

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6771
PETITION OF NATHAN AND JULIA WEISBURD**

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

Case No. A-6771 is an application for two variances needed for the construction of a deck (landing and steps) and room addition (sunroom). With respect to the deck, the proposed construction requires a variance of one (1) foot as it is within ten (10) feet of the rear lot line. The required setback is eleven (11) feet, in accordance with Section 59.4.4.7.C.3 of the Montgomery County Zoning Ordinance. The proposed construction requires a variance from the Exemption from Controls set forth in Section 59.4.1.7.B.5 of the Zoning Ordinance, which allows a deck to extend nine (9) feet into the rear setback; the proposed construction needs relief from the Planning Board's twenty (20) foot regulation. With respect to the room addition (sunroom), the proposed construction requires a variance of seven (7) feet as it is within thirteen (13) feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59.4.4.7.C.3 of the Zoning Ordinance; the proposed construction needs relief from the Planning Board's twenty (20) foot regulation.

The Board held a hearing on the application on December 7, 2022. Petitioners Nathan and Julia Weisburd (the "Petitioners") appeared at the hearing in support of the application, along with Adam Ford of Maryland Sunrooms.

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

EVIDENCE PRESENTED

1. The subject property is Lot 25, Block D, Middlebridge Subdivision, located at 13577 Coachlamp Lane in Silver Spring, Maryland, 20906, in the R-200 Zone. It is a five-sided corner lot, roughly rectangular in shape but with a fifth side that is angled towards the intersection of Coachlamp Lane, which borders the property on the northeast side, and

Middlebridge Drive, which borders the subject property on the southeast side. The subject property has an area of 9,209 square feet. See Exhibit 4.

2. The Petitioners' variance application indicates that the subdivision in which the subject property is located was recorded in 1984. It states that the siting of the house on the subject property in accordance with the required front setbacks from both abutting streets resulted in the property having a depth of only 21 feet from the house to the rear lot line. Given the twenty (20) foot rear setback, the Petitioners' application concludes that the strict application of the Zoning Ordinance would preclude any kind of improvement to the house without variance relief. See Exhibit 1.

3. Per SDAT, the Petitioners purchased the subject property in 2021. See SDAT Printout.

4. The Petitioners' Statement of Justification ("Statement") states that the Petitioners are seeking to construct a 9'-8" x 11' sunroom addition, and a 3' x 6' landing with steps, on the rear of their existing house. The proposed sunroom will be constructed over an existing deck, and will extend to within 13 feet of the rear lot line. The Statement notes that in order to meet the required front yard setbacks, "the house was positioned at an angle and nestled towards the rear of the already smaller lot," and indicates that if the Petitioners' house "was squared to Middlebridge Drive at a uniform distance of 26' to that property line" instead of being set at an angle, "the sunroom and proposed landing would fall within the building setback." See Exhibits 3 and 4. The Statement states that at most, because of the angled siting of the house, there is only five (5) feet from the rear of the house to the rear setback line, and thus states that variance relief is needed despite the proposed sunroom being "very modest" in size. See Exhibit 3.

5. The Statement states that the proposed landing and steps will be positioned slightly behind the proposed sunroom, ten (10) feet from the rear lot line. See Exhibit 3. The Statement notes that the positioning of the landing and steps was designed to maintain as much distance as possible from the rear lot line while meeting building codes:

The best positioning of the landing and steps was proposed as well. The minimum width of the stairs per building code is 3'. We chose to turn them and run them adjacent to the front wall of the sunroom in order to avoid them going straight out, further toward the rear lot line. We cannot shorten them by 1' due to building code, thus we need the 1' variance.

6. The Statement indicates that the way in which the property was originally developed left no room for future improvements to the rear. The Statement states that this is due to the "peculiar" shape of the property and the actions of the developer, and is in no way attributable to the Petitioners. See Exhibit 3.

7. The Statement states that the requested variances are the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would

entail on account of the unusual conditions of the property, noting that the proposed improvements are modest in size and designed to minimize their visual impact, as follows:

... The sunroom is a three-season room made almost entirely of glass. This was intentional as it is not a full addition and aims to allow more light and visibility through the structure. The landing is open with no roof, and only serves to adhere to the building code for the steps. Moving the sunroom closer to the corner of the house only exacerbates the problem. The sunroom is actually also just short in size of the existing deck and aimed at being the smallest size, less than 110 square feet, that makes any sense on the house....

See Exhibit 3. The Statement further notes that there are only two neighbors who could see the proposed sunroom, and states that "the very intent of the proposed structure being nearly all glass was aimed at reducing any impact to the light and air of nearby neighbors." See Exhibit 3. Thus the Statement concludes that the grant of the requested variances would not be adverse to the use and enjoyment of the neighboring properties.

8. At the hearing, Mr. Ford explained the Petitioners' proposal. He testified that the configuration of the subject property is "odd," and that moving the proposed construction "further down" along the rear of the house would result in its being more intrusive while still requiring variance relief.

9. The Petitioners testified that their neighbors do not oppose the proposed construction.

CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the 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 that the small size of the subject property relative to standard R-200 development, combined with its unusual, five-sided shape, results in the property having an extremely shallow buildable envelope that severely restricts the ability of the Petitioners to expand their home. The Board finds that these circumstances constitute an extraordinary condition that is peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 3 and 4.

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, that the Petitioners, who purchased the property in 2021, are not responsible for the size or shape of this property, its buildable envelope, or the original siting of the house, which was built in 1984. See Exhibit 3. Thus the Board finds that this element of the variance test is satisfied.

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 application of the required setbacks to this unusually shaped, small property leaves no room for functional expansion of the existing home, posing a practical difficulty for the Petitioners. The Board further finds that the requested variances are the minimum necessary to overcome this practical difficulty and to allow the construction of this modest sunroom addition and code-compliant steps and landing. Thus the Board finds that the requested variances are the minimum needed to overcome the practical difficulties imposed by full compliance with the Zoning Ordinance, on account of the unusual shape of the 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; and*

The Board finds that the proposed construction will continue the residential use of this property, and thus can be granted without substantial impairment to the intent and integrity of the general plan or 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 confronting properties.*


The Board finds that the granting the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties. In support of the finding, the Board finds, per the Statement, that the proposed sunroom is purposefully transparent in order to reduce its perceived massing, and that the proposed landing and steps have been located to maximize their distance from the rear lot line while remaining code compliant. See Exhibit 3. In addition, the Board cites the testimony of the Petitioners that they have spoken with their neighbors, and that their neighbors do not object to the proposed construction. Finally, the Board notes that the variance sign was properly posted, and that the record contains no objections to the grant of the requested variances. Accordingly, the Board finds that this element of the variance test is satisfied.

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 consistent with Exhibits 4, 5, and 6.

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.