

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**<http://www.montgomerycountymd.gov/boa/>**

**Case No. A-6720**

**PETITION OF MITCHELL TROPIN**

**OPINION OF THE BOARD**

(Opinion Adopted November 10, 2021)  
(Effective Date of Opinion: November 19, 2021)

Case No. A-6720 is an application for a variance needed for construction of a one story addition to an existing house. The proposed construction requires a variance of 1.50 feet as it is within 13.50 feet of the side lot line (side street lot line). The required setback is fifteen (15) feet, in accordance with Section 59-4.4.9.B of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, November 10, 2021. All participation was done via Microsoft Teams. Petitioner Mitchell Tropin participated in support of the requested variance. His wife was also present. The Tropins were assisted by Richard J. Vitullo, AIA.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 17, Block J, Blair Section 2 Subdivision, located 7710 Chicago Avenue in Silver Spring, Maryland, 20910, in the R-60 Zone. The property is a four-sided corner lot with a trapezoidal shape, bordered on the south by Chicago Avenue, along which the property has 101.60 feet of frontage, and on the west by Islington Street, along which the property has 64.40 feet of frontage. The property has an area of 5,542 square feet, which is substandard for the R-60 Zone. See Exhibits 3 and 4(a)-(b).

2. The subject property contains an existing home, built in 1933, that faces on Chicago Avenue. Chicago Avenue intersects Islington Street at an acute angle, resulting in the trapezoidal shape of the lot, and causing the property—and its buildable envelope—to narrow from west to east, such that when facing the existing house from Chicago Avenue, the left side of the property (along Islington Street) is 64.40 feet deep, but the right side of the property is only 46.44 feet deep. See Exhibits 3, 4(a)-(b), and SDAT printout. The Petitioner's Justification Statement ("Statement"), in the record at Exhibit 3, characterizes the subject property as an "oddly-shaped corner lot property with the angled side yard," further describing the uniqueness of the property as follows:

**Odd-shaped Corner Lot:** The required setback for this corner lot along Islington Street is 25'-0" from the front property line, and 15'-0" from Chicago Avenue. However, the property line along Chicago Avenue angles at 10-degrees towards the north, narrowing the lot from 64.40' to 46.44' along a 101.60' long property line.

3. Petitioner Mitchell Tropin ("the Petitioner") and his wife Theresa have owned the subject property since 2019, and have not changed its layout. They are proposing to construct a one story, 53 square foot addition on the south (Chicago Avenue) side of their home, to expand their existing galley kitchen. The proposed addition would be align with the existing house footprint along Chicago Avenue (the dining room projection), but because of the angle of the Chicago Avenue property line, a triangular portion of the proposed addition would project eighteen inches (1.5 feet) into the required side street setback. See Exhibits 3, 4(a), and 5(a)-(f).

The Statement at Exhibit 3 explains that adherence to the required side street setback would only allow a rectangular addition of 2'-8" x 12'-6" to be built, which is not large enough to improve the layout or functionality of the existing kitchen and would not be worth the expense, concluding that the uniqueness of the subject property "causes the Side Setback zoning requirements to disproportionately impact on the reasonable use and enjoyment of this property, creating a practical difficulty." The Statement further explains that with the grant of the requested variance, the size of the addition could be increased to 4'-3" x 12'-6", giving the Petitioner an additional 18 square feet that would improve the kitchen layout and make the project worthwhile. Thus the Statement indicates that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose due to the unique conditions peculiar to this property. See Exhibit 3.

4. The Statement states that the grant of the requested variance will not be adverse to the use and enjoyment of neighboring properties, as follows:

The next door neighbors at 800 Philadelphia Avenue are over 50' away from the addition and this 53 SF addition should not cause any unique and undue visual barrier since the proposed addition fills out the inside corner of the house footprint and so would more align with the current house.

See Exhibit 3. The record contains a letter of support for the grant of the requested variance from the owner of 800 Philadelphia Avenue (the abutting property to the east). See Exhibit 7.

5. At the hearing, Mr. Vitullo testified that the justification for the requested variance is set forth in the Statement. He testified that the Petitioner is seeking variance relief from the side street setback because of the unusual trapezoidal shape of his property, so that he can construct a rectangular kitchen addition that will be flush with the existing dining room. Mr. Vitullo testified that one corner of the proposed addition requires an 18 inch variance. In response to Board questioning, he confirmed that the property's buildable envelope leaves virtually no room for expansion of the existing home on either side, and very little room for expansion to the front or rear.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and the evidence of record, the Board finds that the requested 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 that at 5,542 square feet, the subject property is substandard for the R-60 Zone, which has a minimum size of 6,000 square feet. The Board further finds that the subject property has an unusual, trapezoidal shape with angled frontage along Chicago Avenue. The Board finds that because of its small size and unusual shape, the application of the required setbacks to this property significantly constrain its available buildable envelope, and that these circumstances, taken together, constitute an extraordinary condition peculiar to the subject property, in satisfaction of this element of the variance test. See Exhibits 3 and 4(a).

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, based on the Statement and SDAT information, that the subject property was developed in 1933, and that the Petitioner purchased the subject property in 2019 and has not changed its layout. Thus the Board finds that the Petitioner is not responsible for the unusual shape of the property or its small size. See Exhibit 3 and SDAT printout. Accordingly, the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioner, 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 without the grant of the requested variance, the Petitioner cannot construct a small (53 square foot) one-story addition on plane with the southern façade of his existing house, causing him a practical difficulty. The Board further finds, based on the Statement and the Site Plan, that the requested 18 inch variance is the minimum needed to allow the proposed construction of an addition that will fill out the inside corner of the house footprint while remaining on plane with this façade. Finally, the Board finds that the requested variance is the minimum needed to overcome the constraints placed on the property's buildable envelope by its small size and unusual shape, and to allow the proposed modest expansion of the Petitioner's home. In light of the foregoing, the Board finds that the requested variance is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would otherwise impose, and that this element of the variance test 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 proposed construction continues the residential use of the home, and thus that the requested variance can be granted without substantial impairment to the intent and integrity of the applicable East Silver Spring Master Plan (2000), which seeks to preserve existing residential character, encourage neighborhood reinvestment, and enhance the quality of life throughout East Silver Spring, in satisfaction of this element of the variance test.

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.*

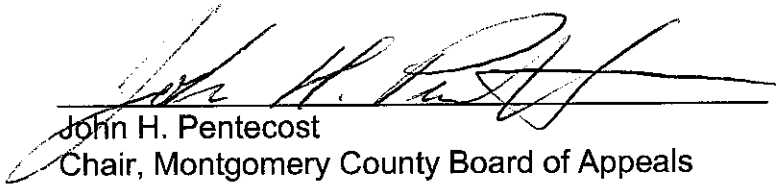
The Board finds, based on the Statement, the Site Plan, and the elevations, that the proposed addition is a single story and will be on plane with the home's existing southern facade. See Exhibits 3, 4(b), and 5(a)-(f). In addition, the Board finds that the proposed addition will align with the existing house and will "not cause any unique and undue visual barrier" for neighboring properties. See Exhibit 3. Finally, the Board finds that the record contains a letter of support from the Petitioner's abutting neighbor to the east. See Exhibit 7. Based on the foregoing, the Board finds that granting the requested 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 variance is **granted**, subject to the following conditions:

1. The Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4(a)-(b) and 5(a)-(f).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, with Bruce Goldensohn, Vice Chair, Mary Gonzales, and Caryn Hines in agreement:

**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 19th day of November, 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.