

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6510

PETITION OF PAUL SAIZ

OPINION OF THE BOARD

(Hearing Held: January 25, 2017)
(Effective Date of Opinion: February 3, 2017)

Case No. A-6510 is an application by Paul Saiz (the "Petitioner") for a variance necessary for the construction of a garage extension. The proposed construction requires a variance of fifteen (15) feet as it is within five (5) feet of the side lot line. The required setback is twenty (20) feet, in accordance with Section 59-4.2.1.F.3 of the Montgomery County Zoning Ordinance (2014).

The Board of Appeals held a hearing on the application on Wednesday, January 25, 2017. Nancy P. Regelin, Esquire, appeared with Mr. Saiz at the hearing, in support of the application. Asith Dias, Mr. Saiz's neighbor to the south, was also present at the hearing, and also supported the grant of the variance.

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

EVIDENCE PRESENTED

1. The subject property is Parcel P663, 0502 Subdivision, IMPS Bordleys Choice, located at 20310 Georgia Avenue, Maryland, 20833, in the AR Zone.
2. The Petitioner is seeking to construct an extension on the southern side of his existing garage, necessary to allow space for his elderly parents to reside with him and maintain their car. See Exhibit 10(a).
3. The Statement of Justification explains that the subject property was deeded out of a larger farm parcel in 1956, and that the Petitioner's "modest home" was also built in 1956. The Petitioner's Statement of Justification explains that the subject property is comprised of two very distinct areas, a homesite which occupies the front of the property,

and a special exception landscape contractor, which occupies the balance of the acreage. The Statement of Justification notes that the homesite portion "is very constrained in size," as follows:

Despite the overall size of the Property, the homesite itself is very constrained in size – approximately 230 feet wide by 170 feet deep (less than one acre), which is significantly smaller than the homesites on either side of the Property which encompass their entire parcels. The front yard of the homesite is reduced in depth by prior dedication of land needed for widening Georgia Avenue at this intersection, and is encumbered by the driveway, landscape buffering and the elevated front porch of the house. The side yard north of the house is improved with the driveway, underground electrical lines, the well, and the propane tank, rendering that area unbuildable. The rear yard of the house is encumbered by septic fields and an existing swimming pool. To the south of the house is a garage connected by a breezeway to the at-grade side entrance to the home. The balance of the acreage beyond the homesite slopes down and is occupied with old farm buildings that are utilized for a landscape contractor use per S-1947.

See Exhibit 10(a).

4. The subject property is further described in Petitioner's Statement of Justification as follows:

The home is one of three isolated single family homes sited along Georgia Avenue amidst large acreage farmland parcels north of Brookeville. The Property is located between a 5 acre homesite to the south and a 2.3 acre homesite to the north, each improved with a single family home. The trio of homesites create their own little enclave surrounded by farm fields. ... The Property is immediately opposite the intersection with Bordley Road To buffer the house from the vehicular lights from the Bordley Road intersection which face directly into the home, the raised Georgia Avenue road frontage of the Property is heavily screened with a deep stand of mature trees and bushes. The driveway to the Property enters from Georgia Avenue at the northernmost boundary to offset it from the Bordley Road intersection. The location forces the driveway to the house to immediately turn left and run parallel to Georgia Avenue in the narrow slot between the landscape buffer and the front of the house in order to access the garages on the southern side of the house.

See Exhibit 10(a).

5. The Statement of Justification states that Mr. Saiz's father is 94 years old and in declining health, and that Mr. Saiz's mother is his primary caretaker. It states that "in preparation for moving his parents into his house, another garage is needed for use by his parents so that they may live with the family but maintain their car to have access to doctors, shopping and other activities of daily living that are not conveniently located in the agricultural reserve," and that a recent health setback has "triggered the urgency to

make the Property accessible for occupancy by elderly parents and able to accommodate the declining mobility of Mr. Saiz's father." See Exhibit 10(a).

6. At the hearing, Mr. Saiz testified that he has owned the subject property since 1990, and that the house was built in the 1950's. He testified that when he purchased the property, the house, well, fuel tanks, pool and other encumbrances were already on the property, which he said was an excavating firm at the time of his purchase. Mr. Saiz testified that he operates a landscape contracting special exception, which he received from the Board in 1990, on the subject property. He estimated that two-thirds of his approximately two and one-half acre property is used as a contractor yard in connection with this special exception. He presented an aerial photograph corroborating this, and illustrating some of the other constraints on the property. See Exhibit 12(k).

