

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6716

PETITION OF JEFFREY AND KIMBERLY VAROS

OPINION OF THE BOARD

(Hearing Held: October 13, 2021)

(Effective Date of Opinion: October 20, 2021)

Case No. A-6716 is an application by Jeffrey and Kimberly Varos (the "Petitioners") for two variances needed for the proposed construction of a second-story addition. The proposed construction requires a variance of 0.68 feet as it is within 4.32 feet of the right side lot line. The required setback is five (5) feet, in accordance with Sections 59-4.4.9.B.2 and 59-7.7.1.D.3 of the Zoning Ordinance. In addition, the proposed construction requires a variance of 0.8 percent because it exceeds the maximum in-fill lot coverage, which is thirty (30) percent, in accordance with Section 59-4.4.1.B of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on October 13, 2021. All participation was done through Microsoft Teams. Petitioners Jeffrey and Kimberly Varos participated in support of the requested variances, assisted by their contractor, Harris Woodward.

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

EVIDENCE PRESENTED

1. The subject property is Lot 26, Block E, Blair Subdivision, located 819 Violet Place, Silver Spring, Maryland, 20910 in the R-60 Zone. It is a narrow interior lot, rectangular in shape, with a width of 40 feet and a depth of 100 feet deep, giving it a lot size of 4,000 square feet. See Exhibits 1, 3, and 4. The R-60 Zone has a minimum lot size of 6,000 square feet. The lot was recorded in 1922. See Exhibits 1 and 8(b).

2. The Petitioners purchased the subject property in 2014. See Exhibit 3.
3. Per the Justification Statement ("Statement"), the subject property contains an existing house, built in 1928, which extends approximately 0.68 feet into the required 5-foot right side setback at its closest point, and is a legal, nonconforming structure. See Exhibits 3 and 6. This original portion of the house has a concrete block foundation wall that can support the proposed second story addition. The house also has an existing one-story rear addition, built sometime before 1950. The rear addition cannot bear the weight of the proposed second story. See Exhibit 3.
4. The Petitioners are seeking to add a modular second story addition to their home. The Statement at Exhibit 3 explains the challenges and nuances related to the installation of this addition and the resultant need for variance relief, as well as the practical difficulty if that relief is not granted, as follows:

The second level, load bearing wall needs to be placed over the existing main level load bearing wall. If the second level was designed to start approximately 8" in to clear the 5' side-setback, it would place loads on the first level ceiling making the project structurally deficient. The only way to remediate this would come with substantial cost due to demolition and rework of the existing main level and basement to install new support columns, making the project impractical.

* * *

The addition was designed to conform to the front, left-side, and rear setbacks required for infill development. However, since the structure of our existing house already encroaches on the right-side setback by 0.68 feet, and the external weight bearing wall of the addition needs to be built right over the external weight bearing wall of the main level, the addition violates this setback. We looked at what it would take to build the second level approximately 8" in, however that would require significant demolition to accommodate additional support beams in the main level and finished basement, which would make this project impractical. Due to these factors, we kept the design to build straight up from the existing wall.

Also, when erecting a modular home on top of an existing house structure, it is highly recommended to not vary the width of each module, which means that the modules need to be as wide as the widest part of the existing main level. This design creates a cantilever overhang over the left side of the house at the front and rear, which increases the coverage. To accommodate the needed room for the additional rooms, the length was also extended to go over the rear of the house. However, as mentioned the rear section cannot bear the weight of the addition without rebuilding it, greatly increasing the time and cost of this endeavor. Since we had ample room before we ran into the rear setback limitation, we decided to extend it an additional 2 ft beyond the existing house so that new 4x4 ft footers could be installed for new support columns without impacting the existing house structure. We also designed a small 2x12 ft bumpout on the front of the house so

that it conforms better aesthetically with the existing neighborhood. While these design decisions created a floor plan that we are very happy with, it ended up resulting in the coverage exceeding the 1,200 sqft lot coverage limit (30% of 4,000 sqft lot) by 31 sqft, or 0.8%.

5. The Statement asserts that with the requested lot coverage relief and construction of the proposed addition, the house will conform with the existing development pattern in the neighborhood, as follows:

Over the years, many of the lots on Violet PI have been re-zoned to contain more area, enabling them to build larger houses with coverages over 1,200 sqft. This proposed addition increases the property coverage of 819 Violet PI from 1093 sqft to marginally over the coverage limit by 0.8% or 1,231 sqft increase of this addition. This coverage is less than many of the surrounding properties and would conform with the traditional development pattern of the street. For example, lot P13, which is two lots over, is now 7,632 sqft and has a house with a coverage of 1,872 sqft.

See Exhibit 3. The Statement notes elsewhere that the house on the property adjacent to the subject property is also located 4.37 feet from the side lot line, and states that “[i]n the past, multiple lots around this property have acquired additional adjacent land, which has increased their property area and their effective coverage allowance.” The Statement further states that “many of the houses on the other side of Violet PI have been converted to 5,000 sqft or larger lots, thus many of the houses in this neighborhood can have coverages of 1,500 sqft or more.” See Exhibit 3.

6. The Statement states that the proposed construction will not negatively impact the Petitioners’ right side neighbor because it will maintain the setback of the existing house. The Statement further notes that the variance from the lot coverage restriction will similarly not impact the use and enjoyment of abutting and confronting properties. The Statement indicates that the Petitioners have discussed their plans with many of their neighbors. See Exhibit 3. The record contains seven letters of support from the Petitioners’ neighbors, including their abutting neighbors to the right and the left, and their confronting neighbors, urging approval of the requested variances. See Exhibits 7(a)-(g). The record contains no letters of opposition.

