

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6882

PETITION OF CHRISTOPHER STONE

OPINION OF THE BOARD

(Opinion Adopted October 9, 2024)
(Effective Date of Opinion: October 16, 2024)

Case No. A-6882 is an application for two variances needed to allow enclosure of an existing carport. The proposed construction requires a 0.20 foot variance as it is within 9.90 feet of the left side lot line. The required setback is 10.10 feet, in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of 0.20 feet from the sum of both side yard setbacks. Section 59.4.4.8.B.2 of the Zoning Ordinance provides that the required sum of both side yard setbacks is twenty-five (25) feet. The proposed construction reduces the sum of both side yard setbacks to 24.80 feet, creating a violation of 0.20 feet.

The Board of Appeals held a hearing on the application on October 9, 2024. Petitioner Christopher Stone appeared in support of the requested variances, along with his contractor, Andrew Costello.

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

EVIDENCE PRESENTED

1. The subject property is Lot 4, Block 4, Manor Lake Subdivision, located at 14829 Bauer Drive in Rockville, Maryland, 20853, in the R-90 Zone. It is an interior property, rectangular in shape, with a width of 80 feet and a depth of 118.68 feet, giving it an area of 0.2179 acres. See Exhibits 4 and 7.
2. The Petitioner's Statement of Justification ("Statement") states that the property contains an existing house with attached carport that was built in 1969. The Statement

states that “[w]hen the home was built, the edge of the carport was either built just over the edge of the ‘building restriction line’, or the setback requirements have increased subsequent to construction so that the current structure no longer meets setback requirements,” and concludes that “[e]ither way, the house as it stands is a legal, non-conforming structure with a setback shortfall of 2’.” See Exhibit 3. The Site Plan shows that the left side of the existing carport is 9.9 inches from the left side lot line, and that the right side of the existing house is 14.9 inches from the right side lot line. See Exhibit 4.

3. The Petitioner’s variance Application states that he intends to enclose the existing carport for use as a garage. See Exhibit 1. The Statement states that the Petitioner intends to incorporate several elements of the existing nonconforming carport into the proposed garage, including its “roof, concrete slab, shed and supporting pillars.” Thus the Statement concludes that the proposed construction would use the existing, nonconforming structure. See Exhibit 3.

4. The Statement states that the proposed enclosure of the carport would “conform with the established character of the neighborhood,” noting that many of the homes on Bauer Drive “have attached, one-car carports with rear sheds that span their width, while quite a number have attached, one-car garages (see reference photos of similar examples on Bauer Drive).” See Exhibit 3. The Petitioner includes photographs of nine houses on his block that have one-car garages, concluding that the enclosure of the Petitioner’s carport into a one-car garage “would not deviate from the established development pattern of homes on the street.” See Exhibit 5(d).

5. The Statement states that the carport the Petitioner is seeking to enclose “has been part of the property since the home was built in 1969,” and that since purchasing the property in 2018, the Petitioner “ha[s] not made any major modifications ... that would affect compliance with setback requirements.” Thus the Statement concludes that the special circumstances or conditions pertinent to this property are not the result of actions by the Petitioner. See Exhibit 3.

6. The Statement states that if the variances are not granted, the Petitioner would have to demolish the existing carport structure to move it two (2) inches further from the side lot line. The Statement states that having to demolish the existing structure and rebuild a garage from the ground up, instead of being able to enclose the existing carport structure, would cause the Petitioner a practical difficulty. See Exhibit 3.

7. The Statement states that the proposed enclosure of the existing carport “would not increase the covered area and not push its perimeter any closer to the property line.” The Statement further states that the proposed construction “would not alter the roof line [of the existing carport] other than the addition of a ridge vent for ventilation.” Finally, the Statement states that the resultant “character of the home would be similar to other homes with garages on the street.” See Exhibit 3.

8. The Statement states that the Petitioner has spoken to his neighbors on both sides, and that “neither household objects to [the] project.” The Statement notes that he has a

cordial relationship with his neighbors to the rear and across the street, and “could not imagine them objecting.” See Exhibit 3.

