

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6673

PETITION OF WILLIAM MARTIN AND PAULE AUDEBERT

OPINION OF THE BOARD

(Hearing Date: December 2, 2020)
(Effective Date of Opinion: December 9, 2020)

Case No. A-6673 is an application by Petitioners William Martin and Paule Audebert for a variance from the requirement in Section 59-4.4.9.B.2.a of the Zoning Ordinance that accessory structures be located behind the rear building line of the principal building. The Petitioners are proposing to construct an accessory structure (pergola) forward of the rear building line.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, December 2, 2020. All participation was done via Microsoft Teams. Petitioner William Martin participated in support of the requested variance. He was assisted by his architect, Stephen Muse.

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

EVIDENCE PRESENTED

1. The subject property is Lot P2, Block 12, Section 4 Chevy Chase Subdivision, located at 4109 Rosemary Street, Chevy Chase, Maryland, 20815, in the R-60 Zone. The subject property has an area of just over 6,000 square feet. Three sides of the property front on public streets (north, south, and east). The Petitioners' Statement of Variance Justification ("Statement") refers to the property as "unusually shallow" with an "extremely shallow" rear yard, and states that the property is approximately 100 feet wide and between 55 and 65 feet deep. See Exhibits 1, 3, and 4(b).

2. The subject property contains an existing house that was built in 1926. The rear façade of the house was constructed approximately three (3) feet from the property's western lot line, the only lot line not fronting on a street. As noted in the Petitioners'

Statement of Variance Justification ("Statement"), "based on the uniqueness of the lot¹ and the location of the house, the rear yard is approximately three feet deep. This depth makes it impossible to locate an accessory structure behind the rear building line." Accordingly, the Statement asserts that for the Petitioners to have any kind of private or semi-private exterior garden space would require using space on the property that fronts on one of the adjacent streets. See Exhibit 3.

3. The Petitioners purchased the property in 2017. To address the practical difficulty associated with the lack of semi-private exterior space on the subject property, the Petitioners are proposing to construct a pergola on an existing 233 square foot terrace that is located on the north side of their home. The Statement notes that the proposed pergola will match the size of the existing terrace, and will be built using materials that are compatible with the existing house. The Statement describes the proposed pergola as an "open structure for screening" that will not have a roof, and contrasts the nature of the proposed structure with a solid fence or other structure that has solid walls and a roof. The Statement notes with respect to the size of the proposed structure that a much larger accessory structure would be allowed on the subject property without the need for variance relief, and thus concludes that "[b]oth aesthetically and functionally, the Petitioner proposes a reasonably sized structure..." See Exhibit 3. The Petitioners include plans, elevations, and details for the proposed pergola with their submission. See Exhibit 5(a)-(d).

4. The Statement at Exhibit 3 states that the proposed pergola will not have an adverse impact on neighboring properties, as follows:

The intended use of the accessory structure is typical of a single-family residence, and does not change the present use of the terrace space. On the adjacent lot, and separated by a driveway, an exterior terrace space is similarly located and used in a similar way. The accessory structure is an open sided pergola without a roof, permitting the flow of air and light. The design and materials are consistent with the existing style of the home. Thus, granting the variance will not adversely affect abutting or confronting properties.

5. The Statement concludes that "the application, drawings, and supporting documents demonstrate the unusual geometry of the lot and atypical placement of the residence, and that the requirements for accessory structures disproportionately affect the reasonable use and enjoyment of the exterior space of this property." See Exhibit 3.

6. At the hearing, Stephen Muse testified that he lives on Stanford Street across the street from the subject property. He testified that the house on the subject property is a "good house" that was built in 1926 in the Spanish Revival style. He testified that he did not want to see that house torn down and replaced, and as a result, that he and his son purchased the subject property and owned it for about a year, during which time they restored the original home and then offered it for sale. Mr. Muse testified that at the time

¹ The Statement similarly references the property's "geometry" and the placement of the house as causing the property's unusually shallow rear yard. See Exhibit 3.

of his purchase, there was a brick terrace on the property that was twice the size of the current terrace and was screened with lattice fencing. He testified that he removed the lattice fencing and reduced the size of the terrace. Mr. Muse testified that he chose to locate the proposed pergola on the north side of the existing house in part because the north side of the abutting property to the west, which is a through lot with frontage on Rosemary and Stanford Streets and a house addressed on Rosemary Street, presents as an open lot.

