

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6754

PETITION OF JOSEPH AND KEREN MULLER

OPINION OF THE BOARD
(Opinion Adopted July 13, 2022)
(Effective Date of Opinion: July 27, 2022)

Case No. A-6754 is an application by Petitioners Joseph and Keren Muller for a variance necessary for the proposed construction of a garage addition. The proposed construction requires a variance of 15.20 feet as it is within 9.80 feet of the rear lot line. The required setback is twenty-five (25) feet, in accordance with Section 59.4.4.8.B.2 of the Montgomery County Zoning Ordinance.

The Board of Appeals held a hearing on the application on July 13, 2022. Petitioner Joseph Muller appeared in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Lot 16, Block B, Musgrove Park Subdivision, located at 11500 Colt Terrace in Silver Spring, Maryland, 20902, in the R-90 Zone. It is a 9,040 square foot corner lot, generally rectangular in shape, with a rounded corner that fronts the intersection. The property is wider (east to west) than it is deep (north to south). The east side of the property is bordered by Colt Terrace, which generally runs north-south and "dead-ends" at Sligo Creek Park, which the subject property abuts along its southern property line. The north side of the subject property is bordered by one of two short cul-de-sac extensions of Colt Terrace that project from the main part of that road towards the west. Finally, the west side of the property abuts an improved residential lot that fronts on the east-west cul-de-sac extension of Colt Terrace that borders the subject property to the north. See Exhibits 3, 4, and 7.

2. The Petitioners' Statement of Justification ("Statement") describes the subject property as being "situated between two dead-end branches of Colt Terrace." The Statement notes that the property is improved with a house that was built in 1958 and is

angled slightly relative to the northern property line. The Statement indicates that the front door of the Petitioners' house is on their home's northern side. It states that their driveway is located on the western side of their home, where there is also a door, and that there is also a door on the southern side of their home, facing the park, which the Petitioners consider to be the property's rear. The Statement states that there is no door on the eastern side of the Petitioners' home. See Exhibit 3.

3. The Statement states that the County's Department of Permitting Services ("DPS") has determined that the Petitioners' western property line is their "rear" property line for setback purposes, thus requiring a 25 foot setback. The Statement observes that the Petitioners' house is located 27 feet from that property line. See Exhibit 3. The Petitioners' variance application states that the imposition of a 25 foot setback on the western side of their home "would not allow any new structure on that side of the house." Their application further states that there is "[n]o other potential site on the property for a garage." See Exhibit 1.

4. The Statement states that the Petitioners, who purchased the property in 2020, are seeking a 15.20 foot variance from the rear lot line setback to allow them to construct a garage addition that would extend to within 9.80 feet of their western lot line. The Petitioners' Statement states that "the Western side of [their] house is functionally not the rear, but a side lot." The Petitioners assert that as a side lot, the appropriate setback from this property line, "per the neighborhood's master plan," is eight (8) feet. See Exhibit 3.

5. The Petitioners' Statement maintains that the actual front of their property is its northern side, which abuts the east-west extension of Colt Terrace, and that if the property were viewed as such, as noted in the preceding paragraph, a side setback would apply along the property's western property line, as follows:

The property is a 9,040-square-foot size lot located on a corner lot between two dead end branches of Colt Terrace. The issue hinges on which of the two branches of Colt Terrace is considered the "front street" and which is considered the "side street." We maintain that the true "front street" is the East-West portion of Colt Terrace, and thus the Western portion of the property should be considered a side set-back. We base our claim on the fact that the main entrance and driveway to our house faces the East-West portion of Colt Terrace, as do the other five homes on our cul-de-sac. Moreover, our house has no door facing the North-South portion of Colt Terrace, which immediately dead-ends into Sligo Creek Park and includes only one home, across the street from our side yard (*see the attached zoning vicinity map*).

The Statement goes on to state that the "unusual positioning of our property and the situation of the current structure (which we did not build) are the grounds for our request for a variance." See Exhibit 3.

