

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
<http://www.montgomerycountymd.gov/boa/>
(240) 777-6600

Case No. A-6762

PETITION OF TODD AND ALISSA GALLAGHER

OPINION OF THE BOARD

(Hearing Held: September 7, 2022)

(Effective Date of Opinion: September 14, 2022)

Case No. A-6762 is an application by Todd and Alissa Gallagher (the "Petitioners") for a variance needed in connection with the proposed construction of a second-story addition. The proposed construction requires a variance of three (3) feet as it is within four (4) feet of the right side lot line. The required setback is seven (7) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a remote hearing on the application on Wednesday, September 7, 2022. All participation was via Microsoft Teams. Petitioner Alissa Gallagher participated in the hearing in support of their variance request, assisted by architect Eric Saul.

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

EVIDENCE PRESENTED

1. The subject property is Lot 19, Block 45, Carroll Manor Addition Takoma Park Subdivision, located at 314 Ethan Allen Avenue in Takoma Park, Maryland, 20912, in the R-60 Zone. It is a four-sided through lot, approximately 40 feet in width, bordered on the south by Ethan Allen Avenue and on the north by Winchester Avenue. The property's southern lot line is angled such that the left side of the property is approximately 120 feet deep, whereas the right side of the property is approximately 133 feet deep. The property has a total area of 4,862 square feet. See Exhibits 3, 4, and 7.
2. The Petitioners purchased the subject property in 2013. The property contains a house that was built in 1923. The house is located approximately four (4) feet from the

right (east) side lot line. The Petitioners' Justification Statement ("Statement") states that because the setbacks were not established when the existing house was built, the existing house is considered a legal, nonconforming structure. The Petitioners are seeking to construct a second-story addition over the "entire footprint" of their existing one-story home, at "a distance no closer to the property line than the existing structure below." See Exhibit 3. The building permit denial also indicates that the existing structure is nonconforming. See Exhibit 6.

3. The Statement highlights the narrowness of the subject property and the hardship that it creates, stating that the subject property is 40 feet wide, and that this is "much narrower than the standard 60' width of R-60 lots, and therefore already creates a very narrow floorplan for the house." The Statement goes on to say that in addition to being unusually narrow for the R-60 Zone, the subject property is also substandard in size, stating that it is "20% smaller than the minimum 6,000 sq. ft. lot size of the R-60 zone." See Exhibit 3.

4. The Statement states that the requested variance is the minimum needed to allow the proposed addition, noting the construction issues that would arise if the second floor had to be offset to meet the required side setback, instead of being located on top of the existing first floor walls:

Without a variance, construction would be impractical and very difficult to build exterior walls not directly over existing bearing walls. Additional steel beams, columns, and posts would be required down through the existing home all the way through the basement to bear the weight of the addition.

See Exhibit 3. The Statement goes on to explain that because the existing house, which again was constructed before the imposition of any setbacks on this property, encroaches on the required right side setback, the Petitioners are unable to add a full second story to their home, as follows:

The existing house is situated on the lot in such a way that eliminates that opportunity to match what so many neighbors have been able to do, which is to construct a full second floor addition on these houses with small footprints compared to modern homes built today. Being able to add a full second floor would provide much needed space to create a more appropriately sized home for this family.

See Exhibit 3. Finally, the Statement states that the uniqueness of the subject property "causes the zoning requirements to disproportionately impact the reasonable use and enjoyment of this property, thus creating a practical difficulty."

5. The Statement states that the proposed addition "preserves the residential character of the neighborhood while allowing the Petitioner to invest in their home and enhance their quality of life," and as such, can be granted without substantial impairment to the intent and integrity of the applicable Master Plan. See Exhibit 3.

6. The Statement at Exhibit 3 states that the granting a variance to allow the proposed addition will not be adverse to the use and enjoyment of neighboring properties, as follows:

The proposed addition of a new second floor on the existing structure will not extend beyond the existing footprint below, thus it will not negatively impact the adjoining side yard. The addition will not negatively impact the character, health, safety, welfare, or security of the neighboring residents. Many of the neighboring houses have much larger additions than the Petitioner is proposing.

