

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6766
PETITION OF MICHAEL AND LIBBIE ROZOFSKY**

OPINION OF THE BOARD
(Hearing Held: December 7, 2022)
(Effective Date of Opinion: December 21, 2022)

Case No. A-6766 is an application by Michael and Libbie Rozofsky (the "Petitioners") for three variances needed in connection with proposed improvements to an existing house. The proposed construction, a two story addition, requires a variance of one (1) foot as it is within twenty-four (24) feet of the front 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. In addition, the proposed construction, a two story addition, requires a variance of 15.39 feet as it is within 4.61 feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance. Finally, the proposed construction, steps at a porch, requires a variance of 1.50 feet as it is within 14.50 feet of the front lot line. The required setback is sixteen (16) feet, in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance and with Section 59.4.1.7.B.5.a of the Zoning Ordinance, which provides that steps may extend nine (9) feet into the twenty-five (25) foot front setback.

The Board of Appeals held a hearing on the application on Wednesday, December 7, 2022. Petitioners Michael and Libbie Rozofsky were present at the hearing, and were represented by their attorney, Elizabeth Rogers, Esquire. Along with Ms. Rogers, Kwasi Hemeng and Michael O'Hearn, both of whom are with CASE Architects and Remodelers, also 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 6, Pt Lt 4 Edgemoor Subdivision, located at 7612 Glenbrook Road in Bethesda, Maryland, 20814, in the R-90 Zone. The subject

property is a substandard corner lot, approximately 6,971 square feet in size, located on the west side of Glenbrook Road and the south side of Wilson Lane. The Site Plan shows that the two roads on which the property fronts meet an acute angle that has a rounded "corner," and that the remaining two property lines are set perpendicular to their respective street frontages and meet at an obtuse angle, giving the property a peninsula shape. See Exhibits 1, 4, and 7.

2. At 6,971 square feet, in addition to being substandard for the R-90 Zone, the subject property is unusually small for the neighborhood. In her letter justifying the grant of the variance, dated August 22, 2022 (hereinafter "Statement"), Ms. Rogers details just how small the subject property is relative to neighboring properties, as follows:

According to the Boundary Survey ("Survey"), submitted concurrently with this Statement, the Property has a net lot area of only approximately 6,971 square feet (less than the 9,000 square foot minimum lot area in the R-90 Zone).¹ As shown on Exhibit A, the Property is the second smallest lot within Block 6 and is significantly smaller than the majority of the lots within the surrounding neighborhood (the average lot size within Blocks 5 and 6 is 13,197 square feet, with the largest lot in Block 6 being 22,787 square feet and the largest lot in Block 5 being 41,382 square feet). In addition to the small lot size, the existing Property has an irregular shape (e.g. trapezoidal). This shape, in combination with the Property's location at the intersection of Glenbrook Road and Wilson Lane (*i.e.* a corner lot), results in the placement of the existing house in the far rear corner of the lot. These factors have significantly limited development opportunities on this Property.

See Exhibit 3. In addition to the property's small size, as noted above, the Statement also indicates that the property's unusual shape, and the positioning of the existing house on the property, serve as constraints on the property's buildable area:

The Property is an irregularly-shaped, corner lot. As a result of the irregular shape, and the setbacks required from the front and side street (*i.e.* 30 feet), the buildable area on the Property is significantly constrained and the house is set well back into the Property. The existing house has been oriented toward the front of the Property, along Glenbrook Road. Given that the rear lot line is at a significant angle, much of the existing structure falls within the required rear yard setback. As a result of these unique conditions, there is no ability for the Petitioners to expand the footprint of the existing structure.

3. The subject property contains an existing house, built in 1964. In 1990, the Board of Appeals granted a variance to permit the enclosure of a carport that had been added to the house so that it could be used as a garage. The Statement describes that variance as follows:

¹ Per Section 59.7.7.1.A the Property is grandfathered.

The Board of Appeals previously approved Variance Case No. A-2982 (Order dated October 5, 1990), allowing the enclosure and conversion of the previously existing attached carport into the current, existing garage. Specifically, the Board of Appeals granted a variance of 14 feet from the 20 foot required rear setback and three (3) feet from the seven (7) foot required side setback.² The Petitioners later purchased the Property on November 30, 2015, after construction of the garage was complete. This variance request is fully consistent with the Board's underlying approval in 1990 and does not expand the building footprint. The same practical difficulties that the Board noted in 1990 (e.g. irregularly shaped corner lot and presence of an existing structure) continue to exist. Furthermore, the proposed addition will not be detrimental to the use and enjoyment of the adjoining properties. As such, the Petitioners are merely seeking to confirm the application of the existing variance to the new, proposed structure.

See Exhibit 3. The Petitioners included a copy of that variance with their submission. See Exhibit 11.

