

**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-6855

PETITION OF BRIAN BLACKLOW AND SARAH SUMMERLIN

**OPINION OF THE BOARD
(Opinion Adopted April 10, 2024)
(Effective Date of Opinion: April 17, 2024)**

Case No. A-6855 is an application for a variance needed for the construction of a room addition. The proposed construction requires a variance of 2.90 feet as it is within 22.10 feet of the front lot line. The required setback is twenty-five (25) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on April 10, 2024. Petitioner Sarah Summerlin appeared at the hearing in support of the application, assisted by her contractor, Ray Heinsman, who is also a neighbor.

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

EVIDENCE PRESENTED

1. The subject property is Lot 1, Block J, Forest Estates Subdivision, located at 1725 Cody Drive in Silver Spring, Maryland, 20902, in the R-60 Zone. It is a four-sided corner lot located on the north side of Cody Drive and the east side of Everest Street. The property is generally rectangular in shape, but has a rounded southwest corner which faces the intersection. The property's frontage on Cody Drive is almost twice as long as its frontage along Everest Street. The property contains a house that was built in 1947. It was purchased by the Petitioners in 2013. See Exhibits 3, 4(a)-(b), and 8, and SDAT Printout.
2. The Petitioners' variance Application cites their property's "narrowness" as a reason that the strict application of the Zoning Ordinance to their property would cause them a practical difficulty. See Exhibit 1.

3. The Petitioners' Statement of Justification ("Statement") states that the "format" of their corner lot makes it difficult to construct an addition to their home. The Statement states that the northern side of their home is bounded by their driveway and a detached garage, which were constructed by a previous owner and which prevent expansion of the home in that direction. See Exhibit 3. The Statement further states that because the goal of the addition is to add communal living space, it "would not make sense to add it to the eastern side of our home which borders two bedrooms." Finally, the Statement states that the remaining two sides of the property are each subject to a twenty-five (25) foot setback, "making it difficult to add on any significant space to our communal rooms." The Statement asserts that these conditions make the subject property unique for the purposes of satisfying Section 59.7.3.2.E.2.a.i of the Zoning Ordinance. See Exhibit 3.

4. The Petitioners' existing conditions Site Plan depicts the driveway and detached garage on the north side of the Petitioners' home, and illustrates the constraints imposed on expansion in this direction by these pre-existing improvements. This Site Plan also shows that the existing house is set back approximately twenty-five (25) feet from Cody Drive, thereby preventing any expansion of the existing home to the south without variance relief. See Exhibit 4(a).

5. The Petitioners are seeking to construct an addition on the west (Everest Street) side of their existing home, in an area that currently contains a porch and deck. The Statement states that the proposed addition "will actually have a smaller footprint than [the] large deck/porch [that were] added by a previous owner." See Exhibit 3. The existing and proposed Site Plans appear to confirm that the proposed addition will not extend as close to the property's Everest Street frontage as the existing deck/porch. See Exhibits 4(a)-(b). The Statement states that the encroachment of the proposed addition into the required setback along Everest Street is "the minimum necessary to overcome the practical difficulties" that full compliance with the Zoning Ordinance would pose because the Petitioners "are requesting less than three feet more space." See Exhibit 3.

6. The Statement states that the proposed construction would "use[] an existing legal nonconforming property or structure." See Exhibit 3. The Petitioners do not provide any support for this assertion.

7. The Statement states that "other Cape Cod-style homes built on corner lots in [the Petitioners'] neighborhood have similar additions on them," and that granting the requested variance "will still provide over 22 feet of yard space between the addition and Everest Street." See Exhibit 3.

8. The Statement states that because the existing deck/porch, driveway, and garage were all constructed by a previous owner, these improvements, and the constraints they place on the buildable area of this property, are "not the result of actions by the applicant." See Exhibit 3.

9. The Statement asserts that granting the requested variance “would not cause ‘substantial impairment to the intent and integrity of the general plan and the applicable master plan,’” and “would also not ‘be adverse to the use and enjoyment of abutting or confronting properties.’” The Statement notes that the Petitioners have submitted letters from three of their abutting and confronting neighbors stating that they have no objection to the proposed construction; those letters are included in the record. See Exhibits 3 and 7(a)-(c).

10. At the hearing, Ms. Summerlin testified that her property’s long driveway and detached garage, which were constructed by a prior owner, serve to significantly narrow her property and to block any use of the area to the rear of the home. She testified that the east side of her home contains bedrooms, precluding the addition of communal space on that side of the house. Ms. Summerlin noted that this condition also predates her ownership of the home. She testified that the remaining two sides of the property are subject to twenty-five (25) foot setbacks. In response to a Board question asking if she had received any responses regarding her variance request from her neighbors, Ms. Summerlin testified that she had letters of support from her abutting neighbor on Everett Street, and from her two confronting neighbors across that street.

