

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6773
PETITION OF JOAN SUSIE**

OPINION OF THE BOARD

(Hearing Date: November 30, 2022)
(Effective Date of Opinion: December 14, 2022)

Case No. A-6773 is an application by Petitioner Joan Susie for two variances needed for an addition to an existing accessory structure (garage) so that it can be used as an accessory dwelling unit. The proposed construction requires a variance of 1.50 feet as it is within 5.50 feet of the right lot line. The required setback is seven (7) feet, in accordance with Section 59.4.4.9.B.2 of the Montgomery County Zoning Ordinance. In addition, the proposed construction requires a variance of seven (7) feet as it is within zero (0) feet of the left lot line. The required setback from that lot line is also seven (7) feet, in accordance with Section 59.4.4.9.B.2 of the Montgomery County Zoning Ordinance.

The Board of Appeals held a hearing on the application on November 30, 2022. Petitioner Joan Susie participated in the proceedings in support of the requested variance, assisted by her architect, Eric Saul.

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

EVIDENCE PRESENTED

1. The subject property is Lot 41, Block D, McNeills Addition Subdivision, located at 701 Bonifant Street in Silver Spring, Maryland, 20910, in the R-60 Zone. It is a five-sided lot located on the north side of Bonifant Street. The property's side lot lines converge to the point that they almost meet, leaving the property with a 12.24 foot rear lot line and a rear yard that is essentially triangular in shape. The property has a total area of 5,418 square feet, which is substandard for the R-60 Zone. See Exhibits 1, 3, 4, and 7.

2. The Petitioner is seeking to convert an existing detached garage into an accessory dwelling unit ("ADU"). The existing garage is located zero (0) feet from the left side property line and 5.50 feet from the right side lot line. See Exhibits 3 and 4. The Petitioner's Justification Statement ("Statement") describes the changes to the existing structure that are needed to effect the proposed conversion, as follows:

Petitioner proposes to convert the existing accessory garage structure into an ADU. The garage requires modifications to create a legal ADU and to meet current building codes, which requires a variance. The current site is unusually narrow and irregular in shape, and without a variance, it would be impossible to build an ADU, or any type of accessory structure on the current site meeting all zoning regulations.

To meet building codes, the roof structure needs to be rebuilt and made taller for appropriate headroom in the unit. Since the entire roof is being replaced, Owner has proposed a taller roof with dormers that are less than 50% of the total roof area (dormers less than 50% of the total roof area are not factored into the mean roof height calculation). This additional height does not exceed the maximum allowable height of 20', nor the allowable mean height of 15' to require additional setback.

Also, the footprint of the existing structure is too small for a functional ADU at only 189 square feet. Petitioner proposes an addition approximately 6 feet in length along the side property line and 6 feet towards the middle of the lot. The addition will not increase the total length of the building beyond 24 feet, which is the maximum length allowed before additional setback is required.

See Exhibit 3. The Statement states that the substandard size of the property and the triangular shape of its rear yard also create a hardship for the Petitioner and factor into the need for variance relief, noting that "[t]he rear yard forms a triangle, creating an acute angle that makes it practically impossible to construct a detached accessory structure when including the required setbacks." See Exhibit 3.

3. The Statement at Exhibit 3 states that the proposed construction uses an existing legal nonconforming building, as follows:

While it is unknown the exact time the existing accessory structure was built, it was constructed prior to the date determining a legal, nonconforming structure (1954), and before 1941 as evidenced by the plat map drawing in the "Atlas of Montgomery County, Maryland," dated 1941 (see attached photos showing the existing garage structure drawn in this map book).

4. The Statement at Exhibit 3 further elaborates on the time of construction in noting that the Petitioner is not responsible for the construction or location of the existing garage:

The existing accessory structure in the rear yard was constructed prior to the Petitioner's purchase of the house and without their knowledge of when it was built. Petitioner purchased the property in 1994 and it is believed the structure was built in 1934. The existing structure was already constructed in its current location on the site, and the special circumstances or conditions were not a result of actions by the Petitioner.

5. In addressing the practical difficulty that full compliance with the Zoning Ordinance poses for the Petitioner, the Statement explains the need for improvements to the existing building, both for code compliance purposes and for habitability, as follows:

In order to convert a garage to an ADU, building codes must be met and the structure must be upgraded. The roof structure is too low to allow for proper ceiling height, insulation and HVAC equipment, and the Petitioner is requesting a moderately sized first floor bathroom, and attic loft space to accompany these needs. It would be impracticable and impossible to tear down the structure and rebuild a new, similar sized structure that meets all county setbacks and regulations.

See Exhibit 3. The Petitioner's variance application reiterates the practical difficulties imposed by the property itself, stating that the property's rear yard is narrow and has a triangular shape, and that the existing garage does not comply with the Zoning Ordinance. The application further states that "[i]t is impossible to construct a detached accessory dwelling unit given the parameters of the existing side and rear property lines." See Exhibit 1.