4. The Petitioners purchased the subject property in 2015, and are seeking to replace their garage with a two story addition with basement. The Statement describes the Petitioners' reasons for building the proposed addition, noting that it is needed to improve the functionality of the house to better accommodate their family and to create a separate home office for remote/hybrid work. The Statement also details the finishes of the proposed addition, and asserts that its appearance will fit with the existing house and neighborhood. Importantly, the Statement states that "the proposed addition will maintain the existing, approved footprint, moving no closer to any property lines than the dwelling exists today," and that "[t]he proposed addition will not increase the existing, overall building height." See Exhibit 3.

5. The Statement at Exhibit 3 states that with the proposed addition, the Petitioners' house would substantially conform with the established historic or traditional development pattern of their neighborhood, as follows:

The proposed vertical addition will conform with the established, traditional development patterns of the neighborhood. The dwellings located on the surrounding properties contain significantly greater living space than what is currently provided on the Property. For example, according to SDAT, the home immediately adjacent to the Property, to the south, has an above grade living area of approximately 2,895 square feet, and the properties located directly across Glenbrook Road have approximately 4,097 square feet and 3,888 square feet above-grade living space. The Property's livable area of only 1,960 [square feet] is significantly diminutive in comparison to nearby properties. Additionally, the

² As previously noted, the prior variance approval did not include relief from the front yard setback. While the front yard setback remains unchanged from the existing condition, the Petitioners are including relief from the front yard setback, which is less than the 30 feet required by the Zoning Ordinance (and also required by the zoning ordinance in effect in 1990), with this variance request. [Footnote reproduced as included in Statement. See Exhibit 3.]

surrounding properties along Glenbrook Road have much more substantial widths facing the street, as compared to the existing home (e.g. based on measurements taken from online mapping tools, the immediately adjacent home appears to have an overall width of approximately 73 feet, including the garage, as compared the over overall width of the Petitioner's residence of only approximately 48 feet, including the garage). As a result, the Petitioners' proposed addition will bring the Property more into conformance with the character of the surrounding neighborhood.

6. The Statement states that in granting the previous variances to allow enclosure of this garage (Case No. A-2982), the Board "found that the Property's irregular shape resulted in a practical difficulty to the Property Owners, and that the variance relief requested was the minimum necessary to overcome those unusual and extraordinary conditions of the Property." See Exhibit 3.

The Statement states that the current Petitioners are "unduly burdened by the irregular shape of the Property," and that "[g]iven the irregular shape, presence of a corner lot, and exceptional shallowness of the Property, there is no ability for the Petitioners to expand the existing residence, to provide additional, needed living space, without variance relief." The Statement states that the proposed addition, which expands the existing structure vertically within the footprint of the existing garage, is the "least disruptive method by which the Petitioners can increase the living space of their home," reiterating that the proposed addition will not be any closer to adjacent homes than the existing home. Finally, the Statement states that the Petitioners have "strategically limited windows on the southwestern and northwestern facades to preserve privacy for their adjacent neighbors." Accordingly, the Statement concludes that "the relief requested is not only the minimum necessary to overcome the practical difficulties, but also will have no adverse impacts on the adjacent properties." See Exhibits 3 and 10.

7. The Statement states that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties. In addition to noting that the proposed addition will not change the footprint of the existing house or bring it any closer to adjacent properties than it is today, the Statement states that the proposed addition "will not cast any additional, adverse shadows on the adjacent properties" other than "minor, incremental additional shadow on the adjacent neighbor's side yard during the morning hours." See Exhibits 3 and 10. The Statement also notes that any impact of the proposed construction on confronting properties is mitigated by distance and landscaping, stating that "[t]he properties across Glenbrook Road are significantly set back from the street and further separated by the approximately 50 foot right-of-way," and that the "immediately confronting property across Wilson Lane is separated from the Property by a wide right-of-way and further screened by mature trees located in the confronting property's side yard." See Exhibit 3. Finally, the Statement states that the proposed improvements to the house have been "designed to blend seamlessly in with the existing architecture and will improve the house's presence along the street."

8. At the outset of the hearing, Ms. Rogers clarified that the Petitioners are seeking a vertical expansion of their existing garage, and that the location of the existing garage walls is not changing. In response to a Board question about the differences between the variances granted in 1990 and the variances currently being requested, Ms. Rogers stated that the discrepancies between the variances that were granted in 1990 for the enclosure of the garage and the variances now being requested for its vertical expansion (both up and down) were likely due to surveying errors when the original variances were requested. Finally, in response to a Board question about the lack of request for a side lot line variance in connection with the proposed construction, Ms. Rogers stated that no side lot line variance is needed, and that she had verified this with the Department of Permitting Services.

Ms. Rogers stated that the same practical difficulties exist today that existed in 1990 when the Board granted the variances needed for the enclosure of the carport, arising from the property's irregular shape, exceptional shallowness, and small size. She stated that when the house on the subject property was built in 1964, the property was zoned R-60, but that its zoning had since been changed to R-90. Ms. Rogers stated that the garage enclosure was built pursuant to a variance that was granted 25 years before the Petitioners purchased the property. She emphasized that there would be no change to the footprint of the existing garage, and that the requested variances were the minimum needed to work within this existing footprint, stating that the inability to be able to expand this home would be a hardship for the Petitioners, and that the proposed addition has been designed in the least impactful way. Finally, Ms. Rogers stated that granting the requested variances to allow the proposed improvements would bring the house into better conformance with the neighborhood in terms of living area and street presence.

