

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
<http://www.montgomerycountymd.gov/boa/>
(240) 777-6600

**Case No. A-6839
PETITION OF CANDACE REID**

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

Case No. A-6839 is an application by Petitioner Candace Reid for eight variances needed for the construction of a detached accessory dwelling unit (“ADU”) with deck. The Petitioner seeks to convert an existing garage/art studio into an ADU. The proposed construction requires the following variances:

Detached Accessory Dwelling Unit:

1. Detached Accessory Dwelling Unit as an accessory structure can't be placed on a property without a principal building in accordance with Section 59.3.7.4.A.1 of the Zoning Ordinance. The proposed construction needs a variance to be located on a piece of property that doesn't have a principal building.
2. Minimum rear setback requirement for Detached Accessory Dwelling Unit is 12.4 feet, in accordance with Sections 59.3.3.3.C.2.c and 59.4.4.9.B.2.b of the Zoning Ordinance. The proposed structure is 6.5 feet from rear property line and therefore needs a variance of 5.9 feet.
3. Minimum side setback requirement for Detached Accessory Dwelling Unit is 10.4 feet on the left side, in accordance with Sections 59.3.3.3.C.2.c and 59.4.4.9.B.2.b of the Zoning Ordinance. The proposed structure is 1.08 feet from left property line, and therefore needs a variance of 9.32 feet.
4. Minimum side setback requirement for Detached Accessory Dwelling Unit is 8.4 feet on the right side in accordance with Sections 59.3.3.3.C.2.c and 59.4.4.9.B.2.b of the Zoning Ordinance. The proposed structure is 0 feet from right property line, and therefore needs a variance of 8.4 feet.
5. The required sum of both side yards is 18.8 feet in accordance with Sections 59.3.3.3.C.2.c and 59.4.4.9.B.2.b of the Zoning Ordinance. The proposed construction reduces the sum of both sides to 1.08 feet, and thus needs a variance of 17.72 feet.

6. Detached Accessory Dwelling Unit has a maximum size requirement of 0 square feet in accordance with Section 59.3.3.3.C.2.e of the Zoning Ordinance. The proposed construction is 412.08 square feet in size, and therefore needs a variance of 412.08 square feet.

Deck:

1. Deck as an accessory structure can't be placed on a property without a principal building, in accordance with Section 59.3.7.4.A.1 of the Zoning Ordinance. The proposed construction needs a variance to be located on a piece of property that doesn't have a principal building.

2. Minimum side setback requirement for Deck is 5 feet on the right side, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance. The proposed structure is 0 feet from right property line, and therefore needs a variance of 5 feet.

The Board of Appeals held a hearing on the application on December 6, 2023. Petitioner Candace Reid participated in the proceedings in support of the requested variances, assisted by architect James McGrath.

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

EVIDENCE PRESENTED

1. In 2014, the Petitioner purchased property described on her survey as "LOT NUMBERED 10 AND THE WESTERLY ONE-HALF IN WIDTH BY THE FULL DEPTH OF LOT NUMBERED 11, IN BLOCK 3, IN THE SUBDIVISION KNOWN AS "SECTION ONE, WILDWOOD," AS PER PLAT RECORDED IN PLAT BOOK S.D.H. 3, AT PLAT 26, AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND." The subject property in this case is a portion of that property (i.e. the westerly half of Lot 11), described as Lot P11, Block 3, Wildwood Section 1 Subdivision, in the R-60 Zone, with a mailing address of 921 Sligo Creek Parkway, Takoma Park, Maryland 20912. The subject property is a narrow, four-sided property, with a width that expands from approximately 21.48 feet at the south end of the property to a maximum of 29.48 feet at the north end of the property, and a depth that exceeds 150 feet, giving the property an overall area of 3,985 square feet. The property is improved with an existing artist's studio that was originally built as a detached two-car garage. Abutting Lot 10, which was conveyed with the subject property, is improved with a single-family dwelling that was built in 1947. Both properties were originally located in Prince George's County. See Exhibits 3, 4(a)-(b), and 8, and SDAT Printout.

2. There is no principal building on the subject property, only the existing detached garage/artist's studio. At its closest points, the existing garage/studio is located 6.5 feet from rear property line, 1.08 feet from left property line, and 0 feet from right property line.

The existing garage/studio is 20.4 feet wide and 20.2 feet deep, giving it a footprint of 412.08 square feet. See Exhibits 4(a) and 6.

3. The Petitioner is seeking to convert the existing detached garage/studio into an accessory dwelling unit ("ADU"). See Exhibit 3. The Petitioner's variance Application states that the building she proposes to use as the ADU was originally constructed as a garage, and that it was converted by the previous owner to an artist's studio. The Application states that "[a]lthough it cannot be determined when the building was constructed, the previous owner has attested in writing that it was there when she purchased the property in 1983." See Exhibits 1 and 7. The Application goes on to state that "[a]s a practical matter, the owner cannot bring the building into compliance with the current [standards]," and that "[w]ithout the grant of the requested variances, the building cannot be converted to an ADU." See Exhibit 1.

