

**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-6763**

**PETITION OF WILLIAM AND SIMONA YOST**

OPINION OF THE BOARD

(Hearing Date: September 7, 2022)

(Effective Date of Opinion: September 23, 2022)

Case No. A-6763 is an application by William and Simona Yost (the "Petitioners") for a variance needed for the proposed construction of a sunroom and deck. The proposed construction requires a variance of twelve (12) feet as it is within three (3) feet of the rear lot line. The required setback is fifteen (15) feet, in accordance with Section 59.4.4.7.C of the Montgomery County Zoning Ordinance.

The Board of Appeals held a remote hearing on the application on September 7, 2022. All participation was done via Microsoft Teams. Petitioners William and Simona Yost participated in support of the requested variances, along with their contractor, Adam Ford.

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

**EVIDENCE PRESENTED**

1.     The subject property is Lot 13, Block U, Poplar Run Subdivision, located at 13311 Windy Meadow Lane in Silver Spring, Maryland, 20906, in the R-200 Zone. The property was recorded in 2012, and has an area of 14,422 square feet. Per SDAT, it was purchased by the Petitioners in 2015. The subject property is an eight-sided pipestem lot, located on the east side of Windy Meadow Lane. The "pipestem" portion of the subject property extends in a straight line for approximately 150 feet from Windy Meadow Lane; this portion of the property is 25 feet wide. The remainder of the

property (the "flag" portion of the lot) is bordered by five distinct line segments that meet in a shallow pentagonal shape. The property's rear lot line is parallel to Windy Meadow Lane, and abuts open space. See Exhibits 1, 3, 4, and 8, and SDAT printout.

2. The Petitioners' Statement of Justification ("Statement") indicates that their property's shallowness and unusual shape cause them a practical difficulty in complying with the setbacks established in the Zoning Ordinance. The Statement describes the property as follows:

The unusual or extraordinary situation or condition that exists in this case is the exceptional shallowness and shape of this specific property. A review of the official vicinity map of this area reveals that a vast majority of the residential lots are rectangular in shape. A more normal shape such as this allows for more rear yard in a generally uniform overall square footage or size of land.

In this case, the odd diamond style shape of this lot fans out a large majority of the square footage for this lot into the side yards. This renders the rear yard the shallowest yard containing the least amount of space. As is typical, the house construction has positioned the rooms and subsequent egress door on the rear yard despite that being the side of the lot with the least amount of room for improvement. In fact, the area of the house where the deck is proposed is only one foot from the building restriction line (BRL) with no improvements.

See Exhibit 3. The Statement further indicates that because the Petitioners' house was set so close to the rear lot line, expansion to the rear is not possible without variance relief:

Even on the part of the rear house façade where the sunroom is proposed, the house only has five feet to the BRL. Any improvement in the rear of this house would require a variance; a fact known at the time the builder designed the house with the door on the rear, and the County approved the design and placement.

3. The Statement at Exhibit 3 proceeds to make clear that the Petitioners are not responsible for the unique shape of their property, as follows:

While the County cannot be expected to avoid this situation at time of subdivision development, this lot was clearly designed by the developer like no other in the area. There is no room for any improvement in the rear without requesting a variance; and this circumstance is not the result of the applicant in any way as they were not the developer. This situation is unique to the applicants due to the peculiar shape of the lot.

4. The Statement states that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose on account of the uniqueness of the property. The Statement states, in this regard, that the proposed sunroom and deck are "modest" in size, that the proposed

deck is "open with no roof," and that the proposed sunroom is "made almost entirely of glass," which "was intentional as it is not a full addition and aims to allow more light and visibility through the structure." See Exhibit 3.

5. The Statement states that since the unique circumstances pertaining to the subject property "[do] not exist for other neighbors," structures similar to those proposed by the Petitioners "exist now in the area," such that "this lot would be keeping in line with normal improvements." See Exhibit 3.

