

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6826

**PETITION OF TAICHANG LLC
by GANG SONG AND CHUNMEI SHI**

OPINION OF THE BOARD
(Hearing Held: October 4, 2023)
(Effective Date of Opinion: October 18, 2023)

Case No. A-6826 is an application of Taichang LLC, by Gang Song and Chunmei Shi (the "Petitioner"), for variances needed for the proposed construction of an accessory structure (garage). The proposed construction requires a variance to be located forward of the rear building line, in the front yard. Accessory structures are required to be located behind the rear building line of the principal building (house), in accordance with Section 59.4.4.8.B.2.a of the Zoning Ordinance. In addition, the proposed construction requires a variance of ten (10) feet, as it is within five (5) feet of the side lot line. The required setback is fifteen (15) feet, in accordance with Sections 59.4.4.8.B.2 and 59.4.4.8.B.2.b of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, October 4, 2023. Chunmei Shi appeared at the hearing, along with her builder, Ross McNair.

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

EVIDENCE PRESENTED

1. The subject property is Parcel N530, Block 3, Pt Lot C Glen Echo Heights Subdivision, located at 5417 Mohican Road in Bethesda, Maryland, 20816, in the R-90 Zone. The subject property is a four-sided, through lot, accessed from Mohican Road

and with frontage on MacArthur Boulevard ("MacArthur"). The property is over four times as deep as it is wide. See Exhibits 3, 4(a)-(b), and 8.

2. The subject property contains an historic house, the "R. A. Charles Castle," that was built in 1888 and is accessed from Mohican Road. See Exhibits 1, 3, and 4(a)-(b). The house is listed on the County's Inventory of Historic Sites as Site Number 35/29/2. The Historic Preservation Commission ("HPC") considers the front of the house to be the façade overlooking the Potomac River and facing MacArthur Boulevard. The Statement of Justification ("Statement") states that this side of the property is very steep, sloping 64 feet downward from the house to MacArthur Boulevard. The Statement indicates that this slope is too severe to install a driveway from MacArthur Boulevard. The Statement further states that MacArthur Boulevard is controlled by the Army Corps of Engineers, and that the Corps would resist construction of a driveway apron on MacArthur Boulevard if there is already another established point of access (Mohican Road). Finally, the Statement notes that the HPC would not like to have a garage installed that would block views of the front of this historic home abutting MacArthur. See Exhibit 3.

3. The Statement states that the Petitioner, who SDAT indicates purchased the property in 2022, is seeking to construct a detached garage in front of the existing house on the Mohican Road side of the property. The Statement indicates that there was previously a detached garage on that side of the house, but that garage has been removed. The Statement states that access from Mohican Road to a garage built on the MacArthur Boulevard side of the house would be prevented by "the Historic house, stone retaining walls and a 42" diameter white oak tree." See Exhibit 3.

4. The Statement states that the Petitioner is seeking a variance from the required side setback in order to avoid "a 25" diameter Hickory tree that w[ould] hinder access to the garage bays." The Statement further states that the requested relief from the side setback would "preserve more views of the R. A. Charles Castle from Mohican Road." See Exhibit 3.

5. The Statement states that granting the requested variances would not be adverse to the use and enjoyment of neighboring properties, and notes that the abutting "Baltzley Castle" has a garage built on the Mohican Road side. See Exhibit 3.

6. The Petitioner's variance Application cites the property's shape, topography, and other extraordinary conditions as factors that cause the Petitioner a practical difficulty and make the subject property unique for purposes of satisfying the first element of the variance test. See Exhibit 1.

7. The Petitioner has included a copy of Historic Area Work Permit #735175, dated December 4, 2015, approving garage and fence construction on the subject property, with their submission. See Exhibit 7.

8. At the hearing, Mr. McNair testified that the house on the subject property is an historic resource that was built in 1888 and that overlooks the Potomac River and the

Virginia palisades. He testified that the property is 411 feet deep and 90 feet wide, that it fronts on both Mohican Road and MacArthur Boulevard, and that it has driveway access from Mohican Road. Mr. McNair testified that the area between the house and Mohican Road is relatively flat, whereas there is a 64-foot drop from the house down to MacArthur Boulevard. He referred the Board to Exhibit 4(b), which contains five-foot contour lines showing the slope of the property. Mr. McNair testified that the Army Corps of Engineers would not allow a curb cut for a driveway on MacArthur.

Mr. McNair testified that if the garage were put behind the rear building line of the house (i.e. on the MacArthur side of the house), it could not be accessed from the property's Mohican Road driveway because of existing stone walls and a large tree. He further testified that the County's Historic Preservation Commission would not allow construction of a garage on the MacArthur side of the house. Mr. McNair testified that there had previously been a detached (non-historic) garage on the Mohican Road side of the house, but that the Historic Area Work Permit approval that was issued for the proposed garage required its removal. See Exhibits 4(b) and 7. He testified that there is a garage on the Mohican Road side of the abutting Baltzley Castle that also had to be approved by the HPC.