6. Finally, the Statement states that "[b]y remaining in its current location with a small addition and increase in height, the proposed project preserves the residential character of the neighborhood." See Exhibit 3. The Statement notes that the proposed structure will remain below the height limit for accessory structures, and states that it will not adversely affect the use and enjoyment of neighboring properties, as follows:

The proposed additions to the existing structure will not negatively impact the adjoining rear yard. The variance will not negatively impact the character, health, safety, welfare, or security of the neighboring residents. It will remain under the allowable height limit.

See Exhibit 3. The record contains letters of support for the grant of the requested variances from the Petitioner's abutting neighbors on both sides. See Exhibits 9(a)-(b).

7. At the hearing, Ms. Susie testified that her neighborhood is marked by detached garages with alley access. She testified that her garage shares a common wall, approximately 18.9 feet in length, with her neighbors' garage. Ms. Susie testified that she had reached out to the neighbors with whom her garage shares this wall, as well as to the neighbors on the opposite of her house, and that both sets of neighbors support her variance request. Ms. Susie testified that she is seeking to convert her garage to an accessory dwelling unit that she can live in while renting out her home.

8. Mr. Saul testified that the property has a triangular, wedge-shaped back yard. He testified that it would be virtually impossible to build in the allowable area unless the new structure was attached to the house. Mr. Saul testified that the existing garage is 189 square feet in size, and that this is not large enough for a livable ADU. He testified that they are proposing to increase the size of this structure to about 350 square feet, which he testified is still very small, and below the 400 square foot maximum for a house to be considered a "tiny house" in Montgomery County. Mr. Saul testified that ADUs need full

sized kitchen appliances. He testified that the proposed ADU will meet the 24 foot accessory structure length limit (above which additional setbacks are required), and that it will comply with the applicable height limits, concluding that the proposed structure is as small as it can be without necessitating additional variances. In response to a Board question, Mr. Saul testified that it is only the proposed ADU's right rear corner, which he described as "about an 18 inch triangle," that encroaches on the setback from the property line shared with Ms. Susie's neighbor to the right.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the variances from the right and left lot lines can be granted. The Board finds that 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 at 5,418 square feet, the subject property is substandard for the R-60 Zone, which has a minimum size of 6,000 square feet. The Board further finds that the subject property has an unusual, five-sided shape, with converging side lot lines that leave a narrow (and narrowing) rear yard that is essentially triangular in shape. The Board finds that these factors combine to significantly constrain the buildable area available for construction behind the rear building line of the existing house, and that these circumstances, taken together, constitute an extraordinary condition 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 Statement indicates that the subject property was developed in 1934, and that the Petitioner purchased it in 1994. The Statement further indicates that the existing garage was located on the property in the setbacks at the time of her purchase. See Exhibit 3. Thus the Board finds that the special circumstances or conditions relating to this property and structure are not the result of actions by the Petitioner, and 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 compliance with the right and left side setbacks imposed by the Zoning Ordinance poses a practical difficulty for the Petitioner with respect to her ability to convert her existing garage for use as an ADU. In support of this finding, the Board notes, per the Statement and the testimony of Mr. Saul, that the 189 square foot footprint of the existing garage is too small for a functional ADU; that in order to meet

building codes, the roof of the existing garage needs to be rebuilt and raised; and that the property's small size and unusual shape make it "practically impossible to construct a detached accessory structure" that complies with the required setbacks. See Exhibit 3. The Board further finds, based on the Statement and the Site Plan, that the proposed addition to the existing garage would not encroach any farther into the left side setback than the existing garage, that it is only a small corner of the proposed ADU that would extend into the right side setback, and that that the requested variances are the minimum needed to allow the Petitioner to reuse her existing garage for an ADU and thus to overcome the practical difficulty that full compliance with the Zoning Ordinance would entail. See Exhibits 3 and 4. Accordingly, the Board finds that this element of the variance test is satisfied.

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 variances from the right and left side lot lines, needed to allow the proposed conversion of the existing garage to an ADU, can be granted without substantial impairment to the intent and integrity of the East Silver Spring Master Plan (2000), which seeks, among other things, to preserve existing residential character, encourage neighborhood reinvestment, provide a greater range of housing types, and enhance the quality of life throughout East Silver Spring.

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, per the Statement and Site Plan, and the testimony of Mr. Saul, that the proposed construction will not encroach any farther into the left side setback than the existing garage, that the proposed encroachment into the right side setback is minor, and that the proposed ADU will not exceed the allowable height for accessory structures. See Exhibits 3 and 4. The Board further finds, per the Statement, that the grant of the variances will not be adverse to the use and enjoyment of neighboring properties because it will not negatively impact the adjoining properties or "the character, health, safety, welfare, or security of the neighboring residents." In addition, the Board finds, based on the testimony of Ms. Susie and as evidenced by the letters of support, that her immediate neighbors do not object to the proposed construction. See Exhibits 9(a) and (b). On the basis of the foregoing, the Board finds that 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 from the right and left lot lines, needed for the construction of an addition to the Petitioner's existing garage, are **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5.

Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines and Laura Seminario-Thornton 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 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.