

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/boa/>

**Case No. A-6891**

**PETITION OF DIANE AND CHRIS JACKSON**

**OPINION OF THE BOARD**

(Opinion Adopted November 20, 2024)

(Effective Date of Opinion: December 4, 2024)

Case No. A-6891 is an application for a variance needed for the construction of a single-story addition. The proposed construction requires a variance of 5.50 feet as it is within 24.50 feet of the rear lot line. The required setback is thirty (30) feet, in accordance with Section 59.4.4.7.B of the Zoning Ordinance.

The Board held a hearing on the application on November 20, 2024. Petitioner Diane Jackson appeared at the hearing in support of the application, assisted by her contractor, Michael R. Naugler.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 7, Block L, Layhill Village Subdivision, located at 13629 North Gate Drive in Silver Spring, Maryland, 20906, in the R-200 Zone. It is a five-sided, 16,974 square foot corner lot, bordered to the south by North Gate Drive and to the west by North Gate Lane. The property's "fifth side" is a truncated corner that faces the intersection of North Gate Drive and North Gate Lane. The remaining sides of the property are not parallel to one another, giving the property an unusual shape. The property's frontage along North Gate Lane is slightly convex, following the curvature of the street. This causes the property's rear lot line, which is set at a right angle to North Gate Lane, to meet the property's side lot line, which is set at a right angle to North Gate Drive, at an obtuse angle, and results in the property's right side, when viewed from North Gate Drive, being shallower than its left side. In addition, the property as a whole is appears to be shallower than almost all of its neighbors, including the abutting properties

to its right and left, and the confronting properties across North Gate Drive. The property is improved with a single family home that was built in 1969. It was purchased by the Petitioners in 1996. See Exhibits 4 and 7, and SDAT Printout.

2. The Petitioners' variance Application states that they are seeking a reduction to the setback from the rear lot line to facilitate construction of a rear addition that is needed to provide accessible single level living. The Application cites the property's narrowness, shape, and other extraordinary conditions as factors that justify the grant of the requested variance. The Application states that the Petitioners cannot put the addition on the right side of their house because of the narrowness of their property. The Application states that the Petitioners cannot build towards the road due to County regulations. The Petitioners' Application thus states that the Petitioners are seeking to expand their home to the rear, on the same level as their kitchen and dining room, to provide "single level living with [their] split-level house." The Application states that the "design of the addition also aligns with connecting an external ADA ramp with the outside patio/landing area." See Exhibit 1.

3. The Petitioners' Statement of Justification ("Statement") states that their property is a corner lot, and that their house "is constructed with a foundation that is 50% slab-on-grade, lacking a basement or any associated plumbing." The Statement explains that "[t]he side of the property containing the basement and all essential utilities, including electrical and plumbing connections, is adjacent to the proposed addition," and expresses a desire to locate the addition in the proposed location so that it can "share a wall with the existing basement, thereby facilitating the integration of plumbing with the current system." See Exhibit 3.

4. The Statement states that the proposed addition will create "a living space that is level with the first floor of the home, facilitating access to the kitchen and other necessary areas without the need to navigate stairs." The Statement states that the proposed addition is "intended to accommodate a sunroom, laundry room, covered porch, and master bedroom." The Statement states that the addition will enhance the accessibility of the Petitioners' home, contributing to their "quality of life and overall well-being." See Exhibit 3.

5. The Statement states that the special circumstances or conditions applicable to the Petitioners' property are not a result of actions they took. In support of this, the Statement states that "[t]he original structure of the home was constructed only 15 feet from the right-side property line," and that "[t]his side of the house contains the electrical panel and plumbing infrastructure that connects to the public sewage system." The Statement goes on to state that "[c]onversely, the opposite side of the residence lacks access to both plumbing and electrical utilities." See Exhibit 3.

6. The Statement states that the requested variance is the minimum needed to overcome the practical difficulty caused by full compliance with the Zoning Ordinance. The Statement states that the variance "is critical to facilitate the seamless construction of the proposed addition" in that it "would ensure convenient access to all necessary

utilities while preserving the existing electrical meter.” The Statement states that approval of the requested variance would “enhance [the Petitioners’] quality of life without the significant disruption that would arise from relocating these essential components” of their home. See Exhibit 3.

