its current 5,950 square feet and creating its angled rear lot line. In 1953,

a house was built on the subject property; the house extended to within 18 feet of the property's rear lot line. The Petitioners purchased the subject property in 1986. See Exhibit 3.

3. In 1991, in variance Case No. A-3327, the Petitioners were granted variances to permit them to construct an open deck that extended 8.5 feet into the eleven (11) foot rear setback, leaving it 2.5 feet from the rear lot line, and to permit their existing house, which was built eighteen (18) feet from the rear lot line, to encroach two (2) feet into the required twenty (20) foot rear setback. See Exhibits 3 and 7. In that case, the Board's decision states that Mr. Ryan testified that "the existing house was built in 1953 before present zoning regulations took effect." See Exhibit 7. The Board made the following findings in determining to grant the variances requested in that case:

Based on the appellants' binding testimony and evidence of record, the Board finds that the variances can be granted. The existing house was built before present zoning regulations took effect. The property abuts park land and a vacant lot on the sides where the construction is proposed. Therefore, the proposed deck will not interfere with neighboring properties. The lot is also angled at the rear causing the appellants to require a decreasing amount of variance along the rear lot line. Thus, the strict application of the setback requirements would result in practical difficulty to the applicants if the variances are not granted. Further, the Board finds that the variances requested are the minimum reasonably necessary to accomplish the proposed project and that the variances can be granted without substantial impairment of the intent, purpose and integrity of the General Plan. The Board finds that construction of a deck 8.5 feet beyond the setback, as proposed herein, is not likely to cause any impairment of the Master Plan.

See Exhibit 7. The Petitioners' Statement of Justification ("Statement") states that the Board's 1991 decision "acknowledged the unusual lot configuration and noted that the proposed deck would not interfere with surrounding properties nor would it impair the intent of the Master Plan since the land behind the Ryans' lot was public land devoted to nature and open space." See Exhibit 3.

4. The Petitioners are proposing to construct an enclosed porch/sunroom addition in the area where part of their existing deck is located. The Statement states that the proposed porch/sunroom addition will be accessible from their house and from the remaining portion of the deck, and "will not extend beyond the boundaries of the existing deck." See Exhibit 3. The Petitioners have included elevations of their proposed addition from three sides with their submission, as well as a roof view. See Exhibits 5(c) and (d). The Statement states that the elevations "show how the enclosed porch 'blends' with the existing improvements and how the extensive window usage contributes to the transparency of the addition and reduces its mass." See Exhibit 3.

5. The Statement states that the Petitioners' proposed porch/sunroom addition is needed to allow them to "take advantage" of the natural setting behind their house "over more months of the year and during times of inclement weather." The

Statement further states that the Petitioners have decided to “age in place,” and that the proposed addition is needed to allow Mr. Ryan, who is not always able to spend time outdoors, to enjoy the outdoors from inside. The Statement concludes that his not being permitted to do so would cause him a practical difficulty. See Exhibit 3.

6. The Statement states that the subject property began as a small lot that was created in 1928, before the enactment of the County’s first Zoning Ordinance, with an area of 6,375 square feet. It states that the property was rendered even smaller by a 1932 taking of land across its rear which left it with an angled rear lot line and an area of 5,950 square feet. The Statement indicates that the resultant area is less than the minimum lot size for the R-60 Zone. See Exhibit 3.

The Statement states that the existing house on the subject property was “originally located without any recognition of rear yard setback requirements” because it was “constructed before [the] R-60 zoning and specified setback had been imposed on the property.” See Exhibit 3. As a result, the Statement states that “the original house construction in 1953 placed the building two feet into the yet to-be-created rear yard setback and left little space for expansion of the house to the rear,” a condition which was made legal through the grant of a variance in 1991. See Exhibits 3 and 7.

7. The Statement asserts that the proposed construction will not increase the lot coverage on the subject property because a deck currently exists where the proposed porch/sunroom addition will be located.<sup>1</sup> The Statement states that lot coverage was not addressed when the 1991 variance for the existing deck was granted. See Exhibit 3.

