

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6567

PETITION OF MARGARET S. SHORTEN

**OPINION OF THE BOARD
(Hearing Held: June 20, 2018)
(Effective Date of Opinion: June 28, 2018)**

Case No. A-6567 is an application by Margaret S. Shorten (the "Petitioner") for a variance necessary for the construction of an attached, one-car garage. The proposed construction requires a variance of nine (9) feet as it is within sixteen (16.00) feet of the front lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, June 20, 2018. The Petitioner appeared with Donald Geiser, a friend and builder, in support of the application.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 3, Block Q1, Woodside Park Subdivision, located at 1600 Dale Drive in Silver Spring, Maryland, 20910, in the R-60 Zone. The property is a corner lot which fronts on both Woodland Drive and Dale Drive to the east, and Luzerne Avenue to the south. There is a triangular traffic island in front of the subject property, formed by the intersection of these three streets. The Statement submitted in connection with the variance application describes this intersection as "busy." See Exhibits 7(a) and 9. The Petitioner is seeking to construct a single-car, attached garage on the south side of her house.
2. The Statement submitted by the Petitioner describes the subject property as "an extraordinary shaped trapezoid corner lot." It states that the area behind the existing home "is not buildable" due to its narrowness and steep slope, and the fact that drainage is located in that area. See Exhibit 9. The Petitioner has submitted photographs showing

these conditions. See Exhibit 5(d). The Statement contains a detailed discussion regarding the numerous difficulties that construction to the rear of the existing home would cause because of its steep slope and narrowness, including significant access problems, foundation/structural problems, and water/drainage problems. It further states that construction in that area would negatively impact neighbors for visual, vegetative, and drainage reasons. See Exhibit 9.

3. The Statement indicates that construction of the proposed garage in the "small buildable land area in front of the house" would not be "consistent with the neighborhood garage siting pattern" and would have a "[n]egative impact on confronting and surrounding neighbors." The Statement goes on to state that "[s]ince the neighborhood is historic and traditional, there are no attached or detached garages oddly located protruding directly in the front yard area" of the house; it later notes that the proposed location, on the side of the house, would "not alter the essential social, environmental and economic character of Woodside Park subdivision deep set back 'park-like' setting." The Statement further indicates that the location of the proposed garage would conform to the traditional pattern in the neighborhood of locating attached garages on the side of the house and detached garages in the back yard. The Petitioner has included photographs of some of these garages with her submission. See Exhibits 5(d) and 9.

4. The Statement states that locating the proposed garage on the side of her house would not have a negative impact on abutting and confronting neighbors, asserting that "[m]y side yard towards Luzerne Ave. would not view garage since there are tall trees surrounding yard. Adjacent neighbors would not view garage." See Exhibit 9.

5. The Statement indicates that the Petitioner "did nothing to change topographical shape of trapezoid lot, tall trees, narrowness, steep hill, shallowness; it was always there." The Statement asserts that the garage would continue the residential use of the property, and further indicates that without the grant of a variance, the Petitioner cannot build a garage anywhere on her property. Finally, the Statement indicates that the proposed location would leave the smallest environmental footprint possible. See Exhibit 9.

6. The record contains a letter from the Woodside Park Civic Association urging the Board to uphold the 25 foot setback along Luzerne Avenue, and asserting that granting the setback would place the garage addition forward of the other homes on that block of Luzerne Avenue. The letter "recognize[s] that the visual intrusion of the garage would be somewhat mitigated by the dense plantings between the subject property and the adjacent home on Luzerne," and asks that if the Board grant the variance, that it "do so only with the condition that the current and all future owners of 1600 Dale Drive be required to perpetually maintain a dense hedge or other plantings to the street along the lot line with the adjoining property on Luzerne Avenue to reduce the visual impact of the encroachment of the garage into the setback area." See Exhibit 10.

