

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6703  
PETITION OF DANIEL HART AND MONICA LEE**

**OPINION OF THE BOARD**

(Opinion Adopted September 29, 2021)  
(Effective Date of Opinion: October 6, 2021)

Case No. A-6703 is an application for a 2.60 foot variance necessary for the proposed construction of a two-story rear addition within 4.40 feet of the side lot line. The required setback is seven (7) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

On Wednesday, June 9, 2021, the Board of Appeals held a remote hearing on the Petitioners' original variance application. Petitioners Daniel Hart and Monica Lee participated in support of the requested variance, and abutting neighbor John Jester participated in opposition. In an Opinion dated June 18, 2021, the Board denied the Petitioners' variance request. Following receipt and consideration of a timely request for reconsideration with supporting materials from the Petitioners, on August 20, 2021, the Board issued a Resolution granting reconsideration of this variance request and Notice of the instant hearing.

Due to COVID-19, on Wednesday, September 29, 2021, the Board of Appeals held a remote hearing to reconsider the Petitioners' variance application. All participation was done via Microsoft Teams. Petitioners Daniel Hart and Monica Lee again participated in support of the requested variance. Abutting neighbor Nelson Carrasco was present at the meeting but did not participate.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 13, Block 3, Pinecrest Subdivision, located 6409 4<sup>th</sup> Avenue in Takoma Park, Maryland, 20912, in the R-60 Zone. It is a narrow,

rectangular lot, 42.87 feet wide<sup>1</sup> by 150 feet deep, with an area of 6,427 square feet. See Exhibit 4. The subject property is located in the portion of Takoma Park that was originally located in Prince George's County, and was incorporated into Montgomery County in 1997. See Exhibit 1. SDAT indicates that the Petitioners purchased the subject property in 2020.

2. The Petitioners' original Justification Statement ("Statement") states that the house on the subject property was built in 1930, and is on a "steep hill." The Statement states that the house is 30.5 feet wide, and that there is a 7.7-foot wide driveway on one side of the house, and a 4.4-foot "strip of earth" on the other side. The Statement explains that "[t]he home was built close to the property line on one side, leaving enough room for a driveway on the other," and that "[t]here are no stairs to access the house, only the steep driveway." The Statement proceeds to note that due to the steepness of the driveway, "any access to the property would require full use of the driveway, including area for a turnaround," and the Petitioners' variance application states that vehicles must "turn around behind the house to safely exit the driveway." See Exhibits 1 and 3.
3. The Petitioners' home is located 4.4 feet from the property's right side lot line, and the rear addition they are proposing will maintain this line. See Exhibits 3 and 4. The Petitioners' variance application states that if the variance is denied and the proposed addition is constructed in accordance with the required setback, the area between the addition and the right side lot line would "create a void on the property that would only be home to inert material (mulch, crushed gravel, etc.)." The application further states that denial of the variance would limit vehicular access to the property using the driveway, thereby leaving the Petitioners without "room to perform daily tasks like unloading groceries and building materials and helping children or elderly family members access the house." See Exhibit 1. The Statement states that the minimal 2.6-foot variance would resolve these issues while at the same time allowing the Petitioners to maintain the line created by the right side of their existing house. See Exhibit 3.
4. The Petitioners requested reconsideration of the Board's variance denial based on new information that could not reasonably have been presented at their original hearing, providing a topographical map, a letter of support from one of their neighbors, several pictures showing the slope of their property, and a rendered boundary survey marked to show existing tree cover. See Exhibits 11(b)-(f), 12, and 17.

The topographical map provided by the Petitioners shows a 14-foot increase in elevation from the base of the driveway to the top, and a 32-foot increase in elevation from the front of the property to the rear. See Exhibit 17. The photographs provided by the Petitioner show the extremely steep nature of the Petitioners' driveway and front yard, the relatively level topography in the area they

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<sup>1</sup> The Board notes that in the R-60 Zone, the minimum width at the front building line is 60 feet, thus illustrating by comparison how narrow this property is with its width of 42.87 feet.

propose for their turnaround, and the trees toward the rear of their property. See Exhibits 11(c)-(h). The rendered boundary survey shows the locations and relative sizes of the trees behind the existing house. See Exhibit 11(b).

