

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6723

PETITION OF VICTORIA W. PIERCE

OPINION OF THE BOARD

**(Opinion Adopted December 8, 2021)
(Effective Date of Opinion: December 15, 2021)**

Case No. A-6723 is an application for two variances needed to allow construction of an addition. The proposed construction requires a variance of 3.75 feet as it is within 16.25 feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59-4.4.9.B of the Zoning Ordinance. In addition, the proposed construction requires a variance of 0.34 feet as it is within 6.66 feet of the side lot line. The required setback is seven (7) feet, also 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 December 8, 2021. All participation was done via Microsoft Teams. Petitioner Victoria Pierce participated in the hearing in support of the requested variance, assisted by her architect, Jeffrey Hains.

Decision of the Board: Variances GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 14, Block F, South Woodside Park Subdivision, located at 501 Pershing Drive, Silver Spring, Maryland, 20910 in the R-60 Zone. The primary structure on this 8,015 square foot property was built in 1934, and the property was purchased by the Petitioner in 1996. The variance application describes the property as a corner lot with an "irregular triangular quadrilateral buildable area." The Site Plan confirms this description, showing that the property is located on the western side of the intersection of Dale Drive and Pershing Drive, which meet at an obtuse angle to form the

northeast and southeast lot lines of the subject property, and that the property's side (southwest) and rear (northwest) lot lines converge at an acute angle behind the functional rear of the existing house. See Exhibits 1, 3, and 4.

2. In 2020, in Board of Appeals' Case No. A-6660, the Board granted the Petitioner a 3.20 foot variance from the rear lot line (as opposed to the 3.75 foot variance currently being requested) to allow substantially the same addition as the addition currently being proposed.¹ See Exhibit 10. In the previous case, the Board found that the subject property was unique, and that the requested variance met the standards for the grant of a variance, 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 is an unusually shaped corner property, with side and rear lot lines that converge at a sharp angle to create a small, shallow, triangular-shaped buildable envelope behind the functional rear of the home. The Board further finds that this unusually shaped and tightly constrained buildable envelope is distinct from the buildable envelope behind most of the houses in the neighborhood, which are located on deeper lots that have a more regular shape. The Board finds that these factors, taken together, constitute an extraordinary 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;

Per the Statement and the testimony of Mr. Hains, the Board finds that most of the additions in this neighborhood are to the rear because of the deep rear yards and shallow side yards, and that the proposed addition would comport with this established pattern, 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 Petitioner purchased this property in 1996, long after its 1934 construction, and thus is not responsible for the shape of the property, the placement of the existing house on the property, or the constrained buildable area behind the existing house. The Board further finds that the Petitioner is not responsible for the development pattern in the neighborhood.

¹ In the instant case (Case No. A-6723), due to the addition of brick cladding, the Petitioner is requesting relief from both the rear and side lot line setbacks, since one corner of the proposed addition encroaches into each of those setbacks.

Thus the Board finds that the Petitioner has satisfied 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 3.20 foot variance is the minimum necessary to overcome the practical difficulty that full compliance with the setbacks imposed by Zoning Ordinance would cause due to the constrained nature of the buildable envelope that results from the application of the setbacks to the property on account of its unusual shape. The Board notes, in further support of its conclusion, that the grant of this variance would only allow the proposed construction to encroach approximately nine (9) square feet into the setback, which the Board finds is the minimum needed to overcome the challenges posed by the small, shallow, and unusually-shaped buildable envelope behind the existing house, and to allow an addition consistent with the existing pattern in the neighborhood.

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 granting of this variance will continue the residential use of the home, consistent with the applicable master plan.

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 grant of this variance will allow construction that is stepped in from the rear face of the house, and that will generally not be visible from the street. The Board further finds, based on the testimony of Mr. Hains, that because the houses on either side of the Petitioner's house are set at an angle to her house, those neighbors should not be able to see the proposed construction when they look into their back yards. Thus the Board finds that granting this variance will not be adverse to the use and enjoyment of abutting or confronting properties.

3. The Petitioner's Statement of Justification ("Statement") refers to the shape of the property as an "irregular shaped triangle," and states with respect to the uniqueness of the property that:

The position of house is set deep into the property; and at an angle to the lot lines such that the back of the house is wedged between the rear & side setback. Furthermore, the south-west corner is built tight to the (south) side yard setback line. The result creates a small triangular rear yard area that, practically speaking, limits the ability to build a modest addition off the back of the house.

See Exhibit 3. The Statement notes that “[t]he shape of the property and house position on lot is original to the 1934 construction and has not been altered in any way by the current owner.”