Mr. McNair testified that he had originally purchased, and has since sold, both of the properties on which the castles are located, as well as the abutting lot on the opposite side of the subject property (i.e. the lot to the left of the subject property), which he testified was vacant and is now being developed. He testified that the owners of the Baltzley Castle, which abuts the subject property to the right, do not object to the proposed garage.

Mr. McNair testified that in 2016, he was issued a building permit for the proposed garage, but that interpretations changed such that while the HPC considered the MacArthur side of the house to be its front, the County's Department of Permitting Services considered the Mohican Road side of the property to be the front for zoning purposes. He testified that the proposed garage will be on the left side of the property as you face it from Mohican Road rather than the right side, where the previous garage was. Mr. McNair testified that there will be habitable space above the garage, and that this is shown on the plans. He acknowledged that additional County approvals may be needed depending on the use of that space.

FINDINGS OF THE BOARD

Based on the binding testimony and 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, based on the Statement, Site Plans, and testimony of Mr. McNair, that the subject property is a very deep and narrow through lot, with exceptionally steep topography between the existing house and MacArthur Boulevard. See Exhibits 3 and 4(b). The Board finds that these conditions make the property unique for the purpose of satisfying 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;*

There is nothing in the record to suggest that the Petitioner is responsible for the shape and slope of this historic property. Per SDAT, the Petitioner purchased this property in 2022. See SDAT Printout. Thus, the Board finds that the special circumstances pertaining to this 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 notes that "Rear Building Line" is defined as follows in Section 59.1.4.2 of the Zoning Ordinance:

Rear Building Line: Except on a through lot, a line along the edge of the principal building facing the rear lot line that extends between side lot lines and is generally parallel to the rear lot line. On a through lot, the rear building line is a line along the edge of the principal building that extends between side lot lines and is on the opposite side of the principal building from the street where the property is addressed.

In light of this definition, the Board finds that the property border the HPC considers to be the "front" of this home is, in effect, the home's "rear building line" for the purpose of siting accessory structures like the proposed garage. The Board finds, per the Statement and the testimony of Mr. McNair, that the steep slope of the property in this area would prevent construction, that the HPC would not approve construction that would block the view of the front of this house, that the Army Corps of Engineers would not approve a driveway apron on MacArthur Boulevard, and that even if a garage could be constructed behind the "rear building line" of this historic home, it could not be accessed from Mohican Road because of the existing house, retaining walls, and large white oak tree. Thus, the Board finds that compliance with the requirement that the garage be constructed behind the rear building line of this house poses a practical difficulty for the Petitioner. In addition, the Board finds that the proposed location for the Petitioner's garage has already been approved by the HPC, and that compliance with the required side lot line setback would pose a practical difficulty for the Petitioner, on account of the property's narrowness, because it would require that the proposed garage be sited in a location that would partially obscure the view of the historic home from Mohican Road. See Exhibits 3 and

7. The Board notes that adherence to the required side setback would also necessitate removal of a large Hickory tree. The Board finds that the requested variances are the minimum necessary to overcome the practical difficulties associated with the location of the proposed structure in full compliance with the Zoning Ordinance, on account of the property's narrowness and topography, 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 allowing the Petitioner to construct the proposed accessory structure (garage) on the subject property, forward of the rear building line as defined by the Zoning Ordinance, and closer to the side lot line than would otherwise be permitted, will continue the residential use of the property, and therefore can be granted without substantial impairment to the intent and integrity of the Bethesda-Chevy Chase Master Plan (1990). The Board further finds, based on the approval of the proposed construction by the Historic Preservation Commission, that the variances needed for the proposed construction can be granted without substantial impairment to this individually designated resource. See Exhibit 7. 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.*

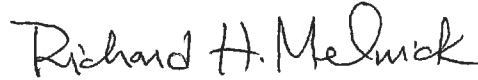
Based on the Statement, Site Plan, and the testimony of Mr. McNair, the Board finds that there was previously a detached garage on the Mohican Road side of this historic home, that the placement of the proposed structure has been approved by the HPC, and that the Petitioner's abutting neighbors to the right do not object to the grant of the requested variances. See Exhibits 3, 4(b), and 7. In addition, the Board notes that despite being properly posted and noticed, no one appeared at the hearing in opposition to the grant of the requested variances, and no written opposition was received. Accordingly, the Board finds that granting the requested variances, to allow the construction of the proposed accessory structure, 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 needed to allow construction of the proposed accessory structure are **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(a) and 5(a)-(c).

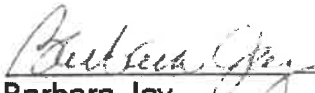
Therefore, based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by Alan Sternstein, with Caryn Hines and Laura Seminario-Thornton in agreement, and with John H. Pentecost, Chair, necessarily absent, the Board adopted the following Resolution:

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.



Richard Melnick, Vice Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 18th day of October, 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.