As noted above, the Petitioners also provided a letter of support from their abutting neighbor to the left. See Exhibit 12. That neighbor compliments the Petitioners on the improvements they have made to the subject property, recognizes the need for the Petitioners to expand the existing house, and expresses support for the grant of the requested variance because it would allow for expansion of the Petitioners' home without an increase to its height. Notably, this neighbor's letter further states that he "would not support [the Petitioners] building a turnaround spot for their vehicle further back on the property, as that would require taking down several trees, whose removal would be detrimental to our local wildlife and to natural look of our neighborhood." See Exhibit 12.

5. Subsequent to the grant of reconsideration, the Petitioners provided the Board with printouts from the DPS website of building permits issued for four homes in the neighborhood that have been recently built or added on to. See Exhibits 16(a)-(d). They also submitted photographs of several such homes. See Exhibits 15(a)-(i).
6. At the hearing, Petitioner Monica Lee testified that the variance request meets four of the five tests set forth in Section 59.7.3.2.E.2.a of the Zoning Ordinance, the first element of the variance test.

Ms. Lee testified that the property's narrowness and slope satisfy Section 59.7.3.2.E.2.a.i of the Zoning Ordinance. She presented a photograph of a vehicle on their driveway which she testified illustrates the narrowness of the driveway and the extremely limited space for a vehicle to pass along the left side of the house. In response to a Board question asking if the driveway was flush against the house, such that the driver might lose his side mirror if he erred, Ms. Lee testified that she has to fold in the mirror when using the driveway, and has to get out of the car to move the drainage pipe. In attempting to demonstrate the slope of the property and driveway, Ms. Lee showed the Board a video of their truck spinning its tires midway up the driveway while trying to back up the driveway in two-wheel drive. Mr. Hart confirmed in response to Board questions that the tires were not bald, and stated that they have to back up the driveway so that they can see traffic when they drive down the driveway to exit the property. Ms. Lee oriented the Board to the topographic map, in the record at Exhibit 17, and testified that the property has an elevation of 180 feet at the base of the driveway, 194 feet at the top of the driveway, and 212 feet at the rear of the property. She testified that this map illustrates the steepness and narrowness of their property. Mr. Hart testified that the extending the driveway to the rear of the property was not possible due to the elevation change.

Ms. Lee testified that the proposed development uses an existing legal nonconforming structure, in satisfaction of Section 59.7.3.2.E.2.a.ii of the Zoning

Ordinance. In support of this, she testified that the existing house was built in 1930, and that it is located less than five feet from the property line. She testified that the house was built before the imposition of the seven (7) foot side setback. Mr. Hart testified that the property was previously located in Prince George's County.

Ms. Lee testified that the proposed development contains environmentally sensitive features or buffers, in satisfaction of Section 59.7.3.2.E.2.a.iii of the Zoning Ordinance. In support of this, she testified that there is a variety of trees and other vegetation on the property, and that in keeping with Takoma Park neighborhoods, as well as their own desires and the desires of their neighbors, they would like to keep as many trees as possible, highlighting one tree in particular that is located behind the driveway on the left side of the property. Mr. Hart testified that Takoma Park does a tree impact assessment in connection with building permits issued by Montgomery County. He testified that there is a protected red oak with a 222" girth at the top of the existing driveway, and that they cannot protect the root zone of that tree if they continue the driveway any further back on the property than is proposed. Mr. Hart testified that there is a second red oak that is also protected in the line of five trees shown behind the house on Exhibit 11(b) and in the photograph at Exhibit 11(h).

