

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6772

PETITION OF MICHAEL BARTOCK AND NORA WONG

OPINION OF THE BOARD

(Opinion Adopted November 9, 2022)
(Effective Date of Opinion: November 16, 2022)

Case No. A-6772 is an application for variances needed in connection with the proposed replacement of an existing detached garage that has pipestem alley access. The proposed construction requires a variance of 5.17 feet as it is within 0.83 feet of the side lot line. The required setback is six (6) feet, in accordance with Section 59.4.4.9.B.1 of the Montgomery County Zoning Ordinance. In addition, the proposed construction reduces the sum of both side setbacks to 1.66 feet and therefore requires a variance of 10.34 feet from the twelve (12) foot sum of both sides required by Section 59.4.4.9.B.1 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on November 9, 2022. Petitioners Michael Bartock and Nora Wong, who own the subject property, appeared in support of the requested variances.

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

EVIDENCE PRESENTED

1. The subject property is Lot 9, Block G, McNeills Addition Subdivision, located on the north side of Queen Annes Drive at 8213 Queen Annes Drive in Silver Spring, Maryland, 20910, in the R-60 Zone. Per SDAT, the subject property has an area of 5,515 square feet, which is less than the 6,000 square foot minimum for the Zone. The property is an unusually shaped, seven-sided lot. The main portion of the property is roughly rectangular in shape with a slightly angled rear lot line. The area that would otherwise be the northeast (right rear) corner of this property is instead a 12-foot wide pipestem that extends approximately 26 feet to the east, where it joins an alley. See Exhibits 4(a) and 7 and SDAT Printout.

2. The Petitioners are seeking to replace an existing one-car, detached garage and associated storage shed with a new one-car garage. The Petitioners' Justification Statement ("Statement") indicates that the existing structure "has structural and foundational damage from tree growth and water rot," later stating that "[t]ree roots caused major structural damage to the foundation of the existing structure and weather has further exacerbated the condition of the structure." The Petitioners include photographs of the existing structure which illustrate its poor condition. See Exhibits 3 and 3(a)-(b).

The Statement states that the Petitioners are seeking to replace the current structure "with a modern, structurally sound, and functional detached single-car garage of almost the same dimensions as the existing structure." The Statement indicates that the proposed replacement garage will have the "same roof line" as the current structure. The new garage will be located in the same place on the property as the existing garage, but the new structure will have "square" corners instead of retaining the current structure's "unique shape" where the existing shed and garage are attached to one another, such that the new structure will have a rectangular perimeter and a slightly larger footprint (less than ten (10) square feet larger) than the current structure. See Exhibits 3 and 4(b).

3. The Statement states that the current structure "is located in an oddly shaped and narrow section of the property that is 12 feet wide," and that as a result, "any reconstruction or expansion of the existing structure would not meet the setback requirements." The Petitioners thus assert that the requested variances can be granted "due to the exceptional narrowness and shape" of their property, which they state would otherwise preclude replacement of the existing, dilapidated structure with "a structure with similar specifications." See Exhibit 3.

4. The Statement makes clear that the unusual shape of the property and the location of the existing garage/shed structure predate the Petitioners' ownership of the property, stating that "[t]he shape and size of the lot have not changed since we purchased the property," and that "the existing structure was already built at the time of our purchase and had already experienced the foundational and structural damage caused by the tree growth and weather." See Exhibit 3.

5. The Statement states that the requested variances are the minimum needed to overcome the narrowness and unusual shape of this property and to allow replacement of the existing structure, noting that the existing structure "does not meet the setback requirements" and that "[d]ue to the structural work needed and the minor expansion of the floor area, any work in this portion of the property would require a variance for the setback." Thus the Statement concludes that the requested variances are the "minimum necessary to build a rectangular structure in the same location as the oddly shaped existing structure." See Exhibit 3.

6. The Statement indicates that the grant of the requested variances will not adversely affect the use and enjoyment of neighboring properties, stating that the

proposed construction will “visually improve the immediate residential area by updating the dilapidated existing structure.” The Statement further states that there are two other detached garages across the 16-foot wide alley from the Petitioners’ proposed garage, and that the area where the proposed garage will be modestly larger than the existing structure “will be in our backyard and will not go any closer to confronting or abutting properties than the existing structure.” Finally, the Statement states that the Petitioners’ abutting and confronting neighbors have been notified of the Petitioners’ variance request, and that they “are all willing and able to provide support for the Project.” See Exhibit 3.

7. At the hearing, Petitioner Bartock testified that the garage is located on a narrow part of the property. He testified that a tree grew into the garage and damaged its foundation, and that rain is causing the condition of the garage to further deteriorate. Petitioner Bartock testified that the garage and attached shed were on the property when they purchased it in 2018, and that they intend to extend the foundation (of the replacement garage) to the area currently occupied by the shed. He testified that his neighbors are supportive of the project.

8. Petitioner Wong testified that the current deteriorated condition of the garage impacts the neighborhood aesthetically and from a safety standpoint. She testified that they are proposing to replace the garage with a structure that is almost an exact replica of the existing structure, and that the new garage would be no closer to the side lot lines than the existing structure.

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 variances comply with the applicable standards and requirements set forth in Section 59-7.3.2.E.2, as noted below:

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 Site Plan, that the subject property has an unusual, seven-sided shape, with an extremely narrow, 12-foot wide extension—in which the Petitioners’ existing garage is located—from its northeast corner towards the abutting alley. See Exhibits 3 and 4(a). The Board further finds, per the Zoning Vicinity Map, that the subject property is the only property on the block with this shape. See Exhibit 7. 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, based on the Statement and the testimony of Petitioner Bartock, that the unusual shape of the property and the location of the existing garage/shed

structure predate the Petitioners' ownership of the property. See Exhibit 3. Thus the Board finds that the Petitioners are not responsible for the special circumstances or conditions that pertain 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 that without the grant of the requested variances, the Petitioners are unable to replace their existing garage/shed structure, which is in disrepair and is located on the narrow pipestem portion of their property, adjacent to the alley, with a structurally sound garage of similar dimensions, causing them a practical difficulty. See Exhibits 3, 4(a)-(b), and 7. The Board further finds that the grant of the requested variances is the minimum necessary to allow the Petitioners to proceed with the proposed construction and replacement. Thus the Board finds that the requested variances are the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose on account of the unusual shape of 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; and*

The Board finds that allowing the construction of a replacement garage in place of the existing garage/shed structure continues the residential use of the property and is consistent with the East Silver Spring Master Plan (2000), the intent of which is to "sustain a livable community of neighborhoods in East Silver Spring by preserving positive attributes and guiding change so that it strengthens the function, character, and appearance of the area," 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 variances requested are needed to allow the construction of a structurally sound garage in the same location, proximate to the alley, as the existing garage/shed structure. The Board further finds that the proposed structure will have dimensions that are almost identical to the existing structure, with a modest increase (less than 10 square feet) that is needed to give the structure a regular shape. The Board notes that the increased area will be located on the side of the structure that is closest to the Petitioners' house, and will not bring the structure any closer to the alley than the existing structure. In addition, the Board finds, per the Statement and testimony of record, that the proposed replacement garage will be a visual improvement for the neighbors, and that the Petitioners' neighbors are supportive of the proposed construction. See Exhibit 3. In light of the foregoing, the Board finds that granting the requested variances 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 variances are granted, subject to the following conditions:

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

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with 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 16th day of November, 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.