

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6564

PETITION OF KEITH AND DONNA RILEY

**OPINION OF THE BOARD
(Opinion Adopted May 23, 2018)
(Effective Date of Opinion: May 31, 2018)**

Case No. A-6564 is an application for a variance needed to allow the replacement of an existing sunroom. The proposed construction requires a variance of seven (7) feet as it is within eighteen (18) feet of the rear lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.8.B.2 of the Zoning Ordinance.

The Board held a hearing on the application on May 23, 2018. Petitioners Keith and Donna Riley appeared at the hearing in support of the application. They were accompanied by their agent, David McDowell.

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

EVIDENCE PRESENTED

1. The subject property is Lot 4, Block 11, Rock Creek Manor Subdivision, located at 13906 Drake Drive, Rockville, MD, 20853, in the R-90 Zone. It is an unusually shaped, five-sided corner lot, located on the northeast corner of Drake Drive and Drake Terrace. See Exhibit 4.

2. The Petitioners are proposing to "replace an existing single story modular sun room addition with a new, single story four season room. The new room will occupy the same location and have the same floor area, width and length (14' x 19') as the existing room." The Petitioners note that the "replacement addition will have a gabled roof, the ridge of which will match the height of the existing house," and that the "existing sunroom has a shallow sloping roof." See Exhibit 3.

3. The Board granted a variance to the Petitioners in Case No. A-4437 to allow the construction of the original sunroom. See Exhibit 12. The Petitioners indicate that they are seeking "a modification to the zoning variance as was granted for the original sunroom in 1995. (Case number A-4437)." See Exhibit 3. In Case No. A-4437, the Board granted the Petitioners a variance of seven (7) feet from the required rear lot line setback of twenty-five (25) feet for the construction of a one-story addition at the rear of their dwelling. In the instant case, the Petitioners are also seeking a variance of seven (7) feet from the required rear lot line setback of twenty-five (25) feet.

4. In Case No. A-4437, the Board found that the subject property has an irregular shape and that the angled placement of the house on the property "restricts the buildable area of the lot..." The Board further found that these two circumstances "are the factors which create difficulties in the siting of new construction at the rear of the dwelling." See Exhibit 12.

5. The record contains a petition of support from adjoining property owners which the Petitioners indicate "reflects the neighborhood's general approval for the variance." See Exhibits 3 and 7.

6. At the hearing, Mr. Riley testified that he and his wife had received a variance in 1995 to construct their existing sunroom, and that they were trying to upgrade that room. He testified that nothing has changed about the location of the room, and that it would be located on the footprint of the existing room. He testified that the existing room has a flat roof, and that the proposed replacement room would have a different roofline, which Mr. McDowell clarified would not be higher than the roofline of the existing house.

7. Mr. McDowell testified that the proposed construction was a replacement of the construction built pursuant to the 1995 variance. He testified that the footings of the original structure were not built correctly and were causing subsidence, and consequently leaks, in the existing structure. Mr. McDowell testified that when they had gone to DPS to get permits for the replacement structure, they were told that because of the difference in the design of the structure, they would have to go through the variance process again.

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 that the subject property has an unusual, five-sided shape and a buildable envelope that restricts construction to the rear of the house. The Board finds

that these circumstances constitute an extraordinary condition that is peculiar to this property. See Exhibits 3, 4, and 12.

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 Petitioner is not responsible for the shape of this property or its buildable envelope.

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 that the requested seven (7) foot variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would entail in that it would allow the replacement of an existing single story sun room that is failing with a new, single story four season room. The Board notes that the replacement room will have the same length, width, and floor area as the existing sun room addition, for which the Board had granted a variance in 1995.

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, and thus can be granted without substantial impairment to the intent and integrity of the Aspen Hill Master 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 proposed sunroom addition will not be adverse to the use and enjoyment of abutting or confronting properties. In support of the finding, the Board notes that the grant of this variance will allow the replacement of an existing single story sun room with a single story four season room. In addition, the Board cites the petition of support in the record from adjoining neighbors.

Accordingly, the requested variance of seven (7) feet from the rear lot line setback 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 (inclusive).

Therefore, based upon the foregoing, on a motion by Stanley B. Boyd, seconded by Bruce Goldensohn, 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 31st day of May, 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.