Finally, Ms. Lee testified that their proposed development is in keeping with the development pattern of their street and neighborhood, in satisfaction of Section 59.7.3.2.E.2.a.v. of the Ordinance. In support of this, Ms. Lee testified that they had provided the Board with photographs of other houses in their neighborhood that have additions or have been rebuilt; she displayed these photographs on her screen for the Board members. See Exhibit 15(a)-(i). Mr. Hart narrated the locations of the various homes displayed, and testified that they are all within a block and a half of their home, and have building permits that were recently granted. He highlighted for the Board the apparent close proximity of the various houses to each other and to their shared property lines. In response to a Board question asking if there was a pattern of homes with limited "elbow room" in this neighborhood, Mr. Hart answered in the affirmative.

Ms. Lee testified that the unique circumstances pertaining to their property are not their fault, noting that the house was built in 1930, less than 7 feet from the property line, and that it was not located in Montgomery County at that time. She testified that they are not seeking to build a house that would change the way their neighborhood looks, that they don't want to go any closer to the property line than is necessary, and that they do not want to build up. She testified that the 2.6 foot variance is the minimum needed to accomplish this, and that it would not change the look of the house. Ms. Lee testified that the proposed changes are consistent with what others in the neighborhood have done with their houses, and will not hurt the neighborhood, but rather would improve both the neighborhood and their house.

Ms. Lee testified that her neighbor to the left is very supportive of the variance request, and she stated that in its current condition, their property is an eyesore. Ms. Lee testified that this neighbor would like to have the turnaround in the location proposed, and does not want the driveway extended any farther back in the yard as that would jeopardize the existing trees. She testified that the house on the subject property is completely unlivable as is, with Mr. Hart later noting that the house has just four rooms. Mr. Hart stated that there was one letter of opposition to the variance request, presumably referring to Exhibit 7. Ms. Lee offered that despite this objection, she hoped the Board would recognize that the proposed addition would add value to that person's property and others in the area.

In response to a Board question asking if the proposed addition would maintain the line created by the east façade of the house, Mr. Hart testified that it would, noting that visually, looking from the street, it would be one continuous line. In response to a Board question asking if the proposed window wells would extend up from the ground, Mr. Hart testified that they are below ground level. Finally, in response to a Board question asking what the proposed turnaround would be made of, Mr. Hart testified that it would have a crushed gravel base with pea gravel on top. He reiterated that this area was necessary to make the house accessible for their parents, who will hopefully visit after they move in and could not negotiate the steep driveway.

## **FINDINGS OF THE BOARD**

In its June 18, 2021, Opinion denying the Petitioners' variance request, the Board found that because there was room on the subject property to accommodate the proposed addition and, if necessary, a driveway turnaround, without the need for variance relief, the Board could not find that the strict application of the right side setback would cause 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 found that the location of the proposed addition was determined by the Petitioners to maximize usable green space behind their house and allow for a turnaround in an area of their choosing, and was thus for their convenience.

Having reviewed the additional evidence provided by the Petitioners, the Board now finds that due to their property's significant slope and existing trees, the Petitioners could not construct a driveway turnaround farther towards the rear of their property, as would be needed if their proposed addition were located in conformance with the required right side setback. Thus the Board finds that the location of the proposed turnaround, which the Board notes is needed to overcome the challenges posed by the extraordinary steepness of the property's front yard and driveway, and further compounded by the property's narrowness, was determined by intrinsic features of this property and was not simply for the Petitioners' convenience. Following from this, the Board finds that the location of the proposed addition, flush with the right side of the existing house, was necessitated by factors inherent to this property (severe slope, narrowness, and existing tree cover).

Accordingly, based on the binding testimony and the evidence of record, the Board now finds that the requested side lot line 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, based on the Application, Statement, and Site Plan, that the subject property, with a consistent width of less than 43 feet, is exceptionally narrow for the R-60 Zone, which has a minimum 60-foot lot width at the front building line. The Board further finds that the existing house sits on a very steep hill, and that this slope, coupled with the narrowness of the property, complicates use of the driveway and necessitates the use of a turn-around behind the home to allow safe egress. See Exhibits 1, 3, 4, 11(c)-(f), and 17. The Board further finds, based on the testimony of the Petitioners, that due to the property's slope and the presence of protected trees, conditions graphically illustrated on the topographic map and rendered boundary survey, the driveway cannot be extended to the rear of the property for the purposes of constructing a turnaround. See Exhibits 11(b) and 17. The Board finds that these conditions, taken together, constrain the area available for construction of the proposed addition, and constitute an unusual condition peculiar to this property, in satisfaction of this element of the variance test.

*Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*

The Board finds, based on the photographs in the record at Exhibits 15(a)-(i) and the testimony of the Petitioners, that several homes in the immediate neighborhood have been renovated or reconstructed, and that many of those homes appear to be located very close to their side lot lines. The Board further finds that the Petitioners' proposed renovation to their home would substantially conform with this established pattern of renovated or reconstructed homes being located in close proximity to each other and to their side lot lines, and thus finds that this element of the variance test is satisfied.

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 purchased this property in 2020, and did not have control over the narrowness, slope, or tree growth on this property. The Board further finds that the Petitioners did not construct or have control over the placement of the original house, close to the property line in the right side setback. Finally, the Board finds that the Petitioners had no control over the renovation and reconstruction of nearby

homes. Thus the Board finds that the special circumstances or conditions applicable to this property are not the result of actions by the Petitioner.

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 requested variance is the minimum necessary to permit an addition that aligns with the right side wall of the existing house, and to overcome the practical difficulties relating to the loss of a needed driveway turnaround that would result from placement of the proposed addition in accordance with the required side setback because of the narrowness, slope and protected trees on the property. In addition, the Board finds that the requested variance is the minimum necessary to comport with the established pattern of development in this neighborhood. Thus the Board finds that requested variance is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would otherwise impose, in satisfaction of this element of the variance test.

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 will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the Takoma Park Master Plan (2000) which seeks, among other things, "to support stable residential neighborhoods."

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 allowing the construction of the proposed addition will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test, because it will bring the house more in line with the neighborhood, will not bring the house any closer to the right side property line than is already the case, and will allow for an expansion of the Petitioners' house without an increase in its height. See Exhibits 3 and 4. The Board notes that the record contains a letter of support from the Petitioners' abutting neighbor to the left, who states that the existing house is too small for a family, and expresses support for the grant of the requested variance because it would allow for expansion of the Petitioners' home without an increase to its height. See Exhibit 12. The Board notes that the record also contains a letter from the abutting neighbor to the right asserting that depending on how far back the proposed addition extends, the addition may bring the Petitioners' home closer to the shared property line than the existing house. See Exhibit 7. The Board finds, based on the Site Plan, that the right rear corner of the existing home is 4.4 feet from the side lot line, and that the right rear corner of the proposed addition will also be 4.4 feet from the side lot line, and accordingly that the Petitioners' proposed addition will not be any closer to the shared lot line than the existing home. See Exhibit 4. The Board also recognizes

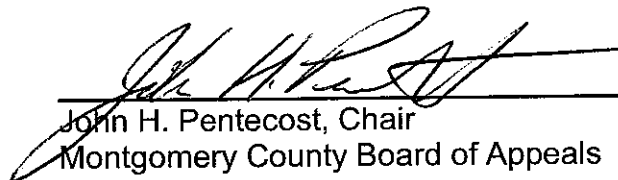
that this neighbor testified in opposition to the grant of the requested variance at the original hearing, expressing, among other things, concern about the effect of the proposed construction on the value of his property. While the Board is sympathetic to this, in light of the Petitioners' testimony that their house is an eyesore and currently unlivable, and the letter at Exhibit 12 expressing support for the improvements Petitioners are making to their property and stating that the existing house is too small for a family, the Board finds that granting the requested variance will allow for needed improvements to this property and as such, will be a positive change for this neighborhood and will not be adverse to the use and enjoyment of neighboring properties.

Accordingly, the requested side lot line variance to allow the construction of the proposed addition is granted, subject to the following conditions:

1. The 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 H. Pentecost, Chair, seconded by Mary Gonzales, with Bruce Goldensohn, Vice Chair, Richard Melnick, and Caryn Hines 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 6th day of October, 2021.



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.