

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6572

PETITION OF US ZEN INSTITUTE, INC.

**OPINION OF THE BOARD
(Opinion Adopted July 25, 2018)
(Effective Date of Opinion: August 7, 2018)**

Case No. A-6572 is an application for a variance needed to allow the proposed construction of a façade for an existing building. The proposed construction requires a variance of 8.50 feet as it is within 8.50 feet of the side lot line. The required setback is seventeen (17) feet, in accordance with Section 59-4.4.4.B.2 of the Zoning Ordinance.

The Board held a hearing on the application on July 25, 2018. Jody S. Kline, Esquire, appeared in support of the variance application on behalf of the Petitioner US Zen Institute, Inc., along with architect Berny Hintz and Master Sagaraguna of the US Zen Institute. Abutting property owners Alphonsa and James Paul appeared in opposition to the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Parcel N205, Lot 17, Boyds Highlands Subdivision, located at 15511 Barnesville Road, Boyds, MD, 20841, in the RE-2 Zone.
2. The Statement of Justification submitted with the variance application explains that the Petitioner acquired the subject property and two abutting properties in 2017 "with the intent of constructing a prayer and meditation (religious assembly) center and housing (convent or monastery) for its monastic leaders." It states that these land uses are permitted in the RE-2 zone. See Exhibit 3. At the hearing, a large zoning vicinity map showing all three properties was introduced into evidence. See Exhibit 11.
3. The Statement of Justification submitted with the variance application describes the subject property as follows:

[T]he subject property is not a simple rectangular shape, but is an irregular shape; a so called "flag" or "pipe stem" lot with the minimum frontage on a public roadway and a narrow portion leading to the balance of the lot. The developable area of the lot is further constrained by additional setbacks from the water supply well and the existing septic system. See Exhibit 3.

The site plan corroborates this description. See Exhibit 4.

4. The Statement of Justification submitted with the variance application states that the subject property is currently improved with a single-family dwelling and a large detached accessory building. It states that although the existing dwelling will be removed, "the existing detached accessory structure is suitable for incorporation into the prayer and meditation building." It notes that in developing the plans for the new prayer and meditation building, "it was discovered that once the detached accessory structure is made part of the principal building, it will not meet the required [principal building] side setback for the Residential Estate - 2 zone." In addition, the Statement asserts that "the existing structure was permitted under Permit No. 86C150128 and therefore the existing structure was legally constructed." See Exhibit 3.

At the hearing, Mr. Kline explained that the existing accessory structure has been in place since approximately 1989. He said that it is presently located within 10 to 11 feet of the side lot line, in violation of the RE-2 Zone requirement that it be 15 feet from the side lot line. He presented Exhibit 12, and explained that the accessory structure was built when the lots were all under single ownership, and that when lots 10 and 11 were created in 2006, lot 11 having been subsequently re-platted, that made the accessory building nonconforming. Mr. Kline stated that the Maryland-National Capital Park and Planning Commission's Planning Department does not usually permit re-platting that would render an existing building nonconforming, and that he was unsure how this came to pass. Mr. Kline further stated that the existing accessory building is not located behind the rear plane of the primary building, such that if it were going to be reused as an accessory building, it would also need a variance from that requirement. He stated that the Petitioner's plan is to connect this existing accessory structure to a rebuilt primary structure, and that this would increase the required side lot line setback to 17 feet. Mr. Kline noted that while making this accessory structure part of the primary structure would modestly increase the amount of variance relief needed from the side setback, it would also eliminate the need for additional variance relief from the requirement that accessory structures be located behind the rear building line. Mr. Kline then explained that a façade wall, approximately 1½ to 2 feet deep, would be added to the existing structure, bringing it to within 8½ feet of the side lot line. He stated that the requested 8.50 foot variance is needed to allow the existing building to remain in its current location and to accommodate the proposed façade.

5. The Statement of Justification states that full compliance with the setbacks in the Zoning Ordinance would require "either substantial modification to the existing structure or removal. The modification of the structure would be very difficult based on the framing

system within the existing structure and would impose unusual conditions. The existing structure is a metal framed, pre-engineered, post-frame structure with metal siding." The Statement thus concludes that the requested variance "is the minimum necessary to overcome the practical difficulties that full compliance would require." See Exhibit 3.

At the hearing, architect Berny Hintz testified that this existing structure is a Morton metal garage building, and is currently used as a garage. He presented a large exhibit showing views of this building, including the view from Lot 12, owned by the Pauls. See Exhibit 13. He explained that one of the photographs on Exhibit 13 shows the view of the structure from the closest available building location on Lot 12.

6. The Statement of Justification notes that the Petitioner did not construct the existing structure and is not responsible for its location on the property. It further notes that the "location of the existing structure will not be altered, with the exception of the thickness of the new façade...." Finally, the Statement states that the grant of this variance "will not substantially impair the intent or integrity of the General Plan nor the Boyds Master Plan" and "will not adversely affect the use and enjoyment of the abutting and confronting properties." See Exhibit 3.