7. At the hearing, the Petitioner testified that her property is unusual in that there is an intersection and a forked divide in front of her house, and because these roads carry a high volume of traffic. She noted that as a result of the unusual road configuration, her

next door neighbor lives on Woodland Drive. She testified that she cannot build in front of her house, that people in her neighborhood do not have garages in front of their homes, and that she cannot build in the rear because of the shallowness of that area and drainage issues. When asked by the Chair whether her proposed garage would extend into the streetscape along Luzerne Avenue, as suggested by the Woodside Park Civic Association, the Petitioner testified that the border on that side of her house is treed. The Board then noted that the Woodside Park Civic Association letter recognized that that the potential intrusion would be somewhat mitigated by "dense plantings," and that the Association had requested a condition requiring the maintenance of a dense hedge or other plantings in perpetuity if the variance was granted.

In response to a Board question asking why she needed a garage, the Petitioner testified that she is getting older and that she needs a garage for safety reasons. She noted that in the summer months, there is sometimes mischief in her neighborhood, and that she did not want her car broken into or vandalized. This is consistent with the representation in Petitioner's Statement. See Exhibit 9.

8. In response to a Board question asking if the area behind the Petitioner's house was steep, Mr. Geiser answered in the affirmative. He then testified that there are drainage problems in that area.

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;

Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the testimony of the Petitioner, her written Statement, and the photographs that she submitted for the record, that the area behind the Petitioner's house is shallow and is encumbered by a steep slope and drainage issues such that construction of a garage is not possible in that area. The Board further finds, based on the Statement and photographs submitted by the Petitioner, and based on her testimony, that construction of a garage in front of the house would not be consistent with the established historic or traditional development pattern of the street or neighborhood, and would be contrary to the "park-like" setting that the Woodside Park subdivision cultivates via its deep setbacks. The Board finds that these unusual or extraordinary

situations or conditions combine to limit the useable area of this property for the proposed construction, and satisfy Section 59.7.3.2.E.2.a of the Zoning Ordinance.

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 in the record at Exhibit 9, that the special circumstances or conditions that make this property unique for the purposes of Section 59.7.3.2.E.2.a are not the result of any actions by the Petitioner.

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 notes that the Petitioner has testified that she needs a garage to protect her vehicle from criminal activity and because she is getting older, and that the record reflects the presence of other garages in the neighborhood, none in "front" of a home. The Board finds, based on the testimony of the Petitioner and the Statement in the record at Exhibit 9, that without the grant of the requested variance, the Petitioner cannot construct a garage on her property because of the topographical and other unusual conditions noted above. The Board further finds that the requested variance is the minimum needed to overcome these conditions and to allow this construction to proceed. Thus the Board finds that the requested variance is the minimum necessary 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 one-car garage will continue the residential use of this property, and thus can be granted without substantial impairment to the North and West Silver Spring Master Plan (2000).

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.*

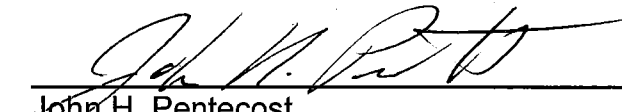
The Board finds, based on the Statement in the record at Exhibit 9, that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties. The Board notes in particular the statement that the garage would not be viewed by adjacent neighbors because there are "tall trees" on the Luzerne Avenue side of the property, and that the letter from the Woodside Park Civic Association confirms the existence of screening between the subject property and the abutting property along Luzerne Avenue. That said, in light of the concern expressed by the Association that this screening be maintained in perpetuity, the Board will condition the grant of this variance on the requirement that the Petitioner and her father, who owns the subject property, and all successor owners of this property, maintain a dense hedge or other plantings to the street along the lot line with the adjoining property on Luzerne Avenue.

Accordingly, the requested variance to allow construction of an attached, one-car garage is **granted**, subject to the following conditions:

1. Petitioner shall be bound by her testimony and exhibits of record, to the extent relied on by this Opinion;
2. Construction shall be according to Exhibits 4(a)-(d) and 5(a)-(c); and
3. The Petitioner and all current and future owners of this property shall be required to maintain a dense hedge or other plantings to the street along the lot line with the adjoining property on Luzerne Avenue in order to reduce the visual impact of the encroachment of the garage into the setback area.

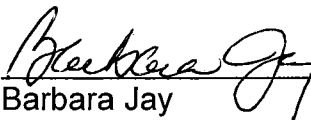
Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Stanley B. Boyd, with Edwin S. Rosado, Vice Chair, Bruce Goldensohn, and Katherine Freeman in agreement, the Board adopted the following Resolution:

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 28th day of June, 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.