

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6827
PETITION OF RYAN MURRAY AND CAMILLE MURRAY**

OPINION OF THE BOARD
(Hearing Date: September 6, 2023)
(Effective Date of Opinion: September 15, 2023)

Case No. A-6827 is an application by Petitioners Ryan Murray and Camille Murray for variance relief needed for the proposed construction of a deck and room addition. The proposed construction requires a variance of 4.75 feet as it is within 10.25 feet of the rear lot line.¹ The required setback is twenty (20) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance, except that lots recorded between 9/30/41 and 12/31/53 have a minimum rear setback of fifteen (15) feet and an average rear setback of twenty (20) feet. Decks may project up to nine (9) feet into the rear setback.

The Board of Appeals held a hearing on the application on September 6, 2023. Petitioner Camille Murray participated in the proceedings in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Outlot A, Temples 2nd Addition Subdivision, located at 516 Harding Drive in Silver Spring, Maryland, 20901, in the R-60 Zone. It is a four-sided

¹ On its original building permit denial, DPS indicated that the proposed construction of a room addition required a variance of 9.75 feet to be located 10.25 feet from the rear lot line, applying a 20-foot rear setback while noting that because of the property's recordation date, the required setback was in fact an average of 20 feet and a minimum of 15 feet. See Exhibit 6(a). On the revised building permit denial, DPS indicated that the proposed construction of a room addition and deck requires a variance of 4.75 feet to be located the same 10.25 feet from the rear lot line. See Exhibit 6(c). Thus on the revised permit denial, DPS applied the 15-foot minimum setback. The Board has noticed this case pursuant to the revised building permit denial. The Board notes that there were no changes to the proposed construction between the original and revised permit denials, and that the extent of the proposed encroachment has not changed, only the extent of the variance deemed necessary by DPS, a fact confirmed by the Petitioners in their Supplemental Statement. See Exhibit 3(b). With the 15-foot rear setback, DPS indicates on the revised permit denial that no variance is needed for the proposed deck, which is allowed to project up to nine (9) feet into the required rear setback.

interior lot located on the southwest side of Harding Drive. The property's side lot lines are generally perpendicular to its front lot line, but the right side lot line is much longer than the left side lot line (92.56 feet versus 26.47 feet). As a result, the property's rear lot line is severely angled, and the property's right side is much deeper than its left. The subject property has a total area of 5,679 square feet, which is substandard for the R-60 Zone. See Exhibits 3(a), 4(a), and 7.

2. The property was recorded in 1949, and contains a house that was built in 1951. There have been no major improvements to increase the square footage of the house since its construction. The Petitioners purchased the subject property in 2014. See Exhibits 1 and 3(a).

3. The Petitioners' variance Application cites their property's shallowness and unusual shape as extraordinary conditions that make their property unique. Their Application further states that their property abuts four different properties/parcels, and that neighboring properties are typically rectangular in shape. See Exhibit 1.

4. The Petitioners' Justification Statement ("Statement") reiterates the assertions made on the Application, stating that the subject property "is shallow from rear to front and has an unusual shape." See Exhibit 3(a). The Statement also elaborates on the assertion made in the Application that the property is unusual because of the number of properties that it abuts, as follows:

As is, the property borders 4 different properties. This is not typical compared to most houses that at most abuts 3 properties (1 in each side (2 total) and 1 in the rear). The weird shape of the property touches four different lots (1 in each side (2 total) and 2 in the rear) (see [Petitioners'] Exhibit 1). The lot that would be considered impacted by this addition would be the neighbor in our back yard, but due to the positioning of their house, the boundary in question is their side yard.

5. The Statement states that "[a]pplying the current setback requirement of 20 feet,² the current structure would be non-compliant," noting that "[t]he current structure's rear left corner as-is is 9 feet and 1.4 inches from the current rear property line...." Thus the Statement asserts that the Petitioners' proposed construction "uses an existing legal nonconforming property or structure." See Exhibit 3(a).

6. The Petitioners' Statement states that most of the houses in their area were built in the 1930s, 1940s, and 1950s, and have "small footprints," a condition that "no longer works for most families in the area." As a result, the Statement states that "[t]he majority of the houses in the neighborhood have had some addition added to their property to accommodate the needs of a modern family," including many houses on Harding Drive. The Petitioners include MCAAtlas map excerpts in their Statement that they say depict

² The Petitioners' Justification Statement was submitted before DPS issued the revised building permit denial requiring a fifteen (15) foot rear setback rather than a twenty (20) foot rear setback. The Board notes, per the Statement, that the Petitioners' existing house is nine (9) feet, 1.4 inches from the rear property line, and thus finds that their house extends into the rear setback regardless of whether it is fifteen (15) feet or twenty (20) feet.

shallow properties in their neighborhood with structures that encroach on the rear setback. See Exhibit 3(a). In light of the foregoing, the Petitioners assert in their Statement that their proposed construction “substantially conforms with the established historic or traditional development pattern of a street or neighborhood.” See Exhibit 3(a).

7. The Petitioners are proposing to build a kitchen addition and deck. The kitchen addition would extend to ten (10) feet, four (4) inches from the rear lot line. The Petitioners’ Statement states that about nine (9) square feet of this addition would encroach into the setback. See Exhibit 3(a). The Statement explains that the requested variance is the minimum needed to overcome the hardships imposed by the unusual shape of the property on their proposed development, as follows:

The current setback requirement makes it impossible to add a room large enough to meet our family’s need. The odd configuration of the property boundary only allows us to add our kitchen at the proposed rear right location. Due to the side setbacks, there is no room to expand on the right side of the property. ... The impacted area of this variance request is around nine (9) square feet.

