

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue, Suite 217
Rockville, Maryland 20850
(240) 777-6600
www.montgomerycountymd.gov/boa/**

Case No. A-6755

PETITION OF JENNIFER PLAIA

**OPINION OF THE BOARD
(Hearing Date: July 20, 2022)
(Effective Date of Opinion: August 3, 2022)**

Case No. A-6755 is an application by Jennifer Plaia (the "Petitioner") for two variances needed for the proposed construction of an accessory structure (detached garage). The proposed construction requires a variance of 31.00 feet as it is within 29.00 feet of the front lot line. The required setback is sixty (60) feet, in accordance with Section 59.4.4.9.B of the Montgomery County Zoning Ordinance. In addition, the proposed construction requires a variance to be located forward of the rear building line of the principal structure, in accordance with Section 59.4.4.9.B.2.a of the Zoning Ordinance.

The Board of Appeals held a remote hearing on the application on July 20, 2022. All participation was done via Microsoft Teams. Petitioner Jennifer Plaia participated in the proceedings in support of the requested variances.

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

EVIDENCE PRESENTED

1. The subject property is Lot 16, Block 2, Northwood Knolls Subdivision, located at 405 Royalton Road in Silver Spring, Maryland, 20901, in the R-60 Zone. It is a four-sided property, trapezoidal in shape and 6,562 square feet in size, with a straight front lot line that extends approximately 85 feet along the west side of Royalton Road. The property's right side lot line is set at a right angle to its Royalton Road frontage, and is 53.90 feet long. The property's left side lot line is also set at a right angle to Royalton Road, but at 100.51 feet in length, is approximately twice as long as the right side lot line. The property has a sharply angled rear lot line, 96.96 feet in length, that connects its two sides. The

Justification Statement (“Statement”) states that the subject property is “shallower and wider than other lots in the subdivision...” See Exhibits 3, 4(a)-(b), and 7(a).

2. The subject property was recorded in 1951. See Exhibits 1 and 4(b). It is improved with an existing 944 square foot brick home that was built in 1953, and purchased by the Petitioner in 2019. The Statement states that “[t]he front of the existing structure is set back 29 feet from the main road. The rear of the structure is set back 32 feet on the left side and 16 feet on the right side, because the rear and side property lines are platted at an angle.” See Exhibits 3 and 4(a).

3. The Petitioner is seeking to build a 20 foot by 20 foot detached garage to the right of her house, forward of the rear building line.¹ The front of the garage would be the same distance from the street as the front of the house. The Site Plan indicates that the proposed garage would be located approximately 29 feet from the front lot line, five (5) feet from the right lot line, six (6) feet from the rear lot line, and five (5) feet from the Petitioner’s house. See Exhibit 4(a). The Petitioner’s Justification Statement (“Statement”) states the subject property’s “unique and unusual layout” causes her a practical difficulty. The Statement states that the shape of the property and the location of the existing house constrain her ability to locate the proposed accessory structure in accordance with the restrictions set forth in the Zoning Ordinance. The Statement states that the shallowness of the subject property “does not allow an accessory unit to be built behind the rear building line of the principal structure.” See Exhibit 3. The Petitioner’s variance application echoes this, stating that no expansion or accessory structure would be allowed on the subject property without the grant of a variance. See Exhibit 1.

4. The Statement indicates that the grant of the requested variances and resultant construction of a detached garage will not impact or be adverse to the Petitioner’s neighbors, stating that the “Petitioner has regular conversations with owners of the confronting property, and the rear and side abutting properties,” and that “[a]ll are supportive of Petitioner’s request for a variance.” See Exhibit 3.

5. At the hearing, the Petitioner testified that her rear lot line runs diagonally. She testified that this sharply angled, diagonal rear lot line makes the shape of her property unique compared with abutting and confronting properties, and the rest of the subdivision. The Petitioner testified that because of this, there is no way for her to make any improvements to her property without violating the Zoning Ordinance. She stated that the proposed garage would be five (5) feet from the side lot line and six (6) feet at the closest point from the rear lot line.

The Petitioner testified that she had spoken with her confronting neighbor the day before the hearing, who again expressed support for the proposed construction. In response to a Board question asking if she had spoken with all of her abutting and

¹ In email correspondence received July 14, 2022, the Petitioner provided the Board with the original plans for her garage, but indicated that she may instead install a prefabricated garage such as is shown in Exhibit 5(b). Whether she proceeds with her original plans or elects to install a pre-fabricated garage, the Petitioner states that the structure will have a footprint of 20 feet by 20 feet, and that it will be located as shown on the Site Plan. See Exhibits 4(a) and 5(a)-(c).

confronting neighbors, the Petitioner confirmed that she had, and that none opposed the proposed garage.

In response to a Board question asking if the variances she was seeking were the minimum reasonably necessary, the Petitioner testified that she originally wanted to build a 22 foot by 22 foot garage, but that that did not work on her property, and that she had reduced the size of the structure such that she was now seeking to construct a 20 foot by 20 foot single story garage. She testified that the proposed garage would be a tight, two-car garage, and that the requested variances were thus the minimum needed.

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 Statement, the Zoning Vicinity Map, and the testimony of the Petitioner, that the subject property is shallower and wider than other properties in the subdivision, with a sharply angled rear lot line and trapezoidal shape. See Exhibits 3 and 7(a). The Board finds that these conditions severely constrain the buildable area on the subject property, and constitute 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 recorded in 1951 and developed in 1953, and that the Petitioner, who purchased the property in 2019, and is therefore not responsible for its unusual shallowness and shape, 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 subject property was developed in 1953, and that the property's shallowness and shape combine to constrain the area available for the construction of an accessory structure on the property, and to preclude construction of the proposed garage behind the rear building line of the Petitioner's house, causing the Petitioner a practical difficulty. See Exhibits 1, 3, and 7(a). The Board further finds that the requested variances are the minimum needed to overcome this practical difficulty. In support of this, the Board finds, per the testimony of the Petitioner, that she had reduced

the size of her proposed garage from 22 feet by 22 feet to 20 feet by 20 feet, which is "tight" for a two-car garage. In addition, the Board finds that with a footprint of 400 square feet, the proposed garage will more than meet the footprint limitation set forth in the Zoning Ordinance, and that the proposed garage will also meet the required side and rear setbacks. 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 home, and thus can be granted without substantial impairment to the intent and integrity of the Four Corners Master Plan (1996), which seeks to "preserve and maintain the character and integrity of the existing, well-established Four Corners residential neighborhoods" by ensuring that new development is "compatible with the existing residential character" of the community, 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 the Petitioner, 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 support of this finding, that the proposed garage will be in keeping with the residential nature of the property, and that the Petitioner has spoken with her abutting and confronting neighbors about her proposed construction, and that all are supportive of her project. See Exhibit 3.

Accordingly, the requested variances to permit the construction of the proposed accessory structure 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 the location shown on Exhibit 4(a), and in accordance with either Exhibit 5(a) or Exhibit 5(b).

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 3rd day of August, 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.