Mr. Saiz described the homesite portion of his property as significantly smaller than his neighbors' homesites, testifying that his homesite occupies 28-30 percent of his property, and that as such, it is significantly smaller than the (approximately) five acre homesite to the south and the (approximately) two and a half acre homesite to the north. He testified that the property to the rear of his property is over 1,000 acres.

Mr. Saiz testified that his property is level from the road to his house, but then slopes severely away from his house to the rear, towards a creek. He testified that in addition to sloping to the rear (west), his property also slopes to the side (south), unlike his neighbors, and testified that as a result, the slope on his property is steeper than that on neighboring properties. He presented a photograph of his driveway, testifying that the driveway continues straight back to the contractor yard, but that this is not visible because of the steep topography. See Exhibit 12(g).

Mr. Saiz testified that the driveway to his garage is approximately twenty feet away from (and parallel to) Georgia Avenue, and that his front yard is heavily landscaped, not only to prevent headlight glare from Bordley Road from shining into his house, but also to keep cars which run the stop sign at Bordley Road and Georgia Avenue from crashing into his property. He testified that this driveway is the only access to his garage. See Exhibit 12(h) (view south down driveway).

Mr. Saiz presented a rendered photograph showing the various utility encumbrances on his property, including underground electric lines, a heating oil tank, a well, and a septic field, and testified that these were present when he purchased the property. See Exhibit 12(k).

Mr. Saiz testified that he is seeking this garage addition so that his elderly parents have a covered, accessible place to put their car when they move in with him. He testified regarding their need for a car, and that the proposed garage addition is the minimum size needed to fit a small, four-door car. He testified that he anticipated moving his parents into his house as soon as he was able to secure approval for the garage. He testified that there is no other level and accessible location on his property for the proposed garage. He testified that the garage is screened from the property to the south by while

pinus, spruces, and a six foot stockade fence, and that it matches the style and siding of the existing house.

7. The record contains letters of support from Mr. Saiz's abutting neighbors to the north and to the south. See Exhibits 7(a) and (b). Mr. Dias, Mr. Saiz's neighbor to the south, was present at the hearing to show his support.

FINDINGS OF THE BOARD

Based on the Petitioners' binding testimony and 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 testimony of Mr. Saiz and his written Statement of Justification, that the homesite portion of the subject property is unusually shallow and constrained relative to the surrounding properties, due to the combined effects of (1) underground electrical lines, a well, a fuel tank, and a septic field preventing development to the north side or immediate rear of the house, (2) the presence of a special exception landscape contractor use on the property which is located to the rear of the homesite and occupies the majority of the property, (3) a front yard which is unusually narrow because of the dedication of a portion of this property for the widening of Georgia Avenue at this intersection, and which is encumbered by the existing driveway and landscape buffering to shield this home from the Georgia Avenue/Bordley Road intersection, and (4) a severe, two-directional slope away from the rear of the existing house.

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 testimony and written submissions of Mr. Saiz, that the conditions on the property predate his 1990 purchase, and that there is nothing to suggest that he was responsible for the property's topography. Thus the Board finds that the Petitioner took no actions to create this property's unusual characteristics.

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 testimony of Mr. Saiz and the Statement of Justification in the record at Exhibit 10(a), that the proposed location of this garage addition is the only level and accessible place on the property for this construction. The Board further finds per the testimony of Mr. Saiz that the proposed garage addition is only large enough to fit a small, four-door car. In light of the foregoing, the Board finds that the requested variance is the minimum necessary to allow the proposed construction to proceed and to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual characteristics of this property.

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 of a garage extension will continue the residential use of this property, consistent with the recommendations of the Olney Master Plan, which seeks (among other things) to "[r]etain the current land use pattern of Olney as a satellite community in the rural and residential wedge of the County's overall Land Use Plan."

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 grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties, as evidenced by the testimony of Mr. Saiz, his Justification Statement, and the letters of support submitted by his neighbors.

Accordingly, the requested variance to allow construction of a second-story addition is **granted**, subject to the following condition:

1. Petitioner shall be bound by his testimony and exhibits of record, to the extent relied on by this Opinion.
2. Construction shall be according to Exhibits 4 and 5.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice Chair, seconded by Bruce Goldensohn, with Carolyn J. Shawaker, Chair, Stanley B. Boyd, and Edwin S. Rosado 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.



Carolyn J. Shawaker, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 3rd day of February, 2017.



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.