8. The Statement at Exhibit 3 states that the proposed construction will not have an adverse effect on the applicable Master Plans, as follows:

Variance No. A-3372 has been in place for over thirty years and the existing elevated deck has blended in well with the maturation of the surrounding Sligo Creek Park. The addition of a sun room to the existing deck will not, in any event, have an adverse effect on the implementation of the County’s Master Plans covering this area.

9. The Statement states that granting the requested variances will not adversely impact the use and enjoyment of neighboring properties:

The Ryans’ modest addition to their residence, which is virtually invisible from any adjoining or confronting property, will have no adverse impact on any surrounding property. Proof of the anticipated compatibility of the proposed sun room with neighboring properties is confirmed by letters of support from neighbors

---

<sup>1</sup> The Board notes that open decks are not included in lot coverage calculations. Section 59.4.1.7.B.4.a of the Zoning Ordinance defines “coverage” as “the area of a lot or site occupied by a building, including an accessory building, structured parking, or other *roofed* structure such as a porch, patio, deck, or steps,” [emphasis added], and states that coverage “does not include” open decks and other enumerated features.

on either side of the Ryans' residence and a third letter from a residence in close proximity to 126 Hilltop Drive.

See Exhibit 3. The Petitioners include letters of support from the abutting neighbors on both sides, and one other neighbor. See Exhibits 8, 8(a)-(c).

10. At the hearing, Mr. Kline oriented the Board to the property, stating that it was located on the northeast side of Hilltop Road, and that it backed to Sligo Creek Park. Referring to Exhibit 4(a), Mr. Kline stated that the subject property was platted in 1928 with a regular shape and an area of more than 6,000 square feet; he noted that the property's original rear lot line is shown with a dotted gray line on Exhibit 4(a). Mr. Kline stated that in 1932, Park and Planning determined to enlarge the abutting park, and so purchased a portion of the rear of the subject property that bordered the park. He noted that the resultant property lines are shown in red on Exhibit 4(a), and stated that this reduced the size of the property to less than 6,000 square feet.

Mr. Kline stated that the existing house on the subject property was built in 1953, and that its northeast (right rear) corner encroached approximately two (2) feet into the twenty (20) foot rear setback, a condition that was made legal by the Board through the grant of a variance in 1991. Mr. Kline stated that a variance to permit the encroachment of what is now the Petitioners' existing deck into the rear setback was also granted by the Board in 1991. See BOA Case No. A-3327. Thus Mr. Kline concluded that everything that is currently on the subject property is existing and legal.

Mr. Kline stated that the Petitioners are seeking to take a part of the deck area and enclose it as a porch. He stated that this will result in no increase in the amount of encroachment. Mr. Kline explained that decks have different setback requirements than standard buildings, and that a new variance is needed to allow the proposed enclosed space that his clients are seeking. Mr. Kline narrated the photographs of the existing deck, and noted that the proposed porch/sunroom will not extend beyond the deck railing. See Exhibits 5(g)-(i). He stated that in addition to a setback variance, the Petitioners are also seeking a 2.26% lot coverage variance, emphasizing that nothing is changing with respect to the current coverage of the ground plane.

In closing, Mr. Kline enumerated the exceptional conditions pertaining to this property, including its small size, unique features, and unusual history that have caused it to have what he referred to as a "tight" buildable area. Mr. Kline noted that the Board previously granted variances for this property, and that the proposed construction will not increase the extent of the existing encroachment.

11. Mr. Jones testified that the proposed addition will not exceed the footprint of the existing deck, but that in order to comply with current building codes, they will need to remove the portion of the deck where the proposed porch/sunroom will be located so that they can put the necessary foundation under the new structure. He testified that the proposed porch is being constructed to match the existing home. Mr. Jones testified that the elevations at Exhibit 5(c) show the sides of the proposed addition and the slope of its

roof. He testified that the proposed addition flows from the existing house, and will allow filtered light and protection from the sun. Finally, Mr. Jones testified that this one-story addition to a two-story house will not "stick out," noting that the volume of the addition is not large.

