

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
<http://www.montgomerycountymd.gov/boa/>

(240) 777-6600

**Case No. A-6669**

**PETITION OF JOHN AND SUSAN CHIRICHELLA**

OPINION OF THE BOARD

(Hearing Dates: October 7, 2020 and November 4, 2020)  
(Effective Date of Opinion: November 18, 2020)

Case No. A-6669 is an application by John and Susan Chirichella (the "Petitioners") for a variance from the requirement in Section 59-4.3.4.B.2.d of the Zoning Ordinance that accessory structures be located behind the rear building line of the principal building, and for a variance from the limitation in Section 59-4.3.4.B.2.e of the Zoning Ordinance, which states that accessory structures cannot be bigger than 50% of the footprint of the principal dwelling. The Petitioners wish to construct an addition to their existing detached garage.

Due to COVID-19, the Board of Appeals held remote hearings on the application on October 7, 2020, and November 4, 2020. All participation was done via Microsoft Teams. The Petitioners, who own the subject property, participated in the proceedings in support of the requested variances.

Decision of the Board: Variance from requirement that accessory structures be located behind the rear building line: **GRANTED.**

Variance from limitation restricting size of accessory structures to 50% of the footprint of the principal dwelling: **DENIED.**

**EVIDENCE PRESENTED**

1. The subject property is Lot 24, Sunnymeade Subdivision, located at 2105 Viewpoint Court, Brookeville, Maryland, 20833, in the RC Zone. The subdivision in which it is located was recorded in 1986. See Exhibit 1.

2. The subject property is an irregularly shaped, 5.65 acre lot, improved with a single family home and detached garage. The existing garage was built pursuant to the grant of a variance that was needed to allow its placement forward of the rear building line. See Exhibits 3 and 7.
3. In its earlier variance decision, Board of Appeals' Case No. A-4079, the Petitioner testified that there is a large septic field immediately behind the existing dwelling, and that as a result, if a detached garage were to be located behind the existing house, it would have to be over 200 feet from the dwelling and would be located on a steep slope. The Board found that the irregularly shaped lot, large septic field, and change in topography combined to constrain the area available for construction to the rear of the house, and created a practical difficulty that necessitated variance relief. See Exhibit 7.
4. The Petitioners are proposing to construct an addition to their existing garage. Their variance application indicates that the proposed garage addition is needed for "tractor storage due to lot size." See Exhibit 1. The Justification Statement ("Statement") submitted with the variance application expands on this, noting that the Petitioners need the additional garage space to "house several tractor mowers, snow plows, and other yard maintenance equipment for the 5.65 acre lot," and that "[b]y attaching to the existing garage it will allow easy access to snow removal equipment needed for the long driveway." See Exhibit 3.
5. The Petitioners' variance application states that a reserve septic field "covers" their back yard. See Exhibit 1. The Site Plan submitted with the variance application shows that the proposed garage addition would be 70 feet away from the south side lot line and 450 feet away from the rear lot line. See Exhibit 4(a).
6. The Statement states that the Petitioners have discussed their propose garage addition with "all visual neighbors ... without any objections." See Exhibit 3.
7. At the October 7, 2020, hearing, Mr. Chirichella testified that he is seeking to construct an addition to an existing garage. He testified that the existing garage is 960 square feet in size, and that the proposed addition is 832 square feet in size. Mr. Chirichella stated that the addition is needed to allow him to store three large tractors, snow removal equipment, and antique cars. He testified that locating the proposed structure anywhere other than the proposed location would put it behind the septic field.

In response to Board questions asking him to quantify the amount by which the garage with the proposed addition would exceed 50% of the footprint of his home, Mr. Chirichella indicated that he was not sure. At that point, the hearing was continued so that the Petitioners could secure that information, which was needed for the Board's variance analysis.

At the November 4, 2020, hearing, Mr. Chirichella testified that he had worked with his architect to reduce the size of the proposed accessory structure (existing plus addition), such that the total square footage of that structure as redesigned would be only 40 square feet larger than 50% of the footprint of his house.