4. The variance application states that “[t]ypical neighborhood lots are rectangular w/ deep rear yards (deeper than 20’ setback) and have sizable building area in rear yard.” See Exhibit 1. The Statement at Exhibit 3 notes that most of the additions in the neighborhood are to the rear because of the deep rear yards and shallow side yards, and that the proposed addition would comport with this established pattern, as follows:

An addition off the rear of the house is consistent with the majority of additions in the neighborhood due to the typically deep rear yards and shallow side yards. As such the proposed addition conforms with established development patterns of the neighborhood. Furthermore, the rear addition will, practically speaking, be unseen from the street views.

5. The Statement states that the encroachments for which the variances are sought are minimal, noting that the rear and side setback lines cross diagonally through two corners of the proposed addition, resulting in two triangle-shaped encroachments, one that extends approximately 13.12 square feet into the rear setback, and the other that extends approximately 0.16 square feet into the side setback. The Statement states that variances to allow the 3.75 foot encroachment into the rear lot line setback and the 0.34 foot encroachment into the side lot line setback are the minimum needed to overcome the practical difficulties that the unusual shape of the lot poses and to allow construction of the proposed addition. See Exhibit 3.

6. In discussing the impact of the variances requested on abutting and confronting neighbors, the Statement notes that “the house position is at an angle to the abutting neighbor homes such that the proposed addition will not face either abutting home.” The Statement further states that the addition is not very deep (4.2 feet off the back face of the house), is offset from the corners of the house, and “will, practically speaking, be unseen from the street views.” See Exhibit 3.

7. At the hearing, Mr. Hains testified that the Petitioner is seeking to construct substantially the same addition for which she received a variance 3.20 foot variance from the rear lot line in 2020, but that because she is now seeking to clad the addition in brick rather than cement fiber board, a 3.75 foot variance from the rear lot line is now needed, along with a 0.34 foot variance from the side lot line. By way of explanation, Mr. Hains testified that brick siding is thicker than the cement fiber board siding that was previously proposed, and has an air gap behind it, resulting in the need for the slightly larger rear variance and the new side lot line variance.

CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds, as it did in Case No. A-6660, that the requested variances can be granted. The 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;

As it had in variance Case No. A-6660, the Board finds that the subject property is an unusually shaped corner property, with side and rear lot lines that converge at a sharp angle to create a small, shallow, triangular-shaped buildable envelope behind the functional rear of the home. The Board further finds that this unusually shaped and tightly constrained buildable envelope is distinct from the buildable envelope behind most of the houses in the neighborhood, which are located on deeper lots that have a more regular shape. The Board finds that these factors, taken together, constitute an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 1, 3, 4, 7(a), and 10.

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;

Per the Statement and in accordance with its findings in the previous case, the Board finds that most of the additions in this neighborhood are to the rear because of the deep rear yards and shallow side yards, and that the proposed addition would comport with this established pattern, in satisfaction of this element of the variance test. See Exhibit 3.

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 Petitioner purchased this property in 1996, long after its 1934 construction, and thus is not responsible for the shape of the property, the placement of the existing house on the property, or the constrained buildable area behind the existing house. The Board further finds that the Petitioner is not responsible for the development pattern in the neighborhood. Thus the Board finds that the Petitioner has satisfied 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 3.75 foot variance from the rear lot line, though incrementally bigger than the 3.20 foot variance originally approved, and the additional 0.34 foot variance from the side lot line, are the minimum necessary to overcome the practical difficulty that full compliance with the setbacks imposed by Zoning Ordinance would cause due to the constrained nature of the buildable envelope that results from the application of the setbacks to the property on account of its unusual shape. The Board

notes, in further support of its conclusion, that the grant of this variance would only allow the proposed construction to encroach just over thirteen (13) square feet into the rear setback, and a matter of inches into the side setback, which the Board finds is the minimum needed to overcome the challenges posed by the small, shallow, and unusually-shaped buildable envelope behind the existing house, and to allow an addition consistent with the existing pattern in the neighborhood.

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 granting of this variance will continue the residential use of the home, consistent with the applicable master plan.

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.*

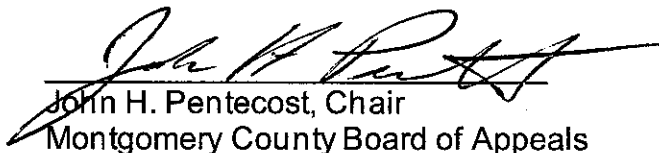
The Board finds, based on the Statement, that the grant of this variance will allow construction that is stepped in from the rear face of the house, and that will generally not be visible from the street. See Exhibit 3. The Board notes that it has not received any opposition to the requested variances, despite posting of the variance sign, and that its previously granted variance, for similar construction, did not engender any appeals. Thus the Board finds that granting this variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variances of 3.75 feet from the rear lot line setback and 0.34 feet from the side lot line setback are **granted**, subject to the following conditions:

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

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, Vice Chair, with Mary Gonzales, 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 15th 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.