12. Mr. Ryan testified that he and his wife purchased their house in 1986, that they are very happy living in their neighborhood, and that they want to "age in place." Mr. Ryan testified that he and his wife are good friends with their neighbors, and that they sought their approval before beginning this process. See Exhibits 8, 8(a)-(c). He attested that they properly posted the variance sign.

Mr. Ryan testified that he and his wife have enjoyed using their deck for a long time, but that in recent years they have not been able to enjoy it as much as they once did, in part due to medical conditions that he testified make it difficult for him to be outside under certain circumstances, which he enumerated. He testified that they are seeking to enclose approximately half of their existing deck for use as a four-seasons room. Mr. Ryan testified that this would give them views to the park and would let him enjoy the outside. He testified that denial of the requested variances would pose a hardship for them.

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

The Board finds that at 5,950 square feet, the subject property is substandard for the R-60 zone, which has a 6,000 square foot minimum. In addition, the Board finds that the property has an angled rear lot line, such that a corner of the existing house is located in the rear setback. The Board further finds that the front and left side of the existing house are built to the required setback lines, and that the right side of the house is less than seven (7) feet from the required setback. See Exhibits 3 and 4(a)-(b). The Board finds that the small size of this property and its angled rear lot line result in the property having a tight and very shallow buildable envelope, significantly limiting the area available to the Petitioners for expansion of their home in any direction. The Board finds that these circumstances combine to constitute an extraordinary condition that is peculiar to this 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 and the testimony of record, that the Petitioners purchased this property in 1986, after it was reduced in size in 1932 and after

their house was built in 1953. See Exhibit 3. Thus the Board finds that the Petitioners are not responsible for the small size or unusual shape of this property, or for its constrained buildable area, 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 the shallow and very constrained buildable area on this property, resulting from its angled rear lot line and substandard size, creates a practical difficulty for the Petitioners in that the setbacks limit any meaningful expansion of this home to the rear, where the property is bordered by parkland. See Exhibits 4(a)-(b) and 9(a)-(b). The Board finds that the addition proposed by the Petitioners would not extend beyond the footprint of their existing deck, and would have little if any impact on the surrounding property owners because of the parkland behind the property and its significant vegetative buffering. See Exhibits 5(g)-(i). The Board further finds that the requested 2.26% variance from the 35% lot coverage limitation is minimal, and observes that this variance would not have been needed if the subject property had not been reduced from its original 6,375 square foot size to its current 5,950 square foot size. The Board notes in support of this that 2.26% of 5,950 square feet is 134.47 square feet, that this property was reduced in size by 425 square feet, and that 134.47 square feet is less than 35% of 425 square feet. Thus the Board finds that the requested variances are the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose due to the extraordinary conditions peculiar to the property, 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 the proposed construction will continue the residential use of this property, consistent with the recommendations of the East Silver Spring Master Plan, which seeks to “[s]ustain and enhance residential neighborhoods.” Thus 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 Statement, photographs, Zoning Vicinity Map, and testimony of record, that granting the variances needed to allow the proposed addition to this home will not be adverse to the use and enjoyment of abutting and confronting properties because the Petitioners’ rear yard is bordered by parkland, and because the proposed addition will be “virtually invisible from any adjoining or confronting property.” See Exhibits 3, 5(g)-(i), and 9(a)-(b). The Board notes in furtherance of this conclusion the record contains letters of support from three neighbors, including the abutting neighbors on both sides of the subject property. See Exhibits 8, 8(a)-(c). Thus the Board finds that this element of the variance test is satisfied.

Accordingly, the requested variances, needed to allow the construction of the proposed one-story rear addition, are **granted**, subject to the following conditions:

1. The Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4(b) and 5(c)-(f).

Therefore, based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by Alan Sternstein, with Caryn Hines and Laura Seminario-Thornton in agreement, and with John H. Pentecost, Chair, necessarily absent:

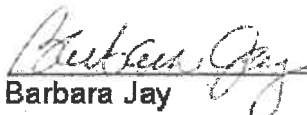
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



---

Richard Melnick, Vice Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 22nd day of September, 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.