6. The Statement states that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties, noting that because of the property's unusual shape, the proposed improvements would be on the side of the house that abuts undeveloped land, as follows: "The very shape that creates this extraordinary circumstance also positions the proposed structures away from any neighbor. Furthermore, there is required open space behind the subject lot where no impact to an adjacent neighbor exists." See Exhibit 3. This assertion is supported by the Site Plan and Zoning Vicinity Map. See Exhibits 4 and 8.

7. The Petitioners have submitted a letter of approval for the proposed construction from the Covenant Committee of the Poplar Run HOA. See Exhibit 7.

8. At the hearing, Mr. Ford testified that the subject property has an irregular shape, and that the existing house is located only a couple of feet from the rear setback line. He testified that the property behind the Petitioners' home is common property owned by the homeowners' association. Mr. Ford testified that there is nowhere else on the property to build, stating that the proposed improvements would not be of usable size if they were built in accordance with the setbacks. In response to a Board question asking if they could be located on the side of the house instead of to the rear, Mr. Ford testified that variance relief would also be needed if the proposed improvements were located on the side of the house because the building restriction line was close on both sides of the house.

9. Mr. Yost testified that there were "doors to nowhere" on the back of his house. He testified that he and Ms. Yost had talked to a number of their neighbors about the project, and that their neighbors believed the proposed improvements would add to the neighborhood. Finally, Mr. Yost testified that their house is set back "pretty far" from neighboring homes.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and the evidence of record, the Board finds that the requested variance can be granted. The 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, based on the Statement and the Site Plan, that the subject property has a unique, eight-sided pipestem shape, with the buildable ("flag") portion of the property having an unusually shallow, pentagonal shape, such that almost any construction to the rear of the Petitioners' home would require variance relief. See Exhibits 3 and 4. The Board further finds, per the testimony of Mr. Ford, that construction of the proposed improvements on the side of the home would also necessitate variance relief. 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 Petitioners, who purchased the property in 2015, are not responsible for the unusual shape or shallow nature of the subject property, which was recorded in 2012. See Exhibits 1 and 3. Thus the Board finds that the special circumstances or conditions applicable to this property 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 that the shallow nature and unusual shape of this property constitute a practical difficulty for the Petitioners in that they severely limit the area available for expansion of the Petitioners' home. See Exhibits 3 and 4. The Board finds, in support of this, that the Statement and Site Plan indicate that the existing house is built to the rear setback line on the right side, and to within five (5) feet of the rear setback line on the left side, leaving the Petitioners no practical way to create meaningful space on the rear of their home without variance relief. The Board further finds, in support of this, that per the testimony of Mr. Ford, the proximity of the building restriction lines to the sides of the Petitioners' house precludes location of the proposed improvements on the sides of the house without variance relief. In addition, the Board finds, in accordance with the Statement, that the requested variances are the minimum needed to allow construction of the proposed sunroom and deck, which the Statement indicates are modest in size and commensurate with "normal improvements" in the neighborhood. See Exhibit 3. Thus, the Board concludes that the requested variance is the minimum necessary to overcome the practical difficulties created by the unusual or extraordinary situations or conditions on this property, 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;

The Board finds that the construction of the proposed sunroom and deck will continue the residential use of the home and thus can be granted without substantial impairment to the intent and integrity of the applicable master plan, 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 fronting properties.

The Board finds that granting the requested variance to allow the proposed sunroom and deck will not be adverse to the use and enjoyment of abutting and fronting properties, in satisfaction of this element of the variance test. In support of this, the Board finds, per the Statement and testimony of Mr. Ford, that the abutting property to the rear of the subject property is not developed with a residence, but rather is common space owned by the homeowners' association. See Exhibit 3. The Board further finds that the proposed construction has been approved by the homeowners' association. See Exhibit 7. In addition, the Board finds, per the testimony of Mr. Yost, that the neighbors with whom he has spoken believe the proposed improvements will enhance the neighborhood, and that there is good separation between his house and nearby houses. Finally, the Board finds, per the Statement, that the proposed sunroom is purposefully transparent in order to reduce its perceived massing. See Exhibit 3.

Accordingly, the requested variance necessary to allow the construction of the proposed sunroom and deck is **granted**, subject to the following conditions:

1. The Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5(a)-(h).

Therefore, 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 23rd 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.