

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6726  
PETITION OF CARL AND JANKA GARRETT**

OPINION OF THE BOARD  
(Hearing Date: December 15, 2021)  
(Effective Date of Opinion: December 30, 2021)

Case No. A-6726 is an application by Petitioners Carl and Janka Garrett for two variances, needed for the proposed construction of a deck and screened porch. The proposed a deck requires a variance of 1.38 feet as it is within 9.62 feet of the rear lot line. The required setback is eleven (11) feet, in accordance with Sections 59-4.4.9.B.2 and 59-4.1.7.B.5 of the Zoning Ordinance. In addition, the proposed screened porch requires a variance of nine (9) feet as it is within eleven (11) feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on this application on December 15, 2021. All participation was done via Microsoft Teams. Petitioners Carl and Janka Garrett participated in support of the requested variances, assisted by their architect, Amy G. Stacy.

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

**EVIDENCE PRESENTED**

1.     The subject property is Lot 2, Block 19, Woodmoor Subdivision, located at 316 Lexington Drive in Silver Spring, Maryland, 20901, in the R-60 Zone. It is a four-sided interior lot located on the north side of Lexington Drive. The property has a sharply angled rear lot line, such that the right side of the property is significantly deeper than the left side. In addition, the property slopes from left to right. See Exhibits 4(a), 5(a), and 8.

2.     The subject property contains an existing house, built in 1941. The left rear corner of the existing house, encompassing parts of the kitchen, dining room, stairs, hall bath, and rear vestibule, encroaches approximately 13.4 feet into the twenty (20) foot rear setback. The Petitioners' Justification Statement ("Statement") indicates that the siting of the house on the property as such was "likely due to a steep slope on the opposite side of the property." In addition to the encroachment of the existing home, a corner of the

existing landing that provides egress from the rear vestibule also extends into the rear setback, after application of the nine (9) foot projection allowance for decks. See Exhibits 3 and 4(a).

3. The Petitioners purchased the subject property in 2013, and have made no changes to the exterior of their house other than the porch addition currently under construction off their home's right rear corner. The Statement notes that the porch addition is 12 feet, six (6) inches deep and 17 feet wide, and is "mostly tucked behind the house in the rear yard." The Statement states that the porch meets the setbacks for an open porch but not for a screened porch, which is considered enclosed space. The Site Plan shows that most of the porch meets the required 20 foot rear setback for enclosed space, but that because of the property's sharply angled rear lot line, a triangular portion extends into the setback and requires a variance. The Petitioners have submitted photographs showing the rear of their house before, and during, construction. In addition to showing the porch, their photographs clearly show the existing stairs and landing on the left rear corner of the house, which the Statement indicates are in poor condition and which the Petitioners are seeking to replace with decking that extends from the rear vestibule to the porch stairs, resulting in a 2.2 square foot, triangular encroachment. See Exhibits 3, 4(a), and 5(b)-(e).

4. The Statement describes the practical difficulty faced by the Petitioners in seeking to undertake the proposed construction, stating that "[d]ue to the shape of the lot and the location of the house on the property there is no way to locate a room addition or enclosed porch in the private, rear part of the yard without a variance." See Exhibit 3. With respect to the deck encroachment, the Statement notes that without the grant of the variance, the Petitioners could construct most of the proposed deck, but "would have to move the rear door to a difficult and awkward location to access it." The Statement further notes that "[i]t appears that there has always been a non-compliant stair in this location, as the current wood landing and stairs are constructed on top of an older concrete stair, which is entombed beneath," and that "[w]ithout a rear entrance and steps to grade in this location the owners are unable to access the rear yard and trash cans without going through the living room to the new porch or out the front door and around the house." See Exhibit 3.

5. The Statement at Exhibit 3 notes that the proposed construction is consistent with the Four Corners Master Plan, as follows:

The proposed addition continues the residential use of the home, and is consistent with the Four Corners Master Plan, which seeks to "preserve and maintain the character and integrity of the existing, well-established Four Corners residential neighborhoods as a foundation of the community by assuring that new development, infill development and special exception uses are compatible with the existing residential character." A screened porch addition is in line with this plan; many homes in the area had them when they were originally constructed, or have added them in recent years.

6. The Statement at Exhibit 3 states that grant of the requested variances will not be adverse to the use and enjoyment of neighboring property owners, as follows:

The small area of the landing that we would like to replace with deck is essentially a replacement in kind. Because of the fences, plantings and changes in grade that exist between the abutting neighbors and the subject property it might not even be visible to them, and will be functionally the same as the current rear egress. It will look much better than the existing deteriorated stairs, and should not affect any adjoining neighbor adversely.

Screening the new porch will be a minor architectural difference from the unscreened porch that is currently being built. This should not be adverse to the neighbors' use of their properties, and could be preferable because the new porch will be somewhat more private for all parties if it is screened.

The Petitioners have submitted a letter of support for the grant of the variances from the neighbors who share their rear lot line. See Exhibit 7.

