

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Rockville, Maryland 20850
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(240) 777-6600

Case No. A-6742

PETITION OF PAT AND THOMAS RUMBAUGH

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

Case No. A-6742 is an application by Pat and Thomas Rumbaugh (the "Petitioners") for variances needed in connection with the proposed improvements to an existing accessory structure. The proposed construction of a second story addition with a height of 17.6 feet requires a variance of four (4) feet as it is within seven (7) feet of the left side lot line. The required setback is eleven (11) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance. In addition, the proposed construction of stairs requires a variance of two (2) feet as it is within three (3) feet of the left side lot line.

The Board of Appeals held a hearing on the application on Wednesday, April 20, 2022. The Petitioners' architect, Eric Saul, appeared at the hearing in support of the requested variances.

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

EVIDENCE PRESENTED

1. The subject property is Lot 25, Block 3, PT LT 26 Gilberts Addition Subdivision, located at in Takoma Park, Maryland, 20912, in the R-60 Zone. It is a rectangular lot, with west (front) and east (rear) sides measuring 75 feet each, and with north (left) and south (right) sides measuring 254.1 feet each, for a total area of 19,057.5 square feet. See Exhibit 4.
2. The Petitioners purchased the subject property in 1982. The accessory structure that the Petitioners are seeking to improve was constructed prior to that time, without the

Petitioners' knowledge, at a distance of seven (7) feet from the left side lot line. See Exhibit 3.

3. The Petitioners' Justification Statement ("Statement") states that the Petitioners are "[s]eeking a variance to allow an exterior egress stair addition and rear dormer addition on an existing accessory structure already encroaching the side setback requirement." See Exhibit 3. The Statement indicates that the existing structure is located seven (7) feet from the left side lot line, and that it is "20'-1" feet in length along the side property line in question and has a peak height of approximately 23'-9". The Statement states that the proposed exterior egress staircase will be "within the side setback requirement." It further states that the new second floor rear dormer is needed "to add necessary ceiling height," and that the new dormer "will not increase the overall height of the roof." The Statement states that the "proposed alterations will be built on an existing structure already encroaching the side setback due to exceeding the current height limit of 20 feet for an accessory structure."¹ It notes that the structure "will not be converted to an accessory apartment." See Exhibit 3.

4. The Petitioners' application cites "other extraordinary situations or conditions peculiar to" the subject property as the reason for seeking the variance, indicating that it is an "[o]utstanding historic resource with strict guidelines set by HPC,"² and that "[t]he second floor of the existing accessory structure could not be used as intended if the proposed staircase and dormer are not granted a variance." See Exhibit 1.

5. The Statement states that the existing accessory structure is an outstanding resource in the Takoma Park Historic District. See Exhibit 3. The Statement describes how this historic designation impacts the construction that is allowed, and triggers the need for variance relief, as follows:

The project is also an outstanding resource in the Takoma Park Historic District, and the Montgomery County Historic Preservation Commission (HPC) prefers our proposed design as an acceptable solution for the proposed staircase and dormer addition, and has acknowledged the necessity for a variance to accomplish this design. An existing exterior door is already on the side of the structure where the stairs are proposed, and this door must remain, according to HPC. An egress door and staircase cannot be constructed on the opposite side as it would require the removal of historic windows, which is not allowed.

6. In addition to being historic, the Statement states that the existing accessory structure 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. The building permit denial issued

¹ The Statement explains that while the normal side setback for an accessory structure is five (5) feet, "because the existing structure already exceeds the mean height of 15 feet (17.6 feet, actual mean height), the revised side setback requirement is increased to 11 feet." See Exhibit 3.

² "HPC" refers to the Montgomery County Historic Preservation Commission.

by the Department of Permitting Services confirms that the existing structure is nonconforming. See Exhibit 6.

7. The Statement states that the historic designation and nonconforming nature of the existing structure cause the zoning requirements to “disproportionately impact the reasonable use and enjoyment of this property, thus creating a practical difficulty.” See Exhibit 3. The Statement further states that the requested variances are the minimum needed to overcome the practical difficulties that these extraordinary conditions pose for the Petitioners, as well as to preserve the utility of the existing accessory structure, as follows:

Petitioner is requesting an addition that is the minimum to overcome practical difficulties. HPC has already ruled against building an exterior staircase to the second floor on the opposite side of the structure. Also, an interior staircase would result in the inability to park two cars in the two-car garage on the first level. It is also impracticable and would place an undue hardship on Petitioner to require a complete tear-down of the entire structure only to rebuild it 4' further from the lot line for this proposal.

8. The Statement states that the proposed construction respects the bulk and placement of the existing structure and will preserve the residential character of the neighborhood, and thus can be granted without substantial impairment to the Takoma Park Master Plan, stating that “[b]y remaining in place without increasing the overall roof height, and with a new exterior stair 3 feet from the side lot line, the project preserves the residential character of the neighborhood.” See Exhibit 3.

9. The Statement states that granting the requested variances will not negatively impact the use and enjoyment of neighboring properties, or the “character, health, safety, welfare, or security of the neighboring residents,” noting that the proposed construction “will remain under the allowable height limit and will not exceed the allowable footprint.” See Exhibit 3.

