

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6840**

**PETITION OF PAUL ANDRESINO**

OPINION OF THE BOARD

(Hearing Date: December 6, 2023)

(Effective Date of Opinion: December 15, 2023)

Case No. A-6840 is an application by Petitioner Paul Andresino for eight variances needed for the construction of a detached accessory dwelling unit (“ADU”). The Petitioner seeks to convert an existing garage into an ADU. The proposed construction requires the following variances:

The proposed ADU requires a variance of 35.40 feet as it is within 5.00 feet of the right side lot line. The required setback is 40.40 feet, in accordance with Sections 59.4.4.9.B.2.b, 59.4.4.9.B.2.c, and 59.3.3.3.C.2.c of the Zoning Ordinance.

The proposed eave requires a variance of 15.7 feet as it is within 2.8 feet of the right side lot line. The required setback is 18.5 feet minimum, per Sections 59.4.1.7.B.5, 59.4.4.9.B.2.b, 59.4.4.9.B.2.c, and 59.3.3.3.C.2.c of the Zoning Ordinance.

The proposed ADU requires a variance of 37.4 feet, as it is within 3.0 feet of the rear lot line at its closest point. The required setback is 40.4 feet minimum, per Sections 59.4.4.9.B.2.b, 59.4.4.9.B.2.c, and 59.3.3.3.C.2.c of the Zoning Ordinance.

The proposed eave requires a variance of 37.3 feet, as it is within 0.6 feet of the rear lot line at its closest point. The required setback is 37.9 feet minimum, per Sections 59.4.1.7.B.5, 59.4.4.9.B.2.b, 59.4.4.9.B.2.c, and 59.3.3.3.C.2.c of the Zoning Ordinance.

The proposed door canopy requires a variance of 12.1 feet, as it is within 6.4 feet of the left side lot line. The required setback is 18.5 feet minimum, per Sections

59.4.1.7.B.5, 59.4.4.9.B.2.b, 59.4.4.9.B.2.c, and 59.3.3.3.C.2.c of the Zoning Ordinance.

The proposed ADU requires a variance of 10.1 feet, as it is within 10.9 feet of the left side lot line at closest point. The required setback is 21 feet minimum, per Sections 59.4.4.9.B.2.b, 59.4.4.9.B.2.c, and 59.3.3.3.C.2.c of the Zoning Ordinance.

The proposed eave requires a variance of 9.8 feet, as it is within 8.7 feet of the left side lot line. The required setback is 18.5 feet minimum, per Sections 59.4.1.7.B.5, 59.4.4.9.B.2.b, 59.4.4.9.B.2.c, and 59.3.3.3.C.2.c of the Zoning Ordinance.

The proposed ADU requires a variance of 106 square feet, as the proposed gross floor area ("GFA") is 858 square feet total. The maximum permitted GFA is 752 square feet, per Section 3.3.3.C.2.e of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on December 6, 2023. Petitioner Paul Andresino participated in the proceedings in support of the requested variances.

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

## **EVIDENCE PRESENTED**

1.      The subject property is Lot 31 Block 49, Chaney's Resub 1615/109 Subdivision, located at 701 Chaney Drive in Takoma Park, Maryland 20912 in the R-60 Zone. The property is located on the south side of the cul-de-sac at the end of Chaney Drive. It is an elongated, five-sided property, much deeper than it is wide, with a curved front lot line and an angled rear lot line. A topographic map submitted with the variance materials indicates that the elevation of the property falls more than 20 feet from front to rear. Per SDAT, the subject property was purchased by the Petitioner in 2011. See Exhibits 3, 4(a)-(c), and 7, and SDAT Printout.

2.      The Petitioner is seeking to convert an existing detached garage to an ADU. The existing garage was built on the property in the 1950s, "long before" the Petitioner took ownership of the property. The Petitioner's Statement of Justification ("Statement") describes the existing garage as a "large concrete and block building" that was "built relatively close to the rear (south) and right side (west) property lines." The Statement states that the existing building "does not meet current requirements for size, bulk, or setback, or height based on current zoning," and further states that "[b]ecause the building [was] built some time in the early 1950's it is a legal non-conforming structure (and based on Zoning Code 59-3.3.C.2.b) whose bulk, wall length, setbacks from property lines, height are grandfathered in." See Exhibit 3.

3. The Statement describes the subject property as “oddly shaped,” and notes that “[t]he lot is designed such that the side yards of the lot in question are not adjacent to other lots’ side yards but rather to their rear yards.” The Statement goes on to note that this “allows for much more distance between the proposed openings [in the proposed ADU] and any neighbors’ back windows or rear decks than may have been anticipated when the zoning regulations were constructed,” making the requested variance relief for those openings “reasonable.” See Exhibit 3.

