

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6555

PETITION OF ZACHARY COOMBS

**OPINION OF THE BOARD
(Hearing Held April 11, 2018)
(Effective Date of Opinion: April 19, 2018)**

Case No. A-6555 is an application by Zachary Coombs (the "Petitioner") for a variance necessary for the construction of an attached garage. The proposed construction requires a variance of five (5) feet as it is within five (5) feet of the side lot line. The required setback is ten (10) feet, in accordance with Section 59-7.7.1.B.1 of the Montgomery County Zoning Ordinance (2014).

The Board of Appeals held a hearing on the application on Wednesday, April 11, 2018. Mr. Coombs appeared pro se at the hearing, in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Lot 6, Block F, Quince Orchard Valley Subdivision, located at 16836 Westbourne Terrace, Gaithersburg, MD, 20878, in the R-200 Zone (Cluster).
2. The Petitioner is seeking to replace an existing one-car carport with a two-car garage. In order to do so, he needs a variance from the required side lot line setback on the north side of his property.
3. The Justification Statement states that "[t]he Principal Building of the Property is located on the only flat area of the property," which the Statement notes "has a substantial grade around 75% of the Home." In light of this, the Statement concludes that "the only reasonable area to put a garage structure without massively changing the environment of the entire property is where the existing carport and driveway are located." The Justification also addresses the shape of the property, and the combined effect of this shape and the topography, as follows:

The Property is an usually shaped trapezoidal lot, unlike any other in the immediate neighborhood. This peculiar feature causes the Property to narrow towards the front, where most other similar properties are rectangular. The odd shape of the lot, combined with the steep topography, unique placement next to a corner lot, and existing footprint of the Principal Building, makes it unreasonably difficult to place an attached two-car garage addition anywhere else on the Property. (See official zoning vicinity and topographical maps provided).

See Exhibit 3. Finally, the Justification Statement states that these special circumstances are not the result of actions taken by the Petitioner, who purchased the property in 2016, and that the variance requested is the minimum needed to allow construction of the proposed garage without having to demolish and rebuild the existing home five feet to the southwest.

4. The Justification Statement indicates that the Petitioner reached out to twelve surrounding property owners to discuss his project and seek support for the grant of his variance. See Exhibit 3. The record contains eight petitions in support of the variance application, each stating that the project would have no detrimental effect on the use and enjoyment of the signing neighbor's property. See Exhibits 7 and 7(a)-(h). Notably one of the eight petitions supporting the grant of this variance was signed by the neighbor who shares the property line from which the Petitioner is seeking setback relief. See Exhibit 7(e).

5. At the hearing, the Petitioner testified that while the majority of the properties in his neighborhood are square, his is trapezoidal. He testified that if the side lot line from which he is seeking setback relief were straight as opposed to angled, his proposed construction would meet the required side lot line setback. He further testified that the other three sides of his property have slope issues, and proceeded to describe the grade change across the front of his house, towards the street, and on the opposite side of his house. He testified that constructing the proposed garage in any other location on his property would require significant terraforming.

In response to a Board question, the Petitioner testified that the neighbor closest to the proposed construction was supportive.

FINDINGS OF THE BOARD

Based on the Petitioner's 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 and exhibits of the Petitioner, that the subject property has an unusual trapezoidal shape which narrows towards the street. In addition, the Board finds, based on the Petitioner's testimony and exhibits of record, that three-quarters of the subject property is encumbered with a significant slope. The Board finds that the shape and topographical features of this property combine to constitute an unusual or extraordinary situation or condition peculiar to this property.

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 Justification Statement of the Petitioner, that the conditions on the property predate his 2016 purchase, and that there is nothing to suggest that the Petitioner is responsible for the property's shape or 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 the Petitioner and on the Justification Statement, that the topography of the subject property restricts the area available for the placement of the proposed garage, and that the angled side lot line further restricts the area of the property which would otherwise be available as a topographical matter. The Board notes Petitioner's testimony that if the side lot line were not angled, he would not need a variance. In this vein, the Board further notes, per Exhibit 4(b), that the rear of the proposed garage appears to meet (or very nearly meet) the side lot line setback, and that only a corner triangle of the proposed garage will extend into the setback area. 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 will continue the residential use of this property, consistent with the recommendations of the Great Seneca Science Corridor Master Plan, and thus can be granted without substantial impairment to the intent and integrity of that 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 letters of support in the record, including one from the neighbor sharing the property line from which the variance is requested, and the testimony of the Petitioner.

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 (inclusive).

Therefore, based upon the foregoing, on a motion by Bruce Goldensohn, seconded by Stanley B. Boyd, with John H. Pentecost, Chair, Edwin S. Rosado, Vice Chair, and Katherine Freeman 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 19th day of April, 2018.



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.