10. At the hearing, Mr. Saul testified that this project is unique. He testified that the existing accessory structure, which he referred to as a garage, is an outstanding historic resource, and that as such, the Petitioners are required to keep all of the windows and doors on the structure, specifically noting that the HPC is requiring retention of the second story door on the left side of the structure and the historic windows on the right side of the structure. He testified that in light of the existence of the existing second story exterior door, that at some point in time there must have been a staircase up to that door and the structure's second floor. Mr. Saul testified that the Petitioners had inquired about putting the stairway on the opposite (right) side of the garage, but that the HPC would not allow this because it would require removal of the historic windows. He testified that the Petitioners were also seeking to add a shed dormer to the rear of the garage. He testified that the dormer could not be added to the front of the structure because of its historic designation, and that construction of the dormer would not increase the height of the

existing structure. Mr. Saul testified that the HPC has approved the design for the proposed construction; he agreed to submit that approval for the record.

In response to Board questions asking about the different setbacks needed for the proposed stairs and for the rear dormer, Mr. Saul explained that the garage building, which is located seven (7) feet from the left side lot line, is required to be eleven (11) feet rather than the standard five (5) feet from that lot line because of the building's height. Mr. Saul stated that the proposed dormer has to meet this eleven (11) foot setback, and so needs a variance of four (4) feet. Mr. Saul further explained that the staircase is viewed by DPS like a deck, and as such, that it has to meet a five (5) foot setback from the side lot line. He stated that because the stairs will be only three (3) feet from that lot line, a variance of two (2) feet is needed. In response to a Board question asking if the stairs would be covered, Mr. Saul testified that they are open to the sky and that there is no plan to cover them.

Mr. Saul testified that the Petitioners have letters of support from their confronting, rear, and right side neighbors. He testified that the Petitioners told him that they have spoken with their left side neighbors, and that those neighbors do not object to the proposed construction.

FINDINGS OF THE BOARD

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

The Board finds, per the Statement, that the property contains an existing accessory structure that was built before 1954 and that is located seven (7) feet from the left lot line where the Zoning Ordinance requires a setback of 11 feet because of the structure's height. The Board further finds, again per the Statement, that the existing structure is nonconforming for these reasons. See Exhibit 3. Because the proposed construction uses this existing structure, the Board finds that this element of the variance test is satisfied.

Section 59-7.3.2.E.2.a.iv. - the proposed development contains a historically significant property or structure;

The Board finds, based on the Statement and the testimony of Mr. Saul, that the subject property is designated as an outstanding resource in the Takoma Park Historic District, and that approval from the HPC is required for the proposed construction, and has been obtained. See Exhibit 3. The Board notes, again per the Statement and the

testimony of Mr. Saul, that the HPC has required preservation of the historic windows on the right side of the existing accessory structure and the second story door on the structure's left side, and has indicated its preference for and approved the proposed design for the exterior staircase and second story/rear dormer addition. Thus the Board finds that the proposed development contains a historically significant 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 Statement indicates that the Petitioners purchased their home in 1982, and that the existing accessory structure was located on the property in the setback at the time of their purchase. The Board further finds that the Petitioners are not responsible for the HPC's designation of their garage as an outstanding resource in the Takoma Park Historic District. Thus, the Board finds that the special circumstances or conditions relating to this property and structure are not the result of actions by the Petitioners, 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 the historic designation and nonconforming nature of the existing accessory structure cause the strict application of the requirements set forth in the Zoning Ordinance to disproportionately impact the Petitioners' ability to use and improve their existing accessory structure, causing them a practical difficulty. The Board further finds that the requested variances are the minimum needed to overcome this practical difficulty, and to allow the Petitioners to construct the proposed improvements to this existing historic, nonconforming structure. In support of this, the Board notes, per the Statement, that the HPC has approved the design for the proposed improvements after rejecting other suggestions, and that the footprint of the accessory structure itself, exclusive of the proposed exterior stairway, is not changing. Thus 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 the property and that the grant of the variances 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 finds, per the Statement, that the proposed addition to the existing garage will not exceed the allowable height and footprint limitations for accessory

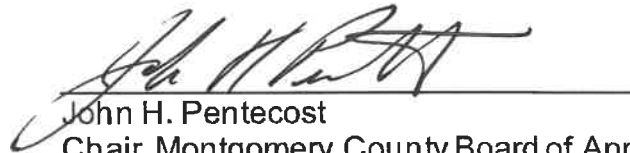
structures. In addition, the Board finds, again per the Statement, that the grant of the variances will not be adverse to the use and enjoyment of neighboring properties because it will not negatively impact the adjoining properties or "the character, health, safety, welfare, or security of the neighboring residents." See Exhibit 3. Finally, the Board finds, based on the testimony of Mr. Saul, that the Petitioners' immediate neighbors do not object to the proposed construction, and that the record contains no opposition to the requested variances. On the basis of the foregoing, 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.

Accordingly, the requested variances from the left lot line 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 and 5(a)-(d).

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.



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.



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.