

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**CASE NO. A-6734**

**PETITION OF JESUS AMAYA**

**OPINION OF THE BOARD**

(Hearing Held February 2, 2022)

(Effective Date of Opinion: February 11, 2022)

Case No. A-6734 is an application by Jesus Amaya (the "Petitioner") for two variances needed for the construction of a carport addition to an existing detached garage. The proposed construction requires a variance of 17.90 feet as it is within three (3) feet of the left side lot line. The required setback is 20.90 feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of two (2) feet as it is within three (3) feet of the rear 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 Wednesday, February 2, 2022. All participation was done via Microsoft Teams. The Petitioner's son, Kevin Amaya, participated in the proceedings in support of the requested variances. Brian Burnham, whose property abuts the Petitioner's property to the rear, also participated.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 3, Block L, Forest Knolls Subdivision, located at 1003 Playford Lane, Silver Spring, Maryland, 20901 in the R-60 Zone. It has an area of 6,980 square feet. The property has five sides. It is 60 feet wide and approximately 110 feet deep along its left and right sides, which are parallel to one another. The rear of the property is comprised of two shorter lot lines that intersect at an obtuse angle, forming a "point" at the rear of the property. See Exhibits 4(a)-(b).
2. The Site Plan shows that there is a detached garage on the subject property, located approximately three (3) feet from the property's left side (west) lot line and

approximately three (3) feet at its closest point from the property's angled rear (northwest) lot line. See Exhibits 4(a)-(b).

3. The Petitioner's Justification Statement ("Statement") indicates that the Petitioner added a carport extension to the front of the existing garage without first obtaining a building permit. The Statement indicates that the Petitioner has acknowledged this error and has "stopped the construction process until [he has] full permission to continue the carport." See Exhibit 3.

4. The Statement indicates that the topography of the property poses difficulties for the Petitioner, stating that the Petitioner originally considered adding a second garage to the property instead of the carport extension "but there was too much slope from west to east," and later stating with respect to this construction that "the best decision was to extend the existing garage roof instead of constructing another garage to the east due to the unevenness of the land." The Statement reiterates the topographical challenges posed by what is elsewhere referred to as the property's "unusual land structure" when it explains how the Petitioner's request satisfies Section 59.7.3.2.E.2.a.i of the Zoning Ordinance, stating that "[d]ue to the nature of the backyard and the unevenness of ground level we are not able to construct a carport to the east of the yard." See Exhibit 3.

5. The Petitioner's variance application states that the owners of Lot 2, which shares the property's left side lot line, "are completely aware of the structure and are in agreement." See Exhibit 1. The Statement indicates that the owners of Lots 4 and 5 are also aware of the construction and "have no issues with the project being there." See Exhibit 3.

6. At the hearing, the Petitioner's son, Kevin Amaya, testified by way of background that the carport was built two years ago without first obtaining a building permit. He testified that after receiving a notice on their front door regarding this violation, they stopped construction and pursued a building permit, which was denied. He testified that the matter went to court, and that they were given 60 days to obtain the necessary variance relief.

Mr. Amaya testified that they have multiple generations of their family living on the property, and that the carport, which he said is nearly complete, is needed to protect their cars. He testified that they originally considered building a second garage on the property, but that their yard has too much slope, so they decided to add on to an existing brick and frame garage that he testified was located on the subject property when they purchased it in or around 2003. Mr. Amaya testified that the construction of the carport involved extending the roof of the existing garage. He testified that the garage itself has not been changed. He testified that the carport roof maintains the line of the existing garage roof and does not cross property lines. Mr. Amaya testified that he has talked to his neighbors on both sides, who have no problems with the carport, but that he did not talk to his neighbors to the rear.

In response to a Board question asking if the carport had a knee wall, Mr. Amaya testified that it did not, explaining that it was completely open between the roof and the ground. In response to a Board question asking about the description in the Statement

of the east side of the property's rear yard being "uneven," Mr. Amaya testified that their house is on a hill, and that the side with the carport is higher than the other side of the property. He testified that it would have been too difficult to level the yard to construct the carport elsewhere, and noted that the left (west) side of the rear yard was already flat.

7. Brian Burnham, whose property abuts the northwest (left rear) corner of the subject property, submitted correspondence noting an objection to the grant of the requested variances. His correspondence states that the carport was already constructed, and questions the impact that it might have on his property value and his ability to expand his own property. See Exhibit 10(a). Mr. Burnham participated in the hearing to seek information regarding these concerns.

Mr. Burnham testified at the hearing that he purchased his property in 2005, and that he does not recall the subject property having a garage at that time. He stated that he is concerned that the carport is already built and about its impact on property values. He further stated that he is also concerned about the impact that the carport and any variances granted for the carport may have on his plans for expansion on his own property. Mr. Burnham made clear that he did not want his participation in the hearing to negatively impact the Petitioner and his family, and indicated that he would not stand in the way of the requested variances. At the close of the proceedings, Mr. Burnham asked if his earlier (written) objection to the grant of the requested variances could be removed so that the Petitioner could take the variance sign down earlier; the Chair granted this request.

## 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, based on the Statement and the testimony of Mr. Amaya, that the subject property slopes from west (left) to east (right), with uneven topography behind the Petitioner's home other than on the left side near the garage, where the property is relatively flat. See Exhibit 3. The Board finds that this constitutes an unusual condition 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 Petitioner, who purchased the subject property around 2003, is not responsible for the slope of the subject 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 that the slope of the subject property complicates construction and effectively limits the area behind the house available for the proposed carport, posing a practical difficulty for the Petitioner. The Board further finds that the requested variances are the minimum needed to overcome the constraints imposed on the development of the property by the application of the required setbacks to the property, in light of its slope, and thus to allow the Petitioner to undertake the proposed construction. Accordingly, the Board finds that the requested variances are the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose, 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 continues the residential use of the home, and therefore can be granted without substantial impairment to the intent and integrity of 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.*

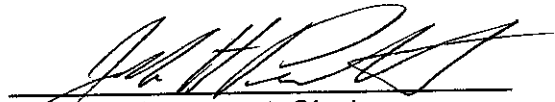
The Board finds, based on the photographs and elevations in the record at Exhibit 5, and on the testimony of Mr. Amaya, that the carport structure does not have walls, but rather is comprised of a roof and posts, minimizing its perceived mass, and that it is no closer to the left side lot line than the existing garage. In addition, the Board notes, based on the Application, Statement, and the testimony of Mr. Amaya, that the owners of Lots 2, 4, and 5 have no objection to the grant of the requested variances, and based on the testimony of Mr. Burnham, that he no longer wishes to contest the grant of the variances. In light of the foregoing, 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.

Accordingly, the requested variances from the rear lot line 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)-(b) and 5(a).

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.



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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 11th day of February, 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.