

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**CASE NO. A-6587**

**PETITION OF JESSICA NORRIS**

**OPINION OF THE BOARD**

(Opinion Adopted October 31, 2018)  
(Effective Date of Opinion: November 6, 2018)

Case No. A-6586 is an application for a variance needed to allow construction of a proposed one-story rear addition. The proposed structure requires a variance of 9.25 feet as it is within 20.75 feet of the rear lot line. The required setback is thirty (30) feet, in accordance with Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance.

The Board held a hearing on the application on October 31, 2018. Petitioner Jessica Norris appeared at the hearing with her contractor, Deborah Lerner.

Decision of the Board: Variance GRANTED.

**EVIDENCE PRESENTED**

1. The subject property is Lot 20, Block E, Charred Oak Estates Subdivision, located at 8004 Carita Court, Bethesda, MD, 20817, in the R-200 Zone. The house on the subject property was built in 1964; Petitioner has owned this property since 2006. See Exhibit 3(a).
2. The subject property is roughly trapezoidal in shape, much wider at the rear than it is along the street, with an arced front lot line on the Carita Court cul-de-sac. As noted in the Petitioner's Statement of Justification, the property is substandard in size for the R-200 Zone:

The property in question is a "non-conforming" lot. Although it is zoned as R-200, which has a minimum lot size of 20,000 sf, this property is only 15,357 sf. The property is only  $\frac{3}{4}$  the size of an R-200 lot, yet it has the same setback and usage

requirements, making it very difficult if not impossible to have a home sized and situated akin to other homes in the same zone/same neighborhood.

See Exhibit 3(a). The Statement of Justification goes on to note that "[t]wo of the adjacent homes on the same cul-de-sac (8000 and 8001 Carita Court) have lot sizes of 26,171 sf and 23,635 sf respectively." The shape of the property, coupled with its small size, results in the property having a relatively shallow buildable area and rear yard. See Exhibits 4(c) and 9.

3. In addition, the subject property is sloped, as indicated by the following description of the existing rear patio:

The existing footprint of the house includes a very large concrete patio, roughly 35' x 16' in size. Because of the sloping topography of the lot (higher in front than in back), this concrete patio was built with a surrounding brick masonry retaining wall. The slope is dramatic enough for the end result to be that this brick masonry wall is almost a full story tall, effectively making it feel from the rear view like a single story addition on the back of the house. While the setback requirements are different for an open patio than for an enclosed addition, it is important to note that the practical experience of this enormous brick wall on this particular property is actually that the existing patio already feels like an addition on the rear of the house. Please see the attached **Existing Photographs** for reference. The proposed new addition would occupy a portion of the existing patio footprint. The proposed new addition would **not** occupy any additional green space on the lot; rather it would only occupy space that is already almost a full single story of brick and concrete.

See Exhibit 3(a).

4. In 1976, a variance of twelve (12) feet from the required rear yard setback of thirty (30) feet was granted to permit the construction of a 16 foot by 16 foot enclosed porch on top of the existing 16 foot by 32 foot concrete deck. See Exhibit 7 (Case A-288). At the hearing, Ms. Norris indicated that this porch was not built.

5. The Supplement to the Statement of Justification notes that there is "a dense thicket of trees and shrubbery that greatly diminishes any view of 8004 Carita Court" from the adjacent rear neighbors on Cindy Lane. In addition, it states that:

[I]n addition, the intent is to install significant decorative plantings around the perimeter of the proposed addition in order to further decrease the impact of the higher walls and blend into the landscape. Lastly, the proposed addition has a significant amount of oversized windows that also serve to decrease the perceived mass of the new build.

See Exhibit 3(b).

6. At the hearing, Ms. Lerner testified that her client is proposing a small addition, and that the size of the lot and angle of the house on the lot causes the rear of the proposed addition to encroach on the rear setback. She testified that the lot is nonconforming in the zone, and that it is three-quarters of the typical size of lots in the zone and in the neighborhood. Ms. Lerner testified that the abutting lots have significantly oversized setbacks such that there is a lot of distance between the home on the subject property and surrounding homes, particularly between the home on the subject property and the home to the rear. She stated that because of this, the proposed addition would not adversely affect these neighboring properties.

### 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 is unique in that it has an unusual trapezoidal shape, making it much wider at the rear than at the front, and in that it is substandard in size for the zone, considerably smaller than at least two other properties on the cul-de-sac and, per the testimony of Ms. Lerner, most properties in the zone and in the neighborhood. The Board finds that these factors combine to limit the depth of the available buildable area, a limitation further constrained by the property's sloping topography. The Board finds that this constitutes an extraordinary condition that is peculiar to this property. See Exhibit 4(c).

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

Based on the Statement of Justification, the Board finds that the Petitioner purchased this property in 2006, and is not responsible for the size, shape or topography of this lot.

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 at 15,357 square feet, this property is significantly substandard for the R-200 Zone, which has a minimum lot size of 20,000 square feet. The Board further notes that as it found above, the small size of this property, coupled

with its unusual trapezoidal shape and sloping topography, results in the lot having an unusually shallow and constrained buildable area. In addition, the Board observes that the Petitioner is seeking to build on top of an existing concrete patio which is supported by a large retaining wall. See Exhibits 3(a) and 5(k). The Board finds that the variance to the rear setback is the minimum needed to allow the proposed construction, and further finds that the requested variance is the minimum needed to overcome the practical difficulty imposed by the development standards of the Zoning Ordinance in light of the shallow buildable area arising from the small size, unusual shape and topography 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 allowing the Petitioner to construct this addition continues the residential use of this home, and therefore can be granted without substantial impairment to the Potomac Subregion Master Plan (2002).

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 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 proposed one-story addition will be to the rear of the existing house, on top of an existing patio. It further notes that there is "a dense thicket of trees and shrubbery that greatly diminishes any view of 8004 Carita Court" from the adjacent rear neighbors on Cindy Lane, that the Petitioner plans to "install significant decorative plantings around the perimeter of the proposed addition in order to further decrease the impact of the higher walls and blend into the landscape," and that the addition has been designed with "a significant amount of oversized windows that also serve to decrease the perceived mass of the new build." See Exhibit 3(a). Finally, the Board notes the testimony of Ms. Lerner that the abutting property to the rear is located a significant distance from the house on the subject property.

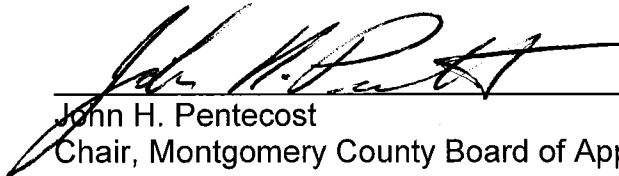
Accordingly, the requested variance from the rear lot line setback is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record to the extent that such testimony and evidence are mentioned in this opinion; and

2. Construction shall be in accordance with Exhibits 4(a)-(c) and 5(a)-(f).

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

  
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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 6th day of November, 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.