7. At the hearing, Mr. Hintz testified that the Petitioner is converting the property to a house of worship and meditation. He testified that there will be two components to the use: a meditation hall and an educational/exhibit component. He testified that the meditation hall is supposed to be located at the highest elevation possible and oriented to face south. He testified that the location of the meditation center on the subject property is further constrained by the location of a drain field on one side, and the location of wells on the other side. Mr. Hintz testified that the existing garage is perfect for the educational/exhibit component of the use, and that while it will be separated from the new meditation center by an open courtyard, the two buildings will be joined by a roof. He testified that the educational/exhibit area will be the more public face of the use. He testified that the new façade will increase the height of the existing building to 24 feet, which is slightly taller than the peak of the roof on the existing building, and that any house built on Lot 12 would be approximately 70 feet away. He stated that the variance was needed to mitigate the violation caused by the corner of the building.

8. At the hearing, Master Sagaraguna testified that the proposed project was critical to the Petitioner's practice of religion. He testified that the Petitioner had purchased the property in 2017 after an extensive search, noting that in addition to being ten minutes from the Petitioner's existing temple, the property had the correct orientation and an ideal setting. Master Sagaraguna testified that the educational resource library and exhibit hall need to be out of sight and sound from the meditation area. He testified that the Petitioner would be a good neighbor, and that the proposed use would be quiet and would typically not generate rush hour traffic.

9. At the hearing, James Paul testified that he and Alphonsa Paul are the owners of Lot 12 (formerly Lot 16), which abuts the subject property. He testified that Lot 12 has been approved for the construction of a four bedroom, single family house. He testified

that the existing garage accessory structure on the subject property is close to the rear of his property. He asserted that the granting of the variance will adversely affect the use and quiet enjoyment of his property, affecting his privacy and bringing more people to the subject property and as a result, closer to his property. Mr. Paul read from his Statement of Objections, in which he questions whether the subject property meets the standards for the granting of a variance. See Exhibit 9. In response to a question posed by Mr. Kline, Mr. Paul acknowledged that he has a ratified contract to sell his property to the Petitioner.

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 shape, as described in the Statement of Justification and shown on the site plan, and that in addition to the limitations on the property's buildable envelope that are imposed by the application of the requisite setbacks to the property as a result of its shape, the buildable envelope of this property is further constrained by the imposition of the necessary setbacks from the property's well and septic system. See Exhibits 3 and 4.

Section 59-7.3.2.E.2.a.ii. - the proposed development uses an existing legal nonconforming property or structure;

The Board finds, based on the evidence of record and the representations of Mr. Kline, that the existing accessory structure on the subject property is an existing legal nonconforming structure, in that it was constructed pursuant to a valid building permit and was rendered nonconforming by subsequently approved subdivisions of the property on which it was located. See Exhibit 3.

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, for the location of its well and septic system, or for its subdivision.

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 8.50 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 reuse of an existing building for a permitted purpose. The Board notes, per the Statement of Justification, that relocation of the existing building would be extremely difficult due to the nature of its construction. While the Board acknowledges that the construction of a façade will bring the existing building closer to the side lot line than is currently the case, the Board finds that the location of the existing structure, built in approximately 1989, is not changing, and that the proposed conversion of this accessory building into a principal building, while increasing the required setback from the side lot line by two (2) feet, actually eliminates the needs for a second variance (to have an accessory building in front of the rear building line), thereby helping to minimize the variances needed.

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 grant of the requested variance will allow the construction of a façade on an existing building and will allow the reuse of that building for a purpose permitted by the Zoning Ordinance in the applicable zone. Thus the Board finds that the requested variance can be granted without substantial impairment to the intent and integrity of the applicable 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.*

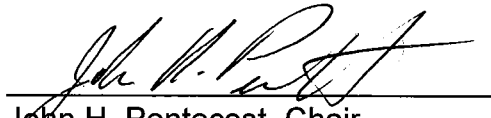
The Board finds that granting the variance, to allow the reuse of an existing building which has been in place for decades, and the construction of a new façade around that building, will not be adverse to the use and enjoyment of abutting or confronting properties. In support of the finding, the Board cites the testimony which indicates that the proposed use of the property would be quiet and would not generate much traffic, and that any construction on adjoining Lot 12, the property most affected by the grant of this variance, would be approximately 70 feet away because of existing constraints on that property. Finally, the Board notes the acknowledgement by the owner of Lot 12 that the Petitioner has a ratified contract to purchase that property.

Accordingly, the requested variance of 8.50 feet from the side lot line setback is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4, 5 and 16 (inclusive).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, with Edwin S. Rosado, Vice Chair, Stanley B. Boyd, 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 7th day of August, 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.