6. The Statement states that "[b]uilding a garage on the Western side of our house would conform with traditional development on our street," noting that "[o]n the same cul-

de-sac three other houses have comparable additions on their side-lots. This includes 11504 Colt Terrace (the property adjacent to our proposed garage), and 11514 Colt Terrace (directly across the street from our home and located on a similar corner lot)." See Exhibit 3.

7. With respect to the impact of the proposed construction on neighboring property owners, the Statement states that the proposed garage "will not impact any abutting properties and will not impede property lines," that it "will not impinge on the use or enjoyment of our neighbors' abutting or adjacent properties," and finally that the Petitioners' neighbors are "supportive" of their proposal. See Exhibit 3.

8. At the hearing, Mr. Muller testified that his proposed one-car garage is in what would normally be considered the Petitioners' "side" yard, but has been designated by DPS as the property's "rear." Mr. Muller testified that multiple other homes around the Colt Terrace cul-de-sac have side additions, and that he is requesting a variance to allow him to construct a similar addition on his home. He testified that his neighbors are not concerned about his proposed addition, since it is like theirs.

In response to Board questions, Mr. Muller testified that he has spoken with his abutting and confronting neighbors. He testified that his abutting neighbor to the west has a similar addition that is used as a sunroom. In response to further Board questioning, Mr. Muller stated that the side additions to other houses on the cul-de-sac are used for interior space rather than garage space.

FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the requested variance can be granted. 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.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that with an area of 9,040 square feet, the subject property barely meets the minimum lot size for the R-90 Zone, which has a 9,000 square foot minimum. In addition, the Board finds that that the subject property is shallow (north to south) relative to its width (east to west). The Board finds the small size and shallow nature of this corner property combine to result in the property having a significantly constrained buildable area when the required setbacks are applied. See Exhibits 1, 3, 4, and 7. The Board finds that this constitutes an extraordinary 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 subject property was developed in 1958, and that the Petitioners purchased the property in 2020. The Board thus finds that the Petitioners are not responsible for their property's small size and shallow nature, or for any other aspect of its development. Accordingly, the Board finds that the special circumstances or conditions are not the result of actions by the Petitioners, 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, based on the Petitioners' variance application and due to the property's shallowness and small size, that the application of the required setbacks to this property, and in particular, the imposition of a 25 foot setback on the western side of this property, leaves no room for expansion to that side, and no room for a garage on the property, causing the Petitioners a practical difficulty. See Exhibit 1. In addition, the Board finds, based on the Statement, that the requested variance is the minimum needed to allow construction of the proposed garage on the west side of the Petitioners' house, and thus to overcome the constraints placed on the property's buildable envelope by the application of the required setbacks, on account of the property's size and shape. See Exhibit 3. Thus the Board finds that the requested variance is the minimum necessary 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 will continue the residential use of this property, consistent with the recommendations of the Master Plan for the Communities of Kensington-Wheaton, which seeks, among other things, to "protect and stabilize the extent, location, and character of residential and commercial land uses," and to "maintain the well established low- to medium-density residential character which prevails over most of the planning area." Thus the Board finds that this element of the variance test is satisfied.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or fronting properties.*

The Board finds, per the Statement and the testimony of Mr. Muller, that the proposed construction will not be adverse to the use and enjoyment of neighboring properties, and that the Petitioners' neighbors support their proposed project. See Exhibit 3. The Board further finds, based on the Statement and Site Plan, that even with the grant of a variance, the proposed construction would still be set back a greater distance from

the western property line than would be required if that lot line were considered a side lot line, which is how it presents to the casual observer. See Exhibits 3 and 4. Thus the Board finds that the grant of the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance 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.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Roberto Pinero, with Caryn Hines in agreement, and with Richard Melnick, Vice Chair, necessarily not participating, 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 27th day of July, 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.