7. The Statement states that with the proposed addition, the Petitioners’ total lot coverage would still only be 15%, and that the extent of the addition’s encroachment into the rear setback is small. The Statement concludes that this “ensur[es] that neighboring properties will not be adversely affected by this expansion.” In addition, the Statement states that the property is “partially fenced, which will ensure minimal visibility from any roadway within the development,” and asserts that “[t]hese factors contribute to the compatibility of the addition with the surrounding neighborhood while maintaining the aesthetic integrity of the area.” See Exhibit 3.

8. At the hearing, Ms. Jackson testified that she and her husband are seeking to construct an addition to their house to provide them with needed single level living. She testified that they had explored other options for the location of the proposed addition, but that they cannot not expand their home to the front or right, and that the proposed rear location is their only option. Ms. Jackson testified that the right rear corner of the proposed addition had been “notched” to minimize its impact on neighboring properties. She testified that the proposed addition would extend towards the rear from the side of their house that has a basement, explaining that this is the side where the home’s utilities are located. Ms. Jackson testified that the other side of their house is built on a concrete slab. She testified that the footprint of their home has not changed since its construction.

Ms. Jackson testified that the subject property is narrow, particularly on its right (east) side. She testified that she has talked to the neighbor on that side about the proposed construction. Ms. Jackson testified that the area behind her house slopes up towards the rear lot line. Ms. Jackson testified that because of this, and because the proposed addition would only a single story, the addition would not impede on the privacy of her neighbor to the rear (north).

9. Mr. Naugler testified that the proposed addition cannot be located behind the left side of the Petitioners’ home because the home is a “colonial split level,” and the Petitioners are seeking the construct an addition that is on grade with the part of the house that contains the kitchen and living areas (i.e. the home’s right side). In addition, Mr. Naugler testified that the right side of the Petitioners’ home also contains its utilities.

## **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, Site Plan, Zoning Vicinity Map, and testimony of Ms. Jackson, that the subject property has an unusual shape and is exceptionally narrow/shallow relative to surrounding properties. The Board further finds that because of this, the application of the required setbacks to this property constrains its buildable envelope and restricts the ability of the Petitioners to expand their home, particularly on its right side, which contains access to the home's utilities and its kitchen and living space. The Board finds that these circumstances constitute an extraordinary condition that is peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 1, 4, and 7.

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 SDAT Printout, that the Petitioners, who purchased the property in 1996, are not responsible for the shape or narrowness/shallowness of their property, which was developed in 1969, or the resulting constraints on the property's buildable envelope. In addition, the Board notes that the Petitioners are not responsible for the original construction of their house or its layout. See Exhibit 3. Thus, the Board finds 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 Plan, and the testimony of Ms. Jackson and Mr. Naugler, that without variance relief, the application of the required setbacks to this unusually narrow/shallow property does not allow for the proposed modest expansion of the existing home on the side that contains its utilities and allows for on grade construction with the level of the home that contains its kitchen and living area. See Exhibits 3 and 4. The Board further finds that this poses a practical difficulty for the Petitioners, and that the requested variance is the minimum necessary to overcome the practical difficulty caused by the shallowness of the property, and to allow the Petitioners to construct a reasonable addition on this side of their home. Thus the Board finds that the requested variance is the minimum needed to overcome the practical difficulties imposed by full compliance with the Zoning Ordinance, 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 construction of the proposed addition will continue the residential use of the home, and so finds that the variance needed for this construction 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 of the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties. In support of the finding, the Board finds, per the Statement, that with the proposed addition, lot coverage will still be far below the lot coverage that is allowed in this Zone. The Board further finds, per the Statement, that the subject property is partially fenced, and that this will "ensure minimal visibility from any roadway within the development" and "contribute to the compatibility of the addition with the surrounding neighborhood while maintaining the aesthetic integrity of the area." See Exhibit 3. In addition, the Board finds, per the testimony of Ms. Jackson, that the proposed addition will not impact the privacy of the neighbor to the rear because of the height of the proposed addition and the elevation difference between the properties. Finally, the Board notes that despite the property having been properly posted and the hearing having been properly noticed, the record contains no opposition to the grant of the variance, and no one was present at the hearing in opposition. In light of the foregoing, the Board finds that this element of the variance test is satisfied.

Accordingly, the requested variance 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 and 5(a)-(g) (exterior dimensions/elevations only).

Therefore, based upon the foregoing, on a motion by Caryn L. Hines, Chair, seconded by Alan Sternstein, with Richard Melnick, Vice Chair, Amit Sharma, and Donald 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.



Caryn L. Hines, Chair

Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 4th day of December, 2024.

  
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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.