## FINDINGS OF THE BOARD

Based on the Petitioners' binding testimony and the evidence of record, the Board finds that the variance to locate the proposed addition to this existing accessory structure forward of the rear building line can be granted, but that the requested variance to permit an accessory structure footprint greater than 50% of the footprint of the principal dwelling must be denied. With respect to the first variance, the Board finds that 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;*

As it had in Case No. A-4079, the Board finds that the area of the subject property located immediately behind the existing house is encumbered by a large septic field, such that accessory structures in that area would need to be located over 200 feet away from the existing house and on a steep slope. See Exhibits 1 and 7. The Board finds that the location of the septic field immediately to the rear of the house, and the steep slope beyond the septic field, coupled with the property's unusual shape, combine to severely limit the area available to construct accessory buildings behind the rear building line of this property, and constitute an unusual condition peculiar to the property, in satisfaction of this Section of the variance test.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

Per SDAT, the Petitioners purchased this property in 2019, long after the existing septic field and topography, which were referenced in the 1994 variance decision, were established, and long after the recording of this subdivision and presumptive creation of this lot in 1986. Thus there is no evidence in the record to suggest that the Petitioners created the special circumstances pertaining to the property, in satisfaction of this Section.

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 location of the existing septic field, coupled with the shape of the lot and the sloping topography behind (east of) the septic field, severely

constrains the ability of the Petitioners to locate an accessory structure on their property in an area that is behind the rear building line of the principal structure (dwelling), as required by the Zoning Ordinance. The Board further finds that this constitutes a practical difficulty for the Petitioners, and that the requested variance, which would allow construction of an addition to an existing accessory structure (garage) that is located in front of the rear building line, is the minimum necessary to overcome this practical difficulty, in satisfaction of this Section.

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;*

The Board finds that the proposed construction continues the residential use of the home, and is consistent with the recommendations of the Olney 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.*

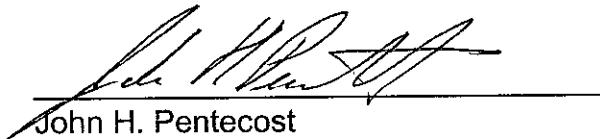
The Board notes, per the Statement, that the Petitioners have shared their plans with their "visual neighbors," and have received no objections. See Exhibit 3. The Board further notes that the proposed construction will be set back approximately 70 feet from the closest (south) side property line, and that the subject property is substantial in size. In light of the foregoing, the Board finds that the proposed construction will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this Section. Accordingly, the requested variance needed for the construction of an addition to the Petitioner's existing garage, in a location forward of the rear building line, is **granted**.

With respect to the requested variance from the 50% footprint limitation set forth in the Zoning Ordinance, the Board finds that the Petitioners have not demonstrated that the subject property has any unusual or extraordinary situations or conditions, for the purposes of meeting Section 59-7.3.2.E.2.a of the Zoning Ordinance, that would prevent the construction of an addition to the existing accessory structure (garage) that complies with this limitation. Having found that an addition to the existing garage that complies with the footprint limitation could be constructed on this property, the Board finds that the strict application of the footprint limitation does not cause the Petitioners a practical difficulty due to an unusual condition of the property and would not unreasonably prevent them from using their property for a permitted purpose. In addition, the Board finds that the size of the proposed addition to the existing garage was determined by the Petitioners and is for their convenience, to house their tractors, cars, and other equipment. The Court of Appeals has previously noted that the need sufficient to justify a variance "must be substantial and urgent and not merely for the convenience of the applicant." Carney v. City of Baltimore, 201 Md. 130, 137 (1952). Accordingly, the Board finds that in addition to failing to meet Section 59-7.3.2.E.2.a of the Zoning Ordinance, the requested variance from the footprint limitation also fails to meet Section 59-7.3.2.E.2.c, and must be **denied**. Having found that the requested variance fails to satisfy these Sections of the variance test, the Board will not address

the remaining Sections, since the variance test is conjunctive, and all parts of the test must be met if a variance is to be granted.

Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, with Bruce Goldensohn, Vice Chair, Katherine Freeman, and Mary Gonzales 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 18th day of November, 2020.

  
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.