7. At the hearing, Ms. Gallagher testified that the existing house is almost 100 years old, and that it does not meet the required setbacks. She testified that the house is small, and that the only way to enlarge it is to build up, because the property is very narrow and does not allow for expansion to either side.

Ms. Gallagher testified that they are close to their neighbors on the right side, and that those neighbors had inquired about the proposed construction. She testified that the neighbors seemed excited about their plans.

8. Mr. Saul testified that the subject property is only 40 feet wide instead of the standard 60 feet, and that the existing house is located four (4) feet from the right side lot line and seven (7) feet from the left side lot line. See Exhibit 4. He testified that the existing foundation can support a second story addition, and that they would like to build up, maintaining the existing lines of the house. Mr. Saul testified that it would be impractical from a construction standpoint to step the second floor in three feet from the right side of the existing house in order to meet the setback.

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 of the Zoning Ordinance, 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 uses an existing structure (the Petitioners' home) which was built in 1923, before the enactment of the County's first Zoning Ordinance, and which extends approximately three (3) feet into the right side setback. Thus the Board finds that the existing home does not comply with the side setback required by the Zoning Ordinance and, as noted in the Statement and

confirmed by DPS on the building permit denial, is nonconforming. See Exhibits 3, 4, and 6. Accordingly, 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 Board finds, based on the Statement and consistent with the testimony of Ms. Gallagher, that the house on the subject property was built in its current location in 1923, and has not changed since that time. See Exhibit 3. The Board further finds, based on the Statement, that the Petitioners purchased the property in 2013. Thus the Board finds that the Petitioners took no actions to create the special circumstances or conditions peculiar to this 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, based on the Statement, that the requested variance is the minimum necessary to allow the proposed construction to proceed on top of the existing exterior walls. The Board finds that the requested variance is minimal in that it would not increase the footprint of the existing house or extend any further into the right side setback than the existing house, which has been in place since 1923. The Board further finds that without the grant of the requested variance relief, the Petitioner could not use the existing bearing walls as support for the proposed second-story addition, which in turn would necessitate the installation of additional beams, columns, and posts through the existing home and down through the basement in order to withstand the weight of the addition. See Exhibit 3. In addition, as shown on the Site Plan, the Board finds that the narrowness of the property also causes the Petitioners a practical difficulty with respect to construction because compliance with the required setbacks would leave the Petitioners a buildable area that is narrower than their existing home. See Exhibit 4. In light of the foregoing, the Board concludes that compliance with the required side setback, which is violated by the existing house, would pose a practical difficulty for the Petitioner, and that the grant of the requested variance is the minimum necessary to allow construction of a second story over the existing structure and therefore to overcome the 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 the property, and that the grant of the requested 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," 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.


The Board finds, per the Statement and the Site Plan, that the proposed second-story addition will maintain the footprint of the existing home, and thus will not encroach any closer on the property's side property line than the existing house does. See Exhibits 3 and 4. The Board further finds, based on the testimony of Ms. Gallagher, that the Petitioners' right side neighbors are aware of the proposed construction and do not object. Finally, the Board finds that the proposed addition would not be out of place in the neighborhood, since the Statement indicates that many of the Petitioners' neighbors have larger additions than the Petitioner is proposing. On the basis of the foregoing, 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 from the side lot line, needed to allow the proposed construction of a second-story addition above an existing single family home, 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(a)-(c).

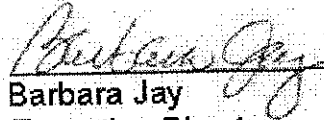
Therefore, based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by Roberto Pinero, with John H. Pentecost, Chair, and Caryn Hines in agreement, the Board adopted the following Resolution:

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 14th day of September, 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.