

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6671**

**PETITION OF DAVID AND SHARON ANTHONY**

OPINION OF THE BOARD

(Hearing Date: November 4, 2020)

(Effective Date of Opinion: November 18, 2020)

Case No. A-6671 is an application by David and Sharon Anthony (the "Petitioners") for a variance from the requirement in Section 59-4.2.1.F.3.c of the Zoning Ordinance, which states that the maximum footprint of an accessory building on a lot where the main building is a detached house is 50% of the footprint of the main building. The Petitioners are proposing to construct an accessory building (garage) with a footprint that is 66.88% of the footprint of their house, necessitating a variance of 16.88%.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on 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 variance. Abutting neighbor Madeleine Wojciechowski also participated to express her concerns regarding the variance request.

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

**EVIDENCE PRESENTED**

1.     The subject property is Lot 1, Block A, Plat 19128 Conoy, located at 17621 Conoy Road, Barnesville, Maryland, 20838, in the AR Zone. It is a four-sided lot, just over an acre in size, located on the northwest side of Conoy Road. See Exhibits 1, 3, and 4.
2.     The Petitioners' Justification Statement ("Statement") states that the Petitioners took ownership of the subject property in 1993 and built their home "towards the top of a long and tapering lot, with a small area behind the house, some of which is a steep hill." The Statement states that at that time, the Petitioners intended to construct a detached garage in the proposed location – to the right of, and slightly behind, their home – but

had to put those plans on hold. It states that the Petitioners are now ready to move forward with the construction of a garage in that location, and that they intend to use it to store two vintage vehicles and to provide additional space for other storage needs (lawn and other outdoor maintenance equipment). The Statement indicates that the Petitioners considered building an attached garage, but determined that an attached garage would negatively affect their home's aesthetics. The Statement further indicates that a smaller garage would not provide them with the storage space they need. See Exhibits 3 and 4.

3. The Statement indicates that the proposed garage would not negatively impact the Petitioners' neighbors' use of their properties or their views, and that three immediate neighbors support the grant of the variance. It further states that:

Our home is situated in an agricultural area, and there are several acres separating our home from our neighbors' homes; additionally, every home on our Conoy Road has outbuildings, so our garage will not detract from the community's aesthetic or use. Further, its size is not excessive or an eyesore, and its construction causes no harm to neighbors.

See Exhibit 3. The Statement further states that "[t]he structure will be surrounded on two sides by trees and will not be largely visible by most neighbors." The record contains two letters of support. See Exhibits 7(a) and (b).

Regarding the impact of the proposed construction on neighboring properties, the Board also received a letter from Petitioners' abutting neighbor to the north, Madeleine Wojciechowski, who takes issue with some of the representations made by the Petitioners in their Statement, and asserts that the proposed construction will alter the view from her property and will exacerbate runoff issues. Ms. Wojciechowski requests a row of screening trees to shield the view of the proposed garage from her property. See Exhibit 10.

4. The Statement asserts that the proposed garage substantially conforms to the established or historic development pattern along Conoy Road, as follows:

The proposed garage structure conforms to the agricultural nature of our Conoy Road neighborhood and aligns with the types of outbuildings of other residents. The majority of houses on Conoy Road are complemented with accessory structures similar to or larger than our proposed garage.

5. With respect to the practical difficulty that full compliance with the footprint limitation in the Zoning Ordinance would pose, the Petitioners state the following:

A garage built within the 50% size of the home's footprint would not allow us to house the two vintage cars we now own and still have reasonable storage space to meet our family's needs. We would have to store cars and items outside the structure, potentially creating an eyesore for the community.

6. At the hearing, Petitioner David Anthony testified that when their house was built in 1992, they originally wanted a three and a half car garage, but that they are now requesting permission for a two and a half car garage. He stated that they are proposing to build this garage in the area where they currently park their cars. He noted that they have a couple of vintage vehicles.

Mr. Anthony testified that they are seeking to have steps inside their proposed garage instead of outside. He testified that space is an issue, and that they need the space the proposed garage would provide. Mr. Anthony testified that the proposed garage is an aesthetically pleasing building that would meet their needs and would fit the space available on their property.

7. Petitioner Sharon Anthony testified that the subject property is a tapering lot with a steep hill behind the house. Ms. Anthony testified that she and her husband are seeking to build a garage to meet their needs, and that without a garage, they have a practical challenge regarding vehicle storage. She testified that the proposed location is the only place they can fit the garage, adding that they had spoken with contractors about building an attached garage at 90 degrees to the rear of their house, but that such a garage could not extend far enough back because of the hill. Ms. Anthony asserted that both the shape of the property and the fact that they cannot build an attached garage constitute practical difficulties for her husband and her.

8. Regarding the potential for construction of an attached garage at 90 degrees to their home, Mr. Anthony testified that such a garage would take up most of their backyard. Mr. Anthony later testified in response to a Board question that another option would be to connect the proposed garage to the house with a conditioned breezeway, but he stated this option would "wall off" their back yard and would not be aesthetically pleasing.