7. At the hearing, Mr. Varos testified that he and his wife have lived in the house on the subject property since 2014, and that the house was built in 1928. He testified that they love the neighborhood and would like to stay, but that the house is small, and that for a variety of reasons, including safety, they would like to expand it. Mr. Varos testified that they are seeking to “build up” rather than expanding the main level of the house. He testified that they had spoken with all of the adjacent neighbors, except those behind them (noting that that house was recently sold), and that he hoped his neighbors had sent in letters of support. See Exhibits 7(a)-(g). Mr. Varos testified with respect to lot coverage that after some misunderstandings about what was and was not included in that calculation, the proposed addition wound up being 31 square feet over the allowed infill lot coverage. He testified that it would be very difficult to scale the project back and

remove those 31 square feet without destroying the existing house. In response to a Board question asking what the front of the house would look like with the addition, Mr. Varos shared a rendering of the house with the proposed addition, which he later emailed to the Board for inclusion in the record.

8. Mr. Woodward testified about the structural aspects of installing a second floor on top of an existing home, noting that whether an addition is stick-built or modular, it is essential that the walls line up for load bearing purposes. He testified that the original 1928 house was built approximately 8 inches over the right side setback line, and that the second floor is designed to bear on the original first floor wall and the basement below. Mr. Woodward testified that if the addition were moved inward 8" to meet the right side setback, it would bear on the ceiling joist, and support columns would have to be installed all the way to the basement because a ceiling joist cannot bear the weight of the proposed addition.

Mr. Woodward testified that on the left side of the house, the addition would be partially cantilevered because of an existing two foot bumpout on that side that was similar to a chimney. He testified that the addition will bear on that bumpout and will be structurally cantilevered on that side, noting that for bearing purposes, you can move a wall for a second story addition farther out than the existing first floor wall, but that you cannot move it farther in. Mr. Woodward testified that the eaves will project about 10 inches from the house, and that this is allowed under the Zoning Ordinance.

FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the requested variances can be granted. The requested variances comply 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 at 4,000 square feet, the subject property is significantly substandard for the R-60 Zone, which has a 6,000 square foot minimum lot size. See Exhibits 1, 3, and 4. The Board finds that this constitutes an unusual condition peculiar to this property, in satisfaction of this element of the variance test.

Section 59-7.3.2.E.2.a.ii. - the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the proposed development uses an existing legal nonconforming structure which was built in 1928 and extends approximately 0.68 feet into the right side setback. See Exhibits 3, 4, and 6. The Board further finds that the Petitioners are proposing to construct a second-story addition directly on top of the

existing home, including its nonconforming side wall. Accordingly, the Board finds that the application satisfies this element 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;*

The Board finds that the subject property was recorded in 1922 and that the existing, original house on the subject property was built in its current location in 1928. The Board further finds that the Petitioners did not purchase this property until 2014. Thus the Board finds that the Petitioners took no actions to create the special circumstances or conditions peculiar to this property, in satisfaction of this element of the variance test.

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 0.68 foot (8") variance from the right side setback would allow the proposed second floor addition to be installed directly over the home's existing right side wall, and would not extend any further into the right side setback than the existing house, which has been in place since 1928. The Board further finds that without the grant of this variance, the Petitioner could not use the existing right side bearing wall as support for the proposed second floor, and that placement of the proposed addition in compliance with the right side setback would necessitate the installation of support columns in the existing home and finished basement in order to withstand the addition's weight. Thus the Board concludes that compliance with the required side lot line setback, which is violated by the existing nonconforming house, would pose a practical difficulty for the Petitioners, and that the grant of the requested 0.68 foot variance is the minimum necessary to allow construction over the existing structure and therefore to overcome the difficulties that full compliance with the Zoning Ordinance would impose.

The Board further finds that the small, substandard size of the subject property causes the infill lot coverage restriction in the Zoning Ordinance to have an unusually burdensome impact on the subject property, posing a practical difficulty for the Petitioners. The Board finds that the additional 0.8% of coverage being sought by the Petitioners (31 square feet) is the minimum needed to allow the installation of a modular addition with a consistent width, as is recommended, on top of this existing home without demolishing the existing rear addition, and thus to overcome the difficulty posed by the application of the Zoning Ordinance to this substandard property, 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; and*

The Board finds that the proposed construction will continue the residential use of this property, consistent with the recommendations of the East Silver Spring Master Plan, which seeks to "[s]ustain and enhance residential neighborhoods." Thus the Board finds that this element of the variance test 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.

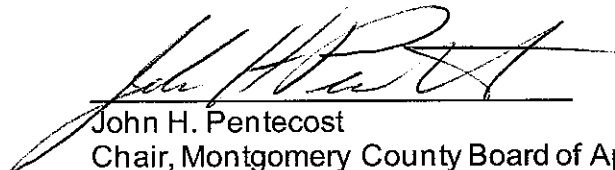
The Board finds, based on the testimony of Mr. Varos, that he and his wife have spoken with most of their neighbors, and that their neighbors support the proposed addition. The Board notes that the record contains seven letters of support for the proposed construction, and no letters of opposition. In addition, the Board finds, per the Justification Statement, that the proposed addition will not increase the existing encroachment into the side setback. On the basis of the foregoing, the Board finds that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variances needed to allow the proposed construction of a second floor addition are **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(a)-(c).

Therefore, based upon the foregoing, on a motion by Caryn Hines, seconded by Richard Melnick, with John H. Pentecost, Chair, Bruce Goldensohn, Vice Chair, 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 20th 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.