11. Mr. Heinsman testified that he lives in the neighborhood, and that he has spent the past few years helping other neighbors make their homes workable. He testified that Cape Cods are small houses, with correspondingly small kitchens and dining rooms. Mr. Heinsman testified that the Petitioners are trying to expand these spaces to create a kitchen that they can cook in and a dining room that will fit a table for their family. He testified, in response to a Board question, that the proposed addition cannot adhere to the twenty-five (25) foot setback line along Everett Street because that would not allow the Petitioners to add enough space to make these undersized rooms functional. Mr. Heinsman testified that there are dozens of houses like the Petitioners’ house in the neighborhood that have additions, but that because of the placement of the Petitioners’ house on their property, and because their property is a corner lot, the Petitioners’ property is uniquely constrained with respect to potential expansion.

In response to a Board question asking whether, if the proposed addition were built, the setback of the Petitioners’ house from Everett Street would match the setback of other houses along that street, Mr. Heinsman testified that it would. He testified that the houses behind (i.e. to the north of) the Petitioners’ house on Everett Street are downhill from the Petitioners’ house. Mr. Heinsman testified that many have front porches, that some of these porches have been screened, and that they are not set back twenty-five feet from the property line. He testified that the Petitioners’ existing deck is larger than the proposed addition, and that it has a roof. Mr. Heinsman testified that the proposed addition would not change the sight lines of the house. Finally, in response to a Board question asking if there was any other place on the property that the addition could be located without needing a variance, Mr. Heinsman testified that there was not. He testified that even without the presence of the existing driveway, the subject property is an exceptionally narrow lot.

CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the variance can be granted. 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, based on the Application, the Statement, the Site Plan, and the testimony of both Ms. Summerlin and Mr. Heinsman, that the subject property is unusually narrow, with existing conditions and a buildable envelope that effectively preclude the construction of a functional addition without variance relief. See Exhibits 1, 3, and 4(a)-(b). The Board notes in this regard that the southern (front) façade of the existing house is located on the twenty-five (25) foot setback line from Cody Drive, and thus cannot be brought any closer to Cody Drive without variance relief. See Exhibit 4(a). In addition, the Board finds, based on the Statement and the testimony of Ms. Summerlin, that a previous owner of the property constructed the existing driveway and detached garage immediately behind the northern (rear) façade of the Petitioners' house, and that these existing impediments prevent the Petitioners from being able to expand their house in that direction. The Board finds that these conditions, taken together, place significant constraints on the available buildable envelope for this property, and make the subject property unique for the purposes of satisfying this element of the variance test.

Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the testimony of Mr. Heinsman, that with the proposed addition, the setback of the Petitioners' home from Everett Street would be consistent with the setback of other homes along that street, thus comporting with the established historic or traditional development pattern of the street. The Board further finds, based on the Statement, that other Cape Cod-style homes in the neighborhood have additions similar to the Petitioners' proposed addition. See Exhibit 3. Thus the Board finds that the proposed construction will comport with the established historic or traditional development pattern of the street or neighborhood, 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 that the existing house was built in 1947, and that Petitioners purchased the property in 2013. In addition, the Board notes, based on the Statement and the testimony of Ms. Summerlin, that the driveway and detached garage, which constrain expansion to the north, were constructed by a previous owner. See Exhibit 3

and SDAT Printout. Thus the Board finds that the Petitioners took no action to create the unusual characteristics of this property, 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, based on the Statement and the testimony of Ms. Summerlin and Mr. Heinsman, that the Petitioners cannot expand their house towards its functional front or rear, that the proposed addition will be located on the left "side" of their house where there is currently a deck and a roofed, but open, porch, and that the proposed addition will not extend as close to the Everest Street property line as the existing deck/porch. See Exhibits 3 and 4(a)-(b). The Board finds, based on the testimony of Mr. Heinsman, that the constraints on the Petitioners' buildable envelope cause them a practical difficulty by precluding practical expansion of their house without variance relief, and that granting the requested variance, which will allow a small encroachment into the required setback from Everest Street but will not result in a structure that is any closer to that street than the existing deck and open porch, or than other houses on that street, is the minimum needed to overcome this practical difficulty. Thus 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; and*

The Board finds that allowing the Petitioners to proceed with the proposed construction is consistent with the residential uses contemplated by the Forest Glen Section Plan (1996), which envisions, among other things, "a stable single-family residential community" in the Forest Glen East area, where the subject property is located. 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, that granting the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test. In support of this, the Board finds, based on the Statement, that many Cape Cod-style homes in the neighborhood have similar additions, and that the proposed addition will replace an existing deck and roofed porch. In addition, the Board notes that the Petitioners have submitted letters from their neighbors who would be most affected by the proposed addition stating that they have no objection to the proposed construction. See Exhibits 3 and 7(a)-(c). Finally, the Board finds that the property was properly posted, and that the record contains no letters of opposition to the grant of the requested variance and the proposed construction.

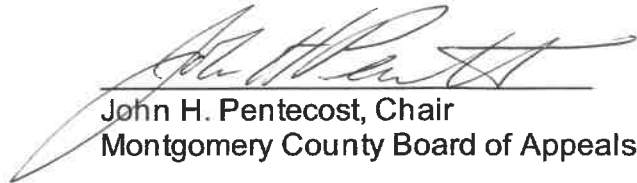
Accordingly, the requested variance from the front lot line setback along Everest Street is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and

2. Construction shall be in accordance with Exhibits 4(b) and 5(a)-(b).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Richard Melnick, Vice Chair, Alan Sternstein, and Amit Sharma 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 17th day of April, 2024.



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.