Mr. Muse testified that he has worked on over 400 residential projects, and that the subject property is the most unusual property with which he has worked. Elaborating on this, Mr. Muse testified that the property has streets on three sides, and a backyard that is only three feet deep. He testified that the proposed pergola cannot be constructed behind the rear building line of the existing house because with a depth of three feet, there is not sufficient room in that location. Mr. Muse testified that there is a park across the street to the east of the subject property.

7. William Martin testified that he posted two large variance signs on the property, and that he had heard only positive comments about his proposed construction from his neighbors. Mr. Martin further stated that he was not aware of any objections. In response to Board questions about the impact of the proposed pergola on neighboring property owners, Mr. Martin testified that his neighbor to the rear has commented that he has a beautiful patio, and that he believes that neighbor would be supportive of the proposed pergola.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variance, needed to allow the construction of an accessory structure (pergola) forward of the rear building line, complies with the standards set forth in Section 59.7.3.2.E.2 of the Zoning Ordinance and can be granted, 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 unusually shallow shape, much wider than it is deep, with three of four sides fronting on public streets. The Board further finds that the subject property contains an existing house that was built in 1926, before the enactment of the County's first Zoning Ordinance, and that the area behind the home's rear building line has a depth of only three (3) feet. The Board finds that this is an exceptionally shallow area that does not allow for the construction of accessory structures in compliance with the development standards of the Zoning Ordinance, and that this

combination of circumstances constitutes an unusual or extraordinary condition peculiar to the subject property, in satisfaction of Section 59.7.3.2.E.2.a.i of the Zoning Ordinance.

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 acquired the subject property in 2017, long after the construction of the original house in 1926, and are not responsible for the configuration of the property or the shallowness of the area located behind the house's rear building line, which the Board again observes is the only area of the property on which accessory structures can be built without variance relief. Thus the Board finds that the special circumstances or conditions pertaining to this property are not the result of actions by the Petitioners, in satisfaction of Section 59.7.3.2.E.2.b.

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 allowing the proposed accessory structure (pergola) to be located forward of the rear building line is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would entail, since the area behind the rear building line of the existing house is so shallow that it effectively precludes the location of any accessory structures on the subject property without variance relief. Thus the Board finds that Section 59.7.3.2.E.2.c of the Zoning Ordinance is satisfied.

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 construction of the proposed accessory structure (pergola) would continue the residential use of the property and will not substantially impair the intent and integrity of the Bethesda Chevy Chase Master Plan. Thus the Board finds that Section 59.7.3.2.E.2.d of the Zoning Ordinance is satisfied.

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.*

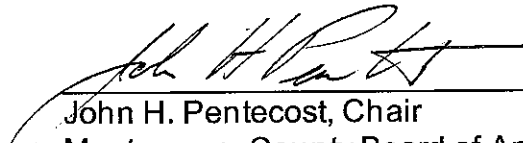
The Board finds that construction of the proposed accessory structure (pergola) in a location forward of the rear building line, on an existing terrace in an area of the subject property that is north of the existing house, will not be adverse to the use and enjoyment of abutting and confronting properties. In support of this, the Board notes the testimony of Mr. Muse that the northern portion of the abutting lot to the west presents as an open lot, and that the confronting property to the east is a park. The Board further notes the testimony of Mr. Martin that he has only heard positive comments from his neighbors since posting his variance sign. Finally, the Board notes that the proposed structure is open in nature and reasonable in size. Thus the Board finds that Section 59.7.3.2.E.2.e of the Zoning Ordinance is satisfied.

Accordingly, the requested variance to allow the proposed accessory structure (pergola) to be located forward of the rear building line is **granted**, subject to the following conditions:

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

Therefore, based upon the foregoing, on a motion by John 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 9th day of December, 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.