

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
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CASE NO. A-6608

PETITION OF JOHN YAMIKEH AND OLIVIA KITCHER-YAMIKEH

OPINION OF THE BOARD
(Opinion Adopted April 10, 2019)
(Effective Date of Opinion: April 17, 2019)

Case No. A-6608 is an application for a variance needed for the construction of a single floor room addition to an existing home. The proposed construction, a sunroom over an existing deck, requires a variance of eight (8) feet as it is within twelve (12) feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Site Plan 819920060.

The Board of Appeals held a hearing on the application on April 10, 2019. Petitioners John Yamikeh and Olivia Kitcher-Yamikeh were present, along with Adam Ford of Maryland Sunrooms.

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

EVIDENCE PRESENTED

1. The subject property is Lot 4, Block EYE, Wexford Subdivision, located at 11406 Whitecrest Place, Germantown, MD, 20876, in the R-200/T Zone. The property is 7,450 square feet in area, and is a five-sided lot. A storm drain easement runs along the left side of the house such that it touches the left front corner of the house, and the right side of the house is situated along the right side setback line. See Exhibit 4.
2. The Petitioners' Justification Statement ("Statement") indicates that the Petitioners purchased this property in 2004, and the SDAT information indicates that the existing home was constructed in 1997. See Exhibit 3 and SDAT information. The Statement indicates that the subject property satisfies Section 59-7.3.2.E.2.a.i (exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary

conditions peculiar to a specific property) because of the constraints imposed by the existence of the storm drain easement and the siting of the house so close to the right side lot line. It further asserts that proposed sunroom substantially conforms to the established historic or traditional development pattern of the neighborhood, in satisfaction of Section 59-7.3.2.E.2.a.v, and includes photographs of some nearby rear porch enclosures. See Exhibits 3 and 5(d)-(e). The Statement notes that the Petitioners are seeking to construct the proposed enclosure over their existing deck for medical reasons and on the advice of a physician. See Exhibits 3 and 7(a)-(b).

3. The Statement indicates that the proposed construction “will stay in the confines of the existing deck” and “will not be adverse to the use and enjoyment of neighboring properties because the room [is] elevated high enough off the ground as to not impact the neighbor’s yard.” See Exhibit 3.

4. At the hearing, Adam Ford, the Petitioners’ agent, testified that the subject property has an unusual shape and has a storm drain easement along the left side which touches the home, precluding construction in that area. He further testified that the existing house is sited close to the right side lot line such that placement of the proposed structure in that location (which would also appear to require a variance) would bring it much closer to neighboring properties than placement to the rear. Mr. Ford testified that the house is sited at an angle to the rear lot line, and that the proposed sunroom enclosure would stay within the footprint of the existing deck.

5. At the hearing, in response to a Board question, Petitioner Olivia Kitcher-Yamikeh confirmed that the proposed construction is needed because of a medical condition.

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 an unusually-shaped, five-sided lot. The Board further finds that the property has a large storm drain easement along its left side that serves to preclude construction on a significant portion of what would otherwise be the property’s available buildable envelope, and that presumably forced the builder to locate the existing home in such close proximity to the right side lot line setback as to eliminate the possibility of construction on that side of the house. Thus the Board finds that the application of the setbacks to this unusually-shaped property, combined with the presence of the large storm drain easement, results in this property being uniquely constrained in terms of available building area, in satisfaction of this Section.

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 Petitioners, who purchased this property years after it was built, are not responsible for the shape of the property or its buildable envelope, or for the existence of the storm drain easement which serves to further constrain development of this property.

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 observes that the proposed construction will not extend the footprint of the existing deck, and that it is the enclosure of this area that triggers the need for variance relief. The Board finds the requested variance, to allow the proposed construction to encroach on the rear lot line setback to the same extent as the existing deck, is the minimum needed to overcome the constraints otherwise imposed on this property's buildable area by the setbacks set forth in the Zoning Ordinance and the presence of the storm drain easement. The Board further notes that the grant of this variance is the minimum needed to address the Petitioner's medical need for an enclosed space in which to enjoy the outdoors. Accordingly, the Board finds that the requested variance is the minimum needed to allow the proposed construction and to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose.

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 Petitioners to proceed with the proposed construction will continue the residential use of this home, and thus can be granted without substantial impairment to the intent and integrity of the applicable Germantown 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 construction will not be adverse to the use and enjoyment of abutting or confronting properties because it will not expand the footprint of the existing deck and, based on the assertion made in the Statement, because it will be elevated so as not to impact the neighbor's yard. See Exhibit 3.

Accordingly, the requested variance of eight (8) feet from the rear lot line is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record;
2. Construction shall be in accordance with Exhibits 4 and 5(a); and

3. Petitioners shall submit a revised site plan accurately depicting the buildable envelope within 30 days of the issuance of this Opinion.¹

Therefore, based upon the foregoing, on a motion by Katherine Freeman, seconded by Bruce Goldensohn, with John H. Pentecost, Chair, and Stanley B. Boyd, Vice Chair, 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 17th day of April, 2019.


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.

¹ The Board makes this request because the rear setback, as drawn on Exhibit 4, is not shown as being parallel to the rear lot line.