4. The Statement states that the removing the existing structure and constructing a new ADU would “create new environmental burdens on the neighboring woods and stream,” and asserts that “from a sustainability, carbon footprint and waste stream standpoint,” it would be better to renovate the existing structure than to replace it. See Exhibit 3.

5. The Statement states that the proposed ADU would substantially conform with the established historic or traditional development pattern of the Petitioner’s street or neighborhood, noting that “[t]he neighborhood is small scale and residential,” and that the proposed renovation of the existing garage “exhibits window pattern, and façade and roof-form relief that is sympathetic to the existing neighborhood.” The Statement states that “eliminat[ing] all openings on the gable-end side walls of the existing structure would be quite large and unrelenting,” and “would not be in the best interest of the neighbors and is not in keeping with the existing fabric of the neighborhood.” Finally, the Statement states that the proposed renovations would “enhance the view and the use and enjoyment of abutting neighbors.” See Exhibit 3.

6. The Statement states that the requested variances can be granted without substantial impairment to the general plan and applicable master plan.” See Exhibit 3.

7. The Statement states that the requested variances are the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would cause the Petitioner. See Exhibit 3. In support of this, the Statement states that:

1) Nothing about the proposed renovation is grandiose or represents a gross violation of the intent of zoning code.

2) The standard for new single family home construction in R-60 is 8’ minimum side yard setback with 18’ total minimum. The standard for an accessory structure in R-60 is a 5’ side yard setback and a 5’ rear yard setback.

3) This existing building has a 5’-1” minimum side yard setback on the park side and 15’-11” total. It should be noted that the side yard closest to a residential neighbor is 10’-10” away from the property line.<sup>1</sup>

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<sup>1</sup> The Statement later notes that it is the side walls on the east side of the structure that are closest to a neighbor and 10’-10” away from the property line, and the side walls on the west side of the structure that are closest to Sligo Park and 5’-1” away from the shared property line.

The Statement further explains that as a result of discussions with DPS which “suggested that because the building is existing and dates back to the 50’s that the conversations about height and building setbacks were for the most part, moot,” “only the issue of openings in the side yard of an accessory building and setbacks to building walls and roof eaves are still a relevant issue.”<sup>2</sup> See Exhibit 3.

8. The Statement states that the “gable-end walls” on the east and west side of the existing garage each have a single window in the center, near the top. The Statement states that a new ridge beam will be needed for the proposed ADU roof, and explains that the supports for this beam would bisect these existing windows, leaving slivers on either side. The Statement then states that “having no windows at the top of the end of the buildings or having thin windows on either side of the pier wood [sic] look so much worse (to the neighbors) than the proposed windows do.” Regarding the proposed first floor openings on these sides of the building, the Statement states that “the apartment would function without them, but the building is large, and specifically the gable end walls are not better off to the neighbors without some relief.” The Statement proceeds to state that “[t]he neighboring houses are quite far from this building so the windows would not be a negative for them in terms of noise, odors, light or really any other issue,” and that “not having the windows just makes the big gable-end walls uglier and less attractive when viewed from a distance.” Finally, the Statement notes that using natural light “is better for overall energy consumption” and “help[s] reduce global warming.” See Exhibit 3.

9. The Petitioner’s variance Application echoes the sentiments expressed in the Statement about the gable-end side walls of the existing structure. The Application states that “[t]he building has large unremarkable gable-end side walls,” and notes that because the Petitioner’s lot is so “long,” the “existing building’s side walls are quite far from the neighbor’s windows and decks.” The Application goes on to state that “[a]s a result, light spillage, odors, noise” will not be an issue for the Petitioner’s neighbors, and that “[t]he side wall closest to the property line primarily is viewed from the woods at a distance, which will not negatively impact the neighborhood.” See Exhibit 1.

10. At the hearing, the Petitioner used his presentation materials at Exhibit 9 to orient the Board to the property. He then continued to use various pages from that Exhibit to support his testimony. The Petitioner testified that the subject property is located at the end of a cul-de-sac, and that it is a long, narrow lot that slopes downhill and backs to the woods. He testified that there is a retaining wall along the back of the property because of the grade. The Petitioner testified that the subject property is improved with a “modest” house and a “monster” garage, and that while the part of the property with the house has always been in Montgomery County, the portion with the garage was originally located in Prince George’s County. He testified that his property backs to the side lots of neighbors that he described as being “unbuildable” areas of those properties. The Petitioner proceeded to testify that to the south of the garage is the side yard of an apartment building, to the northeast is a narrow extension of his neighbor’s property that the

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<sup>2</sup> The building permit denial indicates that the size of the proposed ADU is also an issue. See Exhibit 6. The Petitioner’s variance Application states with respect to this that “[b]ecause of the way the building lays out internally, the ADU square footage is just slightly too large.” See Exhibit 1.