See Exhibit 3(a). In addition, the Statement explains why the Petitioners cannot build the proposed addition on the left side of their house, stating that “this would require substantial cost to configure the bedroom area and cause major upheaval to our home and lives.” At the hearing, Ms. Murray testified that this would require the relocation of the gas line and other pipes serving the house, in addition to the total reconfiguration of the interior space.

8. In addressing the impact of the proposed construction on neighboring properties, the Statement states that the subject property abuts two properties to the rear. It explains that the Petitioners own one of these properties, and that the second (and most affected) is oriented such that that property’s side lot line and side yard abut the Petitioners’ rear lot line. As a result, the Statement states that those neighbors are only required to maintain an eight (8) foot (side) setback from the shared lot line, whereas the Petitioners are required to maintain a much larger setback. The Statement asserts that this is yet another way that the unusual shape of the Petitioners’ property “penalizes” them, and notes that if the shared lot line had been their side lot line, they could build as close as seven (7) feet to that lot line, which would easily accommodate the proposed kitchen addition. See Exhibit 3(a).

9. At the hearing, Ms. Murray testified that their home was built in 1951, and that they purchased it in 2014. She testified that there have been no additions to the footprint of the house since its construction.

Ms. Murray testified that the subject property has a “weird” shape, and that it abuts four different properties, which she testified is very unusual. Ms. Murray testified that the way in which the lot is “cut” makes it impossible to locate the proposed addition elsewhere. She testified that the location for the proposed addition makes the most sense and minimizes the variance relief needed, testifying that the total area of encroachment of the

proposed addition into the rear setback is about nine (9) square feet. Ms. Murray testified that if the addition were placed elsewhere, it would likely still need a variance and would require them to reverse the layout of their home and relocate the pipes serving their home, including the gas line.

Ms. Murray testified that the existing home is nonconforming because it does not meet the required rear setback. She testified that lots of properties in the neighborhood have additions, and that the proposed improvements therefore conform with the established development patterns of their neighborhood. Ms. Murray noted that she had provided three examples of these additions in the Statement.

Ms. Murray testified that she and her husband had spoken with the neighbor to the rear who would be most affected by the proposed addition, and that he had informed them that the proposed addition would not impact him. She further testified that when they started the variance process, they had informed all of their neighbors. She testified that their abutting neighbors to the right had wished them luck. Finally, Ms. Murray testified that the large variance sign has been properly posted, and that those neighbors who have stopped to ask questions about the proposed construction have not expressed any objections.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the variance from the rear lot line can be granted. The Board finds that 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 has a sharply angled rear lot line and an unusual shape compared to others in the immediate vicinity, which are largely rectangular. The Board further finds that at 5,679 square feet, the subject property is substandard for the R-60 Zone, which has a minimum size of 6,000 square feet. The Board finds that these factors combine to significantly constrain the buildable area available for construction on the subject property, and constitute an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 3(a) and 4(a).

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 Application and Statement, that the subject property was recorded in 1949, developed in 1951, and purchased by the Petitioners in 2014. The Board further finds, per the Statement and testimony of Ms. Murray, that the footprint of the original house has not changed since its construction. See Exhibits 1 and 3(a). Thus the Board finds that the unusual shape and small size of the subject property are not the result of actions by the Petitioners, and 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 compliance with the rear lot line setback imposed by the Zoning Ordinance poses a practical difficulty for the Petitioners with respect to their ability to expand their home, on account of their property's unusual shape and sharply angled rear lot line, and the resultant constraints that these features create for the property's buildable envelope. The Board further finds, based on the Statement, that only nine (9) square feet of the proposed addition will encroach into the required setback, that this encroachment is minimal, and that even with this encroachment, the proposed addition will be farther from the rear lot line than the existing house. Thus the Board finds that the variance requested is the minimum needed to allow the Petitioners to overcome this practical difficulty that full compliance with the Zoning Ordinance would entail, in satisfaction of this element of the variance test. See Exhibit 3(a).

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 this property, consistent with the recommendations of the Four Corners Master Plan (1996), which seeks to "maintain and preserve the character and integrity of the Four Corners residential neighborhoods as the foundation of the community." 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 testimony of Ms. Murray, that she and her husband have spoken with their rear neighbor, who would potentially be the most affected by the proposed addition, and that he has indicated that it will not impact him. The Board further finds, again based on the testimony of Ms. Murray, that their abutting neighbors to the right, and other neighbors who have inquired about the proposed construction, have expressed no objections to the proposed construction. Finally, the Board notes that the property was properly posted, and that the record contains no opposition to the requested variance. On the basis of the foregoing, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance from the rear 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(a)-(b) and 5(a)-(b).

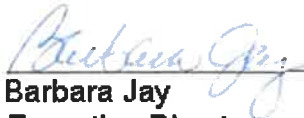
Based upon the foregoing, on a motion by Caryn Hines, seconded by Laura Seminario-Thorton, with Alan Sternstein in agreement, and with John H. Pentecost, Chair, and Richard Melnick, Vice Chair, necessarily absent, the Board adopted the following Resolution:

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.



Caryn Hines
Acting Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 15th 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.