

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6722**

**PETITION OF MANAV AND ISHA PATEL**

**OPINION OF THE BOARD**

(Opinion Adopted November 17, 2021)  
(Effective Date of Opinion: December 3, 2021)

Case No. A-6722 is an application for a variance necessary for the proposed construction of a one-story rear addition (in-law suite) on an existing house. The proposed construction requires a variance of fifteen (15) feet as it is within ten (10) feet of the rear lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.8.B.2 of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on November 17, 2021. All participation was done via Microsoft Teams. Petitioners Manav and Isha Patel participated in the hearing in support of the requested variance, assisted by their architect, Rick Shay.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 7, Block A, Fox Hills of Potomac Subdivision, located 11114 Lamplighter Lane in Potomac, Maryland, 20854, in the R-90 Zone. The property has an area of 10,728 square feet. It is a five-sided corner lot, bordered by Lamplighter Lane to the east and Fox Run to the south. The property's "fifth" side is set at a 45-degree angle to the intersection of these two streets. The remaining four sides circumscribe the bulk of the property and are not parallel to one another, giving the property an unusual shape. See Exhibits 3 and 4.
2. The Petitioners' variance application states that the property's back yard is narrow (i.e. shallow) compared with other properties in the neighborhood. See Exhibit 1. The

Zoning Vicinity Map confirms the subject property's unusual shape and shallowness relative to neighboring properties. See Exhibit 9.

3. The Board of Appeals previously granted a rear lot line variance for this property in Case No. A-5165, dated August 19, 1999. See Exhibit 8. In Case No. A-5165, the Petitioners sought and were granted an 11.5 foot variance from the required 25-foot rear lot line setback so that they could add a screened porch to their existing home. The evidence of record in that case showed that the subject property is a shallow corner property with a large front yard and a very small rear yard, and that the house on the subject property is sited off-center. In addition, the evidence showed that the property is screened by mature vegetation and a 6-foot privacy fence. After reviewing the record before it in Case A-5166, the Board made the following findings in granting the requested variance:

The shallowness of the lot and the location of the existing dwelling severely restrict the buildable area of the lot. These factors create difficulties in the siting of any new construction. Therefore, the strict application of the setback requirements would result in practical difficulty to the applicants if the variance is not granted. Further, the Board finds that the variance requested is the minimum reasonably necessary to accomplish the proposed project and that the variance can be granted without substantial impairment of the intent, purpose and integrity of the General Plan. The Board further finds that the construction of a screened porch located beyond the setback, as proposed herein, will not be detrimental to the use and enjoyment of adjoining properties.

See Exhibit 8. The Justification Statement ("Statement") submitted by the Petitioners in the instant case restates the evidence presented in Case No. A-5165. See Exhibit 3.

4. The Statement indicates that the Petitioners, who purchased the property nine years ago, are proposing to construct a one-story in-law suite so that their aging parents can live with them. The Site Plan shows that the buildable envelope on the subject property limits the space available for construction of the proposed addition, and the Statement notes that "[m]oving this addition to any other portion of the yard will have similar setback challenges" and that "the unusual shape of the lot does not provide any other location for a structural addition on the main level [of] the existing home without requesting [a] variance." See Exhibits 3 and 4.

5. The Site Plan shows that the proposed addition will maintain the line created by the house's existing northern façade, as well as the line created by the western façade of the existing screened porch. See Exhibit 4. The Statement indicates that the proposed addition is consistent with other additions on the same side of the house in the Petitioners' neighborhood, and that it will not be visible from the front of the house. The Statement indicates that there is a six-foot privacy fence and mature vegetation between the subject property and both abutting neighbors. See Exhibit 3.

6. The record contains letters of support from the Petitioners' abutting and confronting neighbors, and no letters of objection. See Exhibits 7(a)-(g).

7. At the hearing, Ms. Patel testified that she and her husband have lived in their house for nine years, and love the neighborhood. She described the proposed addition and testified that they are seeking to construct an accessible first floor space to accommodate their aging parents. Ms. Patel testified that there is a fence around the back and side of their property which will obscure the view of the proposed addition. Finally, Ms. Patel testified that they have consent for their proposed construction from all of their immediate neighbors. See Exhibits 7(a)-(g).

## **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;*

Based on the Statement, the Site Plan, the Zoning Vicinity Map, and the findings in Case No. A-5165, the Board finds that the subject property has an unusual shape and is shallow relative to surrounding properties, and that these factors combine to severely restrict the property's buildable area. See Exhibits 3, 4, 8, and 9. The Board finds that this constitutes an extraordinary condition that is peculiar to this property, in satisfaction of 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 Petitioners, who purchased the subject property nine years ago, are not responsible for its shape or shallowness, or for the resulting constraints on the property's buildable envelope. Accordingly, 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, based on the Statement, that the application of the setbacks to this unusually shaped, shallow property significantly constrain its buildable area and preclude meaningful expansion of the existing home without variance relief. See Exhibits

3 and 4. The Board further finds that this inability to expand their home without variance relief causes a practical difficulty for the Petitioners, and that the requested variance is the minimum necessary to allow an addition that comports with lines of the existing house, and is thus the minimum necessary to overcome this practical difficulty, 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 the property and accordingly can be granted without substantial impairment to the intent and integrity of the Potomac Subregion Master Plan (2002). Accordingly, 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 Statement, that the proposed addition would not be visible from the front of the existing house, and that the subject property is buffered from neighboring properties by a privacy fence and mature vegetation, which would also serve to minimize the visibility of the proposed addition. See Exhibit 3. In addition, the Board notes that the record contains letters of support for the grant of the requested variance from all of the Petitioners' abutting and confronting neighbors. See Exhibits 7(a)-(g). Accordingly, the Board finds that the grant of 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 necessary to allow the proposed construction of a one-story rear addition (in-law suite) 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(a)-(b).

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, 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 3<sup>rd</sup> day of December, 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.