

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6729  
PETITION OF JUAN CRUZ**

OPINION OF THE BOARD  
(Public Hearing Date: April 20, 2022)  
(Effective Date of Opinion: April 29, 2022)

Case No. A-6729 is an application by Petitioner Juan Cruz for five variances needed for the proposed improvements to an existing house, as follows:

The proposed construction, a one-story addition, requires a variance of 23.2 feet as it is within 26.8 feet of the front lot line. The required setback is fifty (50) feet, in accordance with Section 59-4.4.5.B.2 of the Zoning Ordinance.

The proposed construction, a one-story addition, requires a variance of 1.5 feet as it is within 33.5 feet of the rear lot line. The required setback is thirty-five (35) feet, in accordance with Section 59-4.4.5.B.2 of the Zoning Ordinance.

The proposed construction, a porch, requires a variance of 22.84 feet as it is within 18.16 feet of the front lot line. The required setback, with a nine (9) foot exemption, is forty-one (41) feet, in accordance with Sections 59-4.4.5.B.2 and 59.4.1.7.B.5.a.i of the Zoning Ordinance.

The proposed construction, a bay window, requires a variance of 20.67 feet as it is within 26.33 feet of the front lot line. The required setback, with a three (3) foot exemption, is forty-seven (47) feet, in accordance with Sections 59-4.4.5.B.2 and 59.4.1.7.B.5.a.viii of the Zoning Ordinance.

The proposed construction, a deck, requires a variance of 3.46 feet as it is within 22.54 feet of the rear lot line. The required setback, with a nine (9) foot exemption, is twenty-six (26) feet, in accordance with Sections 59-4.4.5.B.2 and 59.4.1.7.B.5.a.i of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, April 20, 2022.<sup>1</sup> Petitioner Juan Cruz participated in support of the requested variances, assisted by close family friend, architect Wendy Amaya.

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

## **EVIDENCE PRESENTED**

1. The subject property is Lot P1, Parcel N602, Shipley Sub and ADJ Parcels Subdivision, located at 11001 Locust Drive in Damascus, Maryland, 20872, in the RE-2C Zone. It is an irregular, six-sided property, located on the north side of Locust Drive. The front part of the property, which fronts on Locust Drive, is roughly rectangular in shape and is slightly wider than it is deep. This part of the property contains the existing house. Located behind the left rear of this portion of the property is a narrow and deep extension of the property that comprises the balance of the property's 0.51 acres. See Exhibits 3, 4(a)-(b), and 7.

2. The Petitioner's Variance Application states that the shape of the subject property makes it unusual for the purposes of the requested variances. The Application succinctly describes the problems that compliance with the Zoning Ordinance poses for this property, stating that "[t]he property has [an] unusual shape that limits opportunity for addition," and that "[t]he location of the existing home within the property does not meet [the] current zoning code, making [it] difficult for [the] new addition to comply." The Application further states that the proposed addition "would not be possible without the requested variances as [the] addition would be detached from the home footprint." See Exhibit 1.

3. The Petitioner's Statement of Justification ("Statement") indicates that the existing house on the subject property was constructed in 1941, and that the Petitioner purchased the subject property in 2015. See Exhibit 3. It states that the existing house is the smallest in the neighborhood, and that "[t]he existing home was built at 28.00 feet perpendicular to the front property line and 34.00 feet perpendicular to the rear property line on the smaller portion of the lot, which does not comply with the current zoning regulations for a RE-2C zone." The Statement states that the Petitioner is seeking to enlarge the footprint of his home to accommodate the needs of his family, and that the constraints imposed by setbacks of the RE-2C Zone limit his ability to do so. The Statement states that "due to the extraordinary irregular shape of the property lot, the home was built very close to the front and rear setbacks of the lot property lines on the smaller portion of the lot as shown in the attached plans," explaining that "the property is divided into two planes where one is long and narrow and the other wider but smaller," and that when the pieces are combined, "it creates a very irregular hexagon shape...." See Exhibit 3. The Statement indicates that because of the unusual shape of the property and the constrained area available for construction when the setbacks are applied, "an allowable addition within the current zoning regulations would be set far back and detached from the main home structure." See Exhibit 3.