9. Mr. Hemeng testified regarding his professional experience. He stated that he is familiar with the variance application, and that he has inspected the subject property. Mr. Hemeng testified that the subject property is a corner lot with two front yards. He testified that the subject property is exceptionally undersized and narrow, and has an irregular shape. He testified that the property has an area of 6,971 square feet, making it one of the smallest lots in the neighborhood. Mr. Hemeng stated that the zoning of the property was changed from R-60 to R-90, and testified that the setbacks leave very little or no room to build, noting that neither of the home's "fronts" meets the R-90 setbacks.

Mr. Hemeng testified that the Petitioners are seeking to construct a two-story addition on the existing garage without adding to its footprint.³ Mr. Hemeng testified that the garage, as built, is currently used for storage and does not function as a garage. He testified that there is a driveway on the property that can accommodate two cars.

Mr. Hemeng testified that the proposed construction will not have adverse impacts on the use and enjoyment of neighboring properties, noting that the windows on the back and left of the proposed addition were limited in number and carefully placed so as to

³ Mr. Hemeng testified that the only increase to the building footprint currently on the property is from the proposed front porch, which will project 1.5 feet farther into the setback than would otherwise be allowed.

respect the neighbors' privacy. In addition, Mr. Hemeng testified that shadows from the proposed addition will not have an adverse impact on neighboring properties.

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;

Based on the Statement, the Site Plan, the Zoning Vicinity Map, the findings in Case No. A-2982, and the testimony of Mr. Hemeng, the Board finds that the subject property has an unusual shape, and is small relative to surrounding properties and significantly substandard for the Zone. The Board further finds that these factors combine to severely restrict the property's buildable area. See Exhibits 3, 4, 7, and 11. The Board finds that this constitutes an extraordinary condition that is peculiar to this property, in satisfaction of this element of the variance test.

Section 59.7.3.2.E.2.a.v: the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the Statement and testimony of Mr. Hemeng, that the proposed addition will maintain the footprint of the existing garage and thus will not extend closer to neighboring properties than the existing house. In addition, the Board finds, again based on the Statement, that with the proposed improvements, the size and width of the house will better approximate the size and street presence of neighboring homes. See Exhibit 3. Thus the Board finds that the proposed construction substantially conforms with the established historic or traditional development pattern of the street or neighborhood, 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 Petitioners, who purchased the subject property in 2015, are not responsible for its size or shape, or for the resulting constraints on the property's buildable envelope. In addition, the Board finds that the Petitioners are not responsible for the development pattern of their street and neighborhood. Accordingly, 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 application of the setbacks to this small and unusually shaped property significantly constrains its buildable area and precludes meaningful expansion of the existing home, commensurate with other properties in the neighborhood, without variance relief, causing the Petitioners a practical difficulty. See Exhibits 3 and 4. The Board further finds that they have previously granted variance relief on account of the extraordinary circumstances pertaining to this property, to allow the construction of the garage. See Exhibit 11. Finally, the Board finds, based on the Statement, that the proposed addition will adhere to the footprint of the existing garage and will not increase the existing, overall building height, and that the encroachment of the proposed front porch is minimal, especially given the constraints on the property's buildable envelope. See Exhibit 3. Accordingly, the Board finds that the requested variances are the minimum necessary to permit construction that that comports with the lines of the existing house and increases its compatibility with the neighborhood, and are thus the minimum necessary to overcome the practical difficulty created by the property's size and shape, 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 granting of the requested variances will continue the residential use of the home, and thus can be granted without substantial impairment to the intent and integrity of the applicable Bethesda-Chevy Chase Master Plan (1990). Accordingly, 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 confronting properties.*

The Board finds that with the exception of the minor footprint addition attributable to the new front porch, the proposed construction will not change the footprint of the existing house, and will not bring it any closer to adjacent properties than it is today. In addition, the Board finds that the windows on the proposed addition have been carefully placed so as not to intrude on the privacy of neighboring property owners, and that the proposed addition "will not cast any additional, adverse shadows on the adjacent properties" other than "minor, incremental additional shadow on the adjacent neighbor's side yard during the morning hours." See Exhibits 3 and 10. Furthermore, the Board finds, per the Statement, that any potential impact of the Petitioners' proposed construction is mitigated by distance and landscaping. Finally, the Board finds, based on the Statement, that the proposed addition and porch will fit in with the neighborhood. In light of the foregoing, the Board finds that the 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 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(h)-(m) (interior layouts excluded).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Laura Seminario-Thornton in agreement, and with Caryn Hines necessarily absent, 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 21st day of December, 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.