Petitioner indicated was not buildable, and to the rear is parkland that is wooded and steeply sloped. As a result, he testified that the existing garage does not bother anyone, and that his neighbors are "fine" with it.

The Petitioner testified that the existing garage was built by a previous owner who stored work trucks in it. He estimated that it was built in 1951 or 1952. The Petitioner testified that he is seeking to keep and reuse this garage, in its existing location. Still working from Exhibit 9, the Petitioner showed the Board pictures of the interior of the structure which he described as including a very large first floor and more modest second floor. He testified that he intends to keep one garage bay as a garage, and then to create an apartment with the remainder of the first floor. The Petitioner testified that the additional 106 square feet of GFA that he is seeking is needed to allow him to put a wall on an existing support column. He testified that it would be better to hold to the existing column line than to move the wall assembly over by the two-plus feet that would be necessary for the construction to comply with the GFA limit. The Petitioner testified that the second floor of the structure would be kept open for storage and sewing/quilting. He showed the Board pictures of the existing garage, noting that there are windows in the sides and rear of the structure. The Petitioner testified that he would like to change some of the windows in the structure, but that he was not seeking to change its footprint. He testified that he also intended to add dormers to the second floor to increase light, but that this would not change the existing height of the structure. The Petitioner testified that installation of a center beam along the ridge of the roof would necessitate supports at either end, and that he would like to replace the existing windows that would be effectively split in two by these supports with windows on either side of the supports.

The Petitioner agreed with the statement of a Board member that there were lots of properties in Takoma Park that have accessory buildings or detached garages, but testified that he did not know if these structures violated the setbacks. In response to a Board question asking him to elaborate on the assertion in his Statement that having to remove the garage to construct an ADU would create environmental burdens, the Petitioner testified that if the existing garage was removed, it would cause erosion issues and create a "mess," adding that there are a lot of old auto parts in the soil that erosion could expose. In response to a Board question asking if he had received any comments about his proposal from his neighbors, the Petitioner testified that he is friends with his neighbors, that they think the existing garage is ugly, and that they would like to see it look better.

## **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 to an 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.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, Topographical Survey, and Zoning Vicinity Map, that the subject property has an elongated and unusual five-sided shape, with a curved front lot line, bowed right side lot line, and angled rear lot line. In addition, the Board finds that the property is encumbered with a significant downhill slope. See Exhibits 3, 4(a)-(c), and 7. The Board finds that these circumstances, taken together, constrain the area available for construction and constitute an extraordinary condition 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, SDAT Printout, and the testimony of the Petitioner, that he purchased the subject property in 2011 from a previous owner, and that the existing garage that he is seeking to convert to an ADU was built in the 1950s. See Exhibit 3. The Board further finds that there is nothing in the record to indicate that the Petitioner is responsible for the unusual shape or steep topography of his property. Thus the Board finds that the special circumstances or conditions pertaining 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, based on the Statement, Site Plans, and Topographical Survey, that the shape and slope of the Petitioner's property limit the area available on the property for development, and that without the grant of the requested variances, the Petitioner would be unable to convert his existing garage for use as an ADU, causing him a practical difficulty. See Exhibits 3, 4(a)-(c), and 7. The Board further finds that the requested variances are the minimum necessary to effect this conversion, and notes in support of this that the Petitioner is not proposing to enlarge the footprint of the existing structure or to increase its peak roof height. See Exhibits 4(a)-(c) and 5(a)-(e). In light of the foregoing, the Board finds that the variances requested are the minimum needed to allow the Petitioner to reuse this existing garage as an ADU, and thus to overcome this practical difficulty that full compliance with the Zoning Ordinance would entail. 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 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, Zoning Vicinity Map, and the testimony of the Petitioner, that because of its siting on the subject property, the proposed ADU will be a substantial distance from the neighbors' houses, such that any light or noise from the ADU will not negatively impact those properties. See Exhibits 3, 4(a)-(c), and 7. The Board further finds, based on the Statement and the testimony of the Petitioner, that he is friendly with his neighbors, that they would like to see the appearance of the existing structure improved, and that the proposed ADU will be more attractive when viewed from these properties than the existing garage. See Exhibit 3. 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 to an ADU, 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)-(c) and 5(a)-(e).

Based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by John H. Pentecost, Chair, with Caryn Hines, Laura Seminario-Thornton, and Alan Sternstein 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, 2022.

  
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.