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<sup>1</sup> This matter was originally scheduled for hearing on January 19, 2022, and was rescheduled to the current date at the Petitioner's request.

4. The Statement describes the requested variances as follows:

The proposed one-story addition requires the minimum variance of 23.2 feet from the front property line and 1.5 feet from the rear property line; the proposed covered porch requires the minimum variance of 22.84 feet from the front property line; the proposed bay window requires the minimum variance of 20.67 feet from the front property line; and the proposed deck requires the minimum variance of 3.46 feet from the rear property line.

See Exhibit 3. It states that these variances are the minimum needed to facilitate the proposed construction, necessary to accommodate the Petitioner's family, and that the Petitioner's property "has the smallest building footprint at 812 square feet compared to the homes in this community, where home footprints range between 1,300 to 2,900 square feet." See Exhibit 3. The Statement states that the proposed construction will not impact any abutting properties since "most homes are constructed on large lots and this home is on a cul-de-sac," and because "[t]his proposed addition will not impede property limits and will be connected to the existing structure of the home." See Exhibit 3.

5. At the hearing, Ms. Amaya testified that the subject property has an irregular shape, with a rectangular area on the eastern part of the property that contains the existing house, and a long, narrow part on the western side. She testified that the existing house was built in 1941 and was purchased by the Petitioner in 2015. Ms. Amaya stated that the existing house is very small, and she described the improvements that the Petitioner is proposing. She said that she works for an architecture firm and that she prepared the architectural drawings.

Ms. Amaya testified that the property's current RE-2C zoning requires a setback of 50 feet from the front lot line and 35 feet from the rear lot line. She stated that if the Petitioner were to pursue an addition without variances, he would be unable to connect the construction to the existing house. In response to a Board question asking why, to minimize the need for variances, the Petitioner was not seeking to extend his home further to the rear rather than to the side, Ms. Amaya testified that the existing house already encroaches on the rear setback, and accordingly that variances would have been needed for the proposed construction regardless of its location. In response to a Board question asking if the Petitioner had spoken with his neighbors about the proposed construction, Ms. Amaya stated that he had, and that none had expressed any concerns or disapproval.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and 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, based on the Application, Statement, Site Plans, and testimony of Ms. Amaya, that the subject property has a very unusual, six-sided shape, and that the narrow configuration of the larger, rear part of this property, and its location relative to the front part of this property, essentially renders the rear part of the property unusable for the purposes of expanding the existing house. See Exhibits 1, 3, and 4(a)-(b). The Board finds that these conditions constitute an extraordinary condition unique 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, based on the Statement, the Site Plan, and the testimony of Ms. Amaya, that the existing house, which was built in 1941, does not meet the current front or rear setbacks for the RE-2C Zone, and as such is nonconforming. See Exhibits 3 and 4(b). Because the proposed development uses this existing structure, the Board finds that this element of the variance test is satisfied.

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 the subject property in 2015, and is not responsible for its unusual shape or for the nonconforming placement of the original house, 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 property's unusual shape and the nonconforming placement of the existing house limit the Petitioner's ability to add the proposed construction in a usable and proximate location that is consistent with the development standards set forth in the Zoning Ordinance, causing the Petitioner a practical difficulty, as explained in the Application, Statement, and by Ms. Amaya in her testimony. See Exhibits 1 and 3. The Board further finds that the requested variances are the minimum necessary to overcome this practical difficulty and to allow the Petitioner to be able to attach the proposed construction to the existing house. 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;*

The Board finds that the proposed construction will continue the residential use of this property, and thus can be granted without substantial impairment to the intent and integrity of the Damascus Master Plan, 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.

Based on the Statement and the testimony of Ms. Amaya, the Board finds that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test. See Exhibit 3. The Board notes, in further support of this finding, that the property was properly posted and the hearing properly noticed, and that the Board has received no objections to the grant of the requested variances.

Accordingly, the requested variances 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(a) and 5(a)-(q).

Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines and Roberto Pinero 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 29th day of April, 2022.

  
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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.