4. The Application states that while the Petitioner cannot determine if the existing garage/studio was originally constructed with a valid building permit, "it can be shown that it existed in its current size and height prior to May 31, 2012." The Application notes that this date is significant because Section 59.3.3.3.C.2.b of the Zoning Ordinance states that "[a]ny structure constructed legally before May 31, 2012 that is not increased in size or building height and does not have new windows on a wall nearest an abutting property may be used for a Detached Accessory Dwelling Unit without regard to setbacks or floor area." See Exhibit 1. The Petitioner is not proposing to increase the size or height of the existing garage/studio structure, and is not proposing any new window openings. See Exhibits 3 and 5(a)-(c).

5. Like the Application, the Petitioner's Justification Statement ("Statement") also acknowledges that the Petitioner "has not been able to establish that the original detached garage was constructed with a building permit," and observes that such a permit "would have been granted by Prince George's County." See Exhibit 3. The Statement asserts that the proposed ADU nevertheless "qualifies for exemption from current zoning restrictions, with respect to setbacks and floor area" pursuant to Section 59.3.3.3.C.2.b of the Zoning Ordinance. Because the Petitioner lacks proof that the existing structure was lawfully constructed, the Statement provides the following alternate justification for the grant of the requested variances:

1. Since acquiring the property in 2014 with the artist's studio as an accessory building in its present configuration, the Applicant has not made any modifications to the building. The proposed conversion to an ADU will entail only two exterior modifications of note: (1) building a deck on the north side facing the main house; and (2) installing a new door in the north wall to allow access to the deck. From the street and the adjacent properties, the building will appear the same on the outside.

2. Granting the variances will not be adverse to neighboring owners' use and enjoyment of their abutting properties.

3. The non-conforming conditions are pre-existing and not the result of any actions by the applicant. The applicant is powerless to modify the building in ways

that would bring it into conformance with the current zoning ordinance. Without the variances, the Applicant will not be able to follow through with her plan to convert the artist's studio to an accessory dwelling unit for herself when she retires. The latter is her primary motivation.

6. At the hearing, Ms. Reid testified that she purchased the subject property and the abutting property to the west, which contains a small house, from a local artist. She testified that she was not aware that the property she was purchasing was really two separate properties—the subject property containing the converted garage/studio, and the abutting property to the west containing the dwelling—until after her offer to purchase the properties was accepted. Ms. Reid testified that the properties were listed for sale as one property, and that they appear to be a single property, with one address and one mailbox.

Ms. Reid testified that she is seeking to convert the existing artist's studio to an ADU that she could live in when she retires. She testified that the structure already has electricity and heating/cooling. Ms. Reid testified that she plans to tie the plumbing for the proposed ADU to the plumbing for the main house.

Ms. Reid testified that her neighborhood is very collegial, and that after she had erected the variance sign, she invited neighbors over and showed them the plans for the proposed ADU. She testified that her neighbors were generally supportive, including the neighbor who owns the abutting property to the east of the subject property. Ms. Reid testified that she had included an extra parallel parking pad on her plans to allay any concerns that her neighbors may have had about parking in the alley.

In response to a Board question asking if the proposed ADU would impact her neighbors, Ms. Reid testified that the footprint of the existing structure was not changing, and that the proposed ADU would not be disruptive to her neighbors. In response to a Board question asking when the main house was built, Ms. Reid testified that it was built in 1947.

7. Mr. McGrath testified that he viewed the garage/studio as being accessory to the main house, and that it was unusual for it to have been built on a separate lot. He testified that the garage was on the subject property in 1983 when the previous owner purchased the properties, but that he has been unable to establish when the structure was originally built or if it was built with proper permits. Mr. McGrath testified that the garage/studio has the same architectural cladding and shingling as the main house, which leads him to believe they were constructed the same time, but that he cannot prove that. Mr. McGrath testified that the previous owner got the necessary permits to convert the garage to an artist's studio.

Mr. McGrath testified that there are two other garages further down the alley. He testified that the grading is similar along the alley, and that like the Petitioner's garage, the other garages have fill underneath. Mr. McGrath testified that the property slopes down towards the creek (i.e. from south to north), and that because of the steep slope, the proposed parking pad has to be parallel to the alley as opposed to perpendicular.

