

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
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Case No. A-6732
PETITION OF TODD BALDWIN AND LAURA CHAMBERS

OPINION OF THE BOARD
(Hearing Date: February 2, 2022)
(Effective Date of Opinion: February 11, 2022)

Case No. A-6732 is an application by Todd Baldwin and Laura Chambers (the "Petitioners") for a variance needed for the expansion of an existing detached garage. The proposed construction requires a variance of two (2) feet as it is within three (3) feet of the right side lot line. The required setback is five (5) 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 the application on February 2, 2022. All participation was done via Microsoft Teams. Petitioner Todd Baldwin participated in the proceedings in support of the requested variance, assisted by his architect, Eric Saul.

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

EVIDENCE PRESENTED

1. The subject property is Lot 21, Block D, Sligo Heights-Cunningham Subdivision, located at 910 Jackson Avenue in Takoma Park, Maryland, 20912, in the R-60 Zone. It is a rectangular lot located on the north side of Jackson Avenue. It is 60 feet wide and 150 feet deep, with an area of 9,000 square feet. See Exhibits 3 and 4(a)-(b).

2. The Petitioners are "[s]eeking a variance to allow an addition on an existing accessory structure that is already encroaching the side setback requirement in order to increase the footprint and increase the average height" of that structure. See Exhibit 3. The Petitioners' application cites "other extraordinary situations or conditions peculiar to" the subject property as the reason for seeking the variance, indicating that "[t]he existing structure was originally constructed 2 feet into the required 5 foot setback," and that "[s]ince the proposed addition will be built on the opposite side of the existing structure, it would be impractical and unnecessary to tear-down a portion of the building that we are not altering." See Exhibit 1.

3. The Petitioners' Justification Statement ("Statement") indicates that the existing structure "is 22 feet in length along the side property line in question and has a peak height of 12'-6". It states that the Petitioners are seeking to "construct an addition to the existing accessory structure without razing the entire structure," and notes that the resultant structure "will not be converted to an accessory apartment." The Statement states that the proposed addition "adheres to all required setbacks," but that "the overall increase of the average height requires a variance in order to keep intact the existing portion of the structure already encroaching the setback, which will not be altered." Finally, the Statement notes that the "proposed mean roof height will increase to 14'-8", which does not exceed the maximum allowable height of 20', nor the allowable average height of 15' requiring additional setback measures." See Exhibit 3.
4. The Statement states that the existing garage is a legal nonconforming structure, noting that "[w]hile it is unknown the exact time the existing accessory structure was built, it was constructed prior to the date determining a legal structure (1954)." See Exhibit 3.
5. The Statement indicates that the Petitioners purchased the subject property in 1995. It states that the existing detached garage was in place at that time, located three (3) feet from the side lot line, and that the Petitioners do not know when the garage was built. Thus the Statement concludes that "the special circumstances or conditions were not a result of actions by the Petitioner." See Exhibit 3.
6. The Statement states that the Petitioners intend to "keep intact the existing portion of the building already within the required setback," and that the Petitioners' planned addition to that building "meets all current zoning regulations." The Statement further states that "[i]t would be impracticable and place an undue hardship on Petitioner to require a complete tear-down of the entire structure only to rebuild it 2' further from the lot line for this proposal." Because of this, the Statement asserts that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would entail. See Exhibit 3.
7. The Statement indicates that the proposed variance can be granted without substantial impairment to the applicable general or master plan, noting that "[b]y remaining at 3 feet from the right-side lot line with the new addition well within the legal buildable area of the rear yard, as well as below the maximum height limits, the project preserves the residential character of the neighborhood." In addition, the Statement states that the grant of the variance will not be adverse to the use and enjoyment of neighboring properties because it will not negatively impact the adjoining properties or "the character, health, safety, welfare, or security of the neighboring residents," and because the proposed addition "will remain under the allowable height limit and will not exceed the allowable footprint." See Exhibit 3.
8. At the hearing, Petitioner Todd Baldwin testified that he and his wife have been working at home since the start of the pandemic, and that the requested garage expansion will be used to create dedicated office space for them to continue to work from home. He expressed his hope that in addition to serving as office space, the lower level

of the structure might also be used for entertaining. Mr. Baldwin testified that he had talked to his neighbors and all seemed fine with the proposed addition. He stated that the neighbors who would be closest to the structure had just moved in two days earlier, and that while he had talked to the prior occupant of that house, he had not spoken with the new owners. Mr. Baldwin testified in response to a Board question that they did not intend to use the structure as an accessory dwelling unit. He testified that while there is a driveway to the garage, they do not use the garage to house their car(s), later testifying that the garage is currently used for storage.

Mr. Baldwin testified that the garage was on the property when they purchased the property in 1995, and that it has not been changed since that time. Mr. Baldwin testified that the existing garage does not conform to the setbacks required by the Zoning Ordinance. In response to a Board question asking if he was asserting that the garage was a legal nonconforming structure because it was built before the setback requirement was imposed, Mr. Baldwin indicated that he was.

9. The Petitioners' architect, Eric Saul, testified that the existing garage was built at the same time the house was built,¹ and is nonconforming. He testified that the zoning changed later in the 1950s to define setbacks for detached garages. Mr. Saul testified that it was common in Takoma Park for garages to be sited near the property line.

FINDINGS OF THE BOARD

Based on the Petitioners' binding testimony and the evidence of record, the Board finds that the variance from the right side lot line can be granted. The Board finds that 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.ii. – the proposed development uses an existing legal nonconforming property or structure;*

The Board finds that the proposed development is an addition to an existing accessory structure which is located only three (3) feet from the right lot line, and which, per the Statement, is nonconforming because it was constructed before 1954. See Exhibit 3. 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 Statement indicates that the Petitioners purchased their home in 1995, and that the existing garage was located on the property in the setback at the time of their purchase. Thus, the Board finds that the special circumstances or conditions relating to

¹ The SDAT printout shows that the existing house was built in 1951.

this property and structure are not the result of actions by the Petitioner, and that this element of the variance test is satisfied.

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 compliance with the right lot line setback imposed by the Zoning Ordinance poses a practical difficulty for the Petitioners with respect to their ability to expand their existing garage. The Board notes in furtherance of this finding that the proposed addition to the existing garage will comport with all of the development standards of the Zoning Ordinance, and that it is only the existing structure that does not meet the Ordinance. Thus the Board finds that the variance requested from the right lot line is the minimum needed to overcome this difficulty by allowing the Petitioners to construct a compliant addition to their existing nonconforming garage, 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;*

The Board finds that the proposed construction will continue the residential use of the property and that the grant of the variance will not impair the intent, purpose, or integrity of the Takoma Park Master Plan (2000), which seeks, among other things, "to support stable residential neighborhoods."

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 notes, per the Statement, that the proposed addition to the existing garage will not exceed the allowable height and footprint limitations for accessory structures. The Board further notes, again per the Statement, that the grant of the variance will not be adverse to the use and enjoyment of neighboring properties because it will not negatively impact the adjoining properties or "the character, health, safety, welfare, or security of the neighboring residents." Finally, the Board notes that the testimony of Mr. Baldwin that the neighbors with whom he has spoken do not object to the proposed construction, and that the record contains no opposition to the requested variance. On the basis of the foregoing, the Board finds that the proposed construction will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance from the right lot line, needed for the construction of an addition to the Petitioners' existing garage, 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.

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.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 11th day of February, 2022.



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.