7. At the hearing, Mr. Garrett testified that he and his wife purchased their house in 2013, and that it was constructed in 1941. He testified that any non-conforming portions of the existing house, including its kitchen and rear stairs, pre-date their ownership, and that with the exception of the new porch construction, they have not changed the exterior of the existing house. Mr. Garrett testified that they are requesting variance relief for a 2.2 square foot portion of decking to replace the existing stairs and landing, and for a variance needed to allow screening of their porch. He testified that the deck replacement was on the same footprint as the existing stairs and landing, and that it would look better and should not impact the neighbors. He testified that screening would make the porch more usable and would provide additional privacy and comfort. Mr. Garrett testified that his neighbors support the grant of the requested variances. He noted that the neighbors with whom they share a rear lot line had submitted a letter of support, and that he had spoken with his neighbors to the right (as you face the house), and they had no concerns. See Exhibit 7. In response to a Board question asking if he had spoken with his neighbors to the left, Mr. Garrett testified that he had not because the existing rear vestibule and trees would block most, if not all, of their view.

8. Ms. Stacy testified that the existing house was built over the rear setback line, and that the home's kitchen is noncomplying. She testified that the grade of the subject property falls off sharply to the right, suggesting that this might explain the placement of the house close to the left rear corner of the property, and that half of what would have been the home's basement was never excavated. Ms. Stacy testified that the section of the deck for which her clients are seeking a variance is on top of an existing stairway that she suspects was part of the original house, and that this section of deck will improve access to the house. She testified that the rear setback line cuts through the porch. In response to a Board question asking if the rear vestibule was original to the house, Ms. Stacy testified that it was there when her clients purchased the property and that there is a concrete stoop underneath it, but that she did not know if it was original to the home. In response to a Board question asking about the proposed screening, Ms. Stacy testified that she uses the Screenshot system, which allows for larger panels. She testified that the porch would have standard fiberglass screening.

## CONCLUSIONS OF LAW

Based on the 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 the subject property has an unusual shape, with a sharply angled rear lot line that significantly constrains the area available for construction behind the existing home, particularly on its left side, where the existing house was built more than 13 feet into the rear setback on account of the slope on the opposite side of the property. The Board finds that these circumstances constitute an extraordinary condition peculiar to the subject property, in satisfaction of this element of the variance test. See Exhibits 3, 5(a) and 8.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

Based on the Statement and the testimony of Mr. Garrett, the Board finds that the Petitioners purchased the subject property in 2013, and are therefore not responsible for the property's shape and sharply angled rear lot line, or for its slope, in satisfaction of this element of the variance test. See Exhibit 3.

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 full compliance with the rear lot line setback imposed by Zoning Ordinance would cause the Petitioners a practical difficulty because the angle of the property's rear lot line eliminates the possibility of expanding the existing home to the rear on its left side, where a sizable portion of the existing home is already well over the setback line, without first obtaining a variance, and further leaves only a small, triangular area available for construction behind the right side of the house. The Board further finds that the requested variances are the minimum needed to overcome this practical difficulty and permit the proposed construction. Accordingly, the Board finds 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; and*

The Board finds, in accordance with the Statement, that the proposed construction will continue the residential use of this property, consistent with the recommendations of the Four Corners Master Plan, which seeks to "maintain and preserve the character and

integrity of the Four Corners residential neighborhoods as the foundation of the community." See Exhibit 3.

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.*

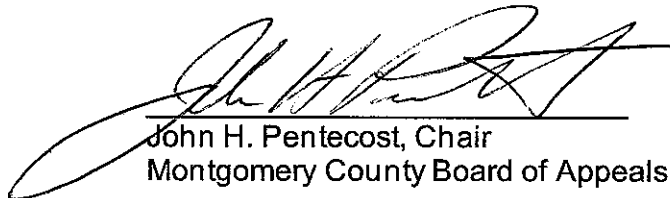
The Board finds that the grant of the requested variances will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test. In support of this, the Board notes, in accordance with the Statement and the testimony of Mr. Garrett, that the variance for the proposed decking would essentially allow an in-kind replacement for the home's existing stairs and landing, and that the remaining variance would allow screening of a legally sited open porch, a portion of which cannot be screened without variance relief because of the property's angled rear lot line. See Exhibit 3. In addition, the Board notes that the record contains a letter of support for the grant of the requested variances from the Petitioners' rear neighbor, and that Mr. Garrett has testified that he has spoken with his neighbors to the right, and that they have no concerns. See Exhibit 7. Finally, the Board notes, again per the testimony of Mr. Garrett, that any view of the proposed construction that the Petitioners' neighbors to the left might have would be obscured by the existing rear vestibule and trees.

Accordingly, the requested variances 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(a) and (b).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, Vice Chair, with Caryn Hines in agreement, and with Mary Gonzales and Richard Melnick necessarily absent, 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 30th 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.