Mr. McGrath testified, in response to a Board question, that what had been "Lot 11" was split in two some years ago. He testified that the western portion of Lot 11 belongs to the Petitioner, and that the eastern portion is under different ownership, and is landscaped but not developed.¹ In response to a Board question asking if the western portion of Lot 11 (i.e. the subject property) was unusually narrow, Mr. McGrath testified that is was.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the variances needed for the conversion of this existing garage/studio to an ADU, and for the construction of the proposed deck on the north side of the ADU, 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 as follows:

1. Section 59.7.3.2.E.1 of the Montgomery County Zoning Ordinance provides that a variance can be granted if "denying the variance would result in no reasonable use of the property." The Board finds, pursuant to the Site Plan, that with an area of 3,985 square feet and a width that narrows from a maximum of 29.48 feet to approximately 21.48 feet, the subject property is not buildable without variance relief, as it is substandard in size for the R-60 Zone and the application of the required setbacks would not leave room for any reasonable development because of the property's extreme narrowness. See Exhibits 4(a)-(c). In addition, the Board finds, based on the Building Permit Denial, that the existing structure on the property cannot be adapted for reuse as an ADU without variance relief. See Exhibit 6. Finally, the Board finds that the reuse of this existing structure as an ADU is a reasonable use of this structure and is consistent with changes to the Zoning Ordinance that allow the reuse of existing structures as ADUs provided certain conditions are met. Accordingly, in light of the foregoing, the Board finds that this element of the variance test is satisfied, and the requested variances can be granted.

2. Alternatively, based on the evidence of record, the Board finds that the variance can be granted under Section 59.7.3.2.E.2 of the Zoning Ordinance, since the request also complies with the applicable standards and requirements set forth in that Section, 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 Site Plan and the testimony of Mr. McGrath, that the subject property is unusually narrow, and is significantly substandard in size for the R-60 Zone, which has a 6,000 square foot minimum. The Board finds that these factors, taken together, result in an unusually small, narrow, and constrained buildable envelope

¹ Per SDAT, the eastern portion of Lot 11 is owned by the same person who owns the property that abuts that property to the east (925 Sligo Creek Parkway).

that generally precludes construction on the subject property without variance relief. The Board finds that this is an exceptional condition, peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 4(a)-(c).

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 Mr. McGrath, that the subject property was created before the Petitioner took ownership of it in 2014, and that the existing structure on the subject property has been in place since at least 1983. The Board further finds, based on the Statement, that the Petitioner has not made any modifications to the existing structure since purchasing the underlying property, and finds that there is nothing in the record to indicate that the Petitioner has made any changes to the size or shape of the subject property. See Exhibit 3. Thus the Board finds that the special circumstances or conditions relating to this property and structure are not the result of actions by the Petitioner, 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 without the grant of the requested variances, the existing structure cannot be converted for use as an ADU, causing the Petitioner a practical difficulty. The Board further finds that the requested variances are the minimum necessary to effect this conversion in that the Petitioner is not proposing to enlarge the existing structure, which already violates multiple development standards, and that the deck she is proposing is modest in size and will not extend any closer to the right side lot line (i.e. the lot line shared with the Petitioner's other property/Lot 10) than the existing structure. In addition, the Board further finds, based on the Statement and testimony of record, that the subject property has been conveyed with the abutting property to the west since at least 1983, and that the properties were marketed as a single property, with the existing structure being viewed as "accessory" to the principal dwelling on the abutting property. In light of the foregoing, the Board finds that the variances requested are the minimum needed to allow the Petitioner to reuse this structure as an ADU with a modest deck, and thus to overcome this practical difficulty that full compliance with the Zoning Ordinance would entail. See Exhibits 3 and 4(a)-(b). Accordingly, 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 requested variances, needed to allow the proposed conversion of the existing garage/studio structure to an ADU, can be granted without substantial impairment to the intent and integrity of the Takoma Park Master Plan, which seeks to preserve "the existing residential character, encourage neighborhood reinvestment and enhance the quality of life throughout Takoma Park." 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, per the Statement, Site Plan, and elevations, that the Petitioner is not proposing any changes to the exterior of the existing structure, other than the addition of a door and deck on the structure's north side, and that "[f]rom the street and the adjacent properties, the building will appear the same on the outside." See Exhibits 3, 4, and 5. In addition, the Board finds, based on the testimony of the Petitioner, that she has spoken with her neighbors and that they do not object to the proposed construction. Finally, the Board notes that despite being properly noticed and posted, the record contains no written opposition to the requested variances, and no one appeared in opposition to the variances at the hearing. 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 listed at the beginning of this Opinion, needed for the conversion of the Petitioner's existing garage/studio to an ADU, and for the construction of an associated deck on the north side of the ADU 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(b)-(c) and 5(a)-(e).

Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Alan Sternstein, with Richard Melnick, Vice Chair, Caryn Hines, and Laura Seminario-Thornton 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 15th day of December, 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.