9. At the hearing, Mr. Stone testified that he is proposing to construct a garage wall on the concrete slab that is part of the existing carport, and that placing the wall on this slab would result in a two (2) inch encroachment into the required setbacks. He testified that the footprint of the existing slab would not be increased or expanded, and that the existing structure is a legal nonconforming structure. Mr. Stone submitted a letter of support from his abutting neighbor to the left, indicating that she has no objection to the grant of the requested variances. See Exhibit 9.

CONCLUSIONS OF LAW

Based on the 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.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds, based on the Statement, Site Plan, and the testimony of the Petitioner, that the Petitioner’s existing home and carport were built in 1969 and are nonconforming because they do not comport to the required side setbacks.¹ See Exhibits 3 and 4. The Board further finds that the proposed construction involves the enclosure the Petitioner’s existing carport, and the reuse of the carport’s existing roof, concrete slab, shed, and supporting pillars. Because the proposed development uses the existing legal nonconforming structure, the Board finds that this element of the variance test is satisfied.

2. *Section 59.7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

Based on the Statement, the Board finds that the Petitioner purchased this property in 2018, and is therefore not responsible for the nonconforming location of the existing carport, which was built in 1969. Thus the Board finds that this element of the variance test is satisfied. See Exhibit 3.

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;*

¹ Based on the photographs of the Petitioner’s house and other houses on the block, in the record at Exhibits 5(c) and 5(d), the Board notes that the Petitioner’s house appears to have been built when the rest of the neighborhood was developed, and that the builder would have had to meet all County requirements, including side setback requirements, at that time.

The Board finds that compliance with the side lot line and sum of both sides setbacks imposed by the Zoning Ordinance poses a practical difficulty for the Petitioner because it prevents him from being able to enclose his existing carport—which encroaches into the required setbacks by about two (2) inches—for use as a garage without obtaining variance relief. The Board finds that the requested variances would allow reuse of the existing nonconforming carport and would not bring the structure any closer to the left side lot line than is currently the case. In addition, the Board notes that the proposed enclosure will not change the general size and shape of the existing carport, since the Petitioner is planning to reuse the carport’s existing concrete slab, support pillars, and roof for the proposed garage. See Exhibit 3. In light of the foregoing, the Board finds that the variances requested are the minimum needed to allow the Petitioner to enclose his nonconforming carport for use as a garage, and thus to overcome the practical difficulty that full compliance with the Zoning Ordinance would entail, 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 the proposed construction will continue the residential use of the home, and thus finds that the requested variances can be granted without substantial impairment to the intent and integrity of the Aspen Hill Master Plan (1994), which seeks, among other things, to “protect and reinforce the integrity of existing residential neighborhoods,” in satisfaction of this element of the variance test.

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.*

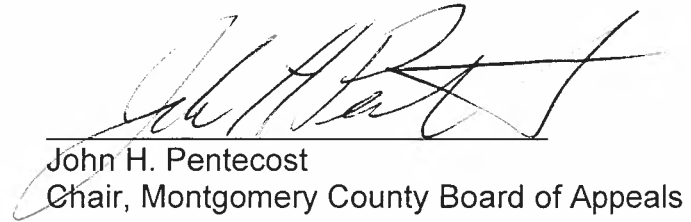
The Board finds that the granting the requested variances to allow the proposed carport enclosure will not be adverse to the use and enjoyment of abutting or confronting properties. In support of the finding, the Board notes, in accordance with the Statement and Site Plan, that the Petitioner is not seeking to increase the width of the existing carport, and thus that the proposed construction will maintain the existing separation of the existing carport from the left side property line. See Exhibits 3 and 4. In addition, the Board finds that the Petitioner has spoken with his neighbors on both sides, that neither object to the proposed construction, and that his neighbor to the left has submitted a letter to that effect. See Exhibits 3 and 9. Finally, the Board finds that the property was properly posted, and that no one appeared at the hearing in opposition to the proposed carport enclosure. In light of the foregoing, the Board finds that this element of the variance test is satisfied.

Accordingly, the requested variances needed to allow the proposed enclosure of an existing carport 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 and 5(a).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, 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 16th day of October, 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.