In response to a Board question asking if any of their neighbors have accessory structures similar to the structure they are proposing, Mr. Anthony testified that the street is a mix of agricultural and residential properties. He testified that neighbors have built similar structures, and that he assumes they are agricultural structures. In response to a Board question asking if a variance of 16.88% from the 50% footprint limitation is the minimum necessary to meet the Petitioners' needs, Mr. Anthony testified that it was.

9 Madeleine Wojciechowski testified that Mr. Anthony notified her by email of his plans to seek a variance for the size of his proposed garage on September 16, 2020. She testified that she took the Petitioner at his word that the proposed garage would be "a little bigger" than allowed. She stated that when she reviewed the actual variance materials, she was struck by some of the representations made by the Petitioners. She elaborated on the representations with which she took issue.

Ms. Wojciechowski testified that the Petitioners carved out a hill and flattened it to form their yard and the parking area for their cars. She further testified that the

Petitioners constructed an addition to their house where they could have put a garage, and that this constitutes a self-created hardship. Ms. Wojciechowski testified that she has no issue with the location proposed for the garage provided the garage is of a size allowed by the Zoning Ordinance.

Ms. Wojciechowski testified that when the subject property was created, it changed the aesthetic appeal of her driveway entrance, and that she can see the Petitioners' rooftop and cars from her house. She testified that the subject property is not like other properties on the street because of its relatively small size, and because it sits closer to the street than the other houses. Ms. Wojciechowski testified that beyond the subject property, Conoy Road is agricultural in nature, and that eight of 15 properties have agricultural enterprises on site.

Ms. Wojciechowski testified that she is very concerned about changes to drainage and flow that the proposed construction might cause, and testified that there is already icing on their street because of drainage from the subject property and from her property. She further testified that road repairs are needed because of this drainage and because of springs, and that the cost of road repairs is assessed based on property size. Ms. Wojciechowski took issue with the Petitioners' claim that proposed garage would be buffered by trees, and testified that she will look at this garage every time she goes up her driveway.

Ms. Wojciechowski testified that the record includes a letter of support from Mr. Anthony's mother, who she said had recently sold the property abutting the subject property.

10. In response to Ms. Wojciechowski's testimony, Mr. Anthony testified that they legally built their house on the subject property 27 years ago. He testified that construction of the proposed garage would not change the existing topography except as needed to construct the footings, and that the existing drainage issues emanate from an underground spring on Ms. Wojciechowski's property.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and the evidence of record, the Board finds that the requested variance to permit an accessory structure (garage) with a footprint that is 66.88% of the footprint of the principal dwelling must be denied. Section 59-7.3.2.E of the Montgomery County Zoning Ordinance, "Necessary Findings," provides that in order to grant a variance, the Board must find that:

- (1) denying the variance would result in no reasonable use of the property; or
- (2) each of the following apply:
  - a. one or more of the following unusual or extraordinary situations or conditions exist:
    - i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

- ii. the proposed development uses an existing legal nonconforming property or structure;
  - iii. the proposed development contains environmentally sensitive features or buffers;
  - iv. the proposed development contains a historically significant property or structure; or
  - v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;
- b. the special circumstances or conditions are not the result of actions by the applicant;
- 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;
- d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and
- e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Section 59-7.1.1 of the Zoning Ordinance provides that the applicant has the burden of production and has the burden of proof by a preponderance of the evidence on all questions of fact.

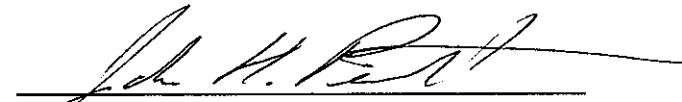
The Board notes that there was no attempt in this case to argue the standard in Section 59-7.3.2.E.1 of the Zoning Ordinance. For that reason, the Board must analyze the instant case under Section 59-7.3.2.E.2 of the Zoning Ordinance. Section 59-7.3.2.E.2 sets forth a five-part, conjunctive ("and") test for the grant of a variance, and thus the Board cannot grant a variance if an applicant fails to meet any of the five elements required by this Section.

The Board finds that despite their testimony regarding the slope and shape of the subject property, the Petitioners have not demonstrated that their property has any unusual or extraordinary situations or conditions that would prevent the construction of a garage with a footprint that would comport with the limitation set forth in Section 59-4.2.1.F.3.c of the Zoning Ordinance, for the purposes of satisfying Section 59-7.3.2.E.2.a. Specifically with respect to Section 59-7.3.2.E.2.a.v of that Section, while Mr. Anthony has testified that other properties on Conoy Road also have large accessory structures, he has also testified that he believes these structures to be agricultural in nature, which the Board finds distinguishes them from the Petitioners' proposed garage. The Board notes that Section 59-4.2.1.F.3.c of the Zoning Ordinance exempts buildings for agricultural use from the footprint size limitation. Having found that a garage that complies with the footprint limitation could be constructed on this property, the Board cannot find that the strict application of the footprint limitation causes the Petitioners a practical difficulty due to an unusual condition of the property, or would unreasonably prevent them from using their property for a permitted purpose. In addition, the Board finds that the size of the proposed garage was determined by the Petitioners and is for their convenience, to house their cars and lawn 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 Mary Gonzales, with Bruce Goldensohn, Vice Chair, Katherine Freeman, and Richard Melnick 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 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.