

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6774**

**PETITION OF JONATHAN AND JENNIFER WEINBERG**

**OPINION OF THE BOARD**

(Opinion Adopted November 30, 2022)

(Effective Date of Opinion: December 14, 2022)

Case No. A-6774 is an application for a variance necessary for the proposed construction of a rear addition to an existing house. The proposed construction requires a variance of eight (8) feet as it is within twenty-two (22) feet of the rear lot line. The required setback is thirty (30) feet, in accordance with Section 59.4.4.7.B.2 of the Montgomery County Zoning Ordinance.

The Board of Appeals held a remote hearing on the application on November 30, 2022. Petitioner Jonathan Weinberg participated in the hearing in support of the requested variance, assisted by architect Eric Saul.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 29, Block A, Lake Normandy Estates Subdivision, located at 10 Le Havre Court in Potomac, Maryland, 20854, in the R-200 Zone. It is an unusually shaped, four-sided cul-de-sac lot, 20,902 square feet in size, with "S-shaped" frontage along the street and cul-de-sac (north side), a left side (eastern) lot line that meets the street at a right angle, a right side (western) lot line that, while set at a right angle to the cul-de-sac, is sharply angled away from the left side lot line due to the curvature of the cul-de-sac, and a rear (southern) lot line that is much longer than the side lot lines and that meets the left side lot line at a right angle and the right side lot line at an acute angle. The overall effect is that the property is shallow and wide, with unusual curves along its front lot line. There is a 20-foot wide Washington Gas right-of-way across the rear of the property, along the rear lot line. See Exhibits 3 and 4.

2. The subject property contains an existing house that was constructed in 1984, and that, as shown on the Site Plan, is located on the front and rear setback lines, and very

close to the left side lot line. The Petitioners' Justification Statement ("Statement") states that because of the proximity of the existing house to the required setback lines, any addition would have to be built on the right side of the house. The Statement goes on to state that there is a swimming pool approximately 16 feet away from that side of the house that constrains construction in that direction.<sup>1</sup> See Exhibits 3 and 4.

3. The Statement indicates that the Petitioners are proposing to construct a one-story rear addition over the footprint of an existing deck, at a distance of 22 feet from the rear lot line. The Statements states that "[d]ue to the irregular sized lot and the placement of the existing structure at the very rear, side and front of the buildable area, the only practical and least disruptive addition is best proposed on the rear." The Statement notes, and the Site Plan shows, that because the proposed addition, like the existing house, will be set at an angle relative to the rear lot line, only the right rear corner of the addition will encroach on the setback. See Exhibits 3 and 4.

4. The Statement states that the "shape of the lot is very wide and not very deep." See Exhibit 3. The Petitioners' variance application notes that the shallowness and shape of the property cause the Petitioners a practical difficulty in complying with the Zoning Ordinance, and states that the "[e]xisting house abuts three setbacks and has a pool on the other side leaving little to no room for the proposed addition," going on to state that without the grant of the requested variance a variance, the Petitioners "will be unable to add a modest rear addition...." See Exhibit 1.

5. The Statement states that with the exception of a deck that was built on the side of the house near the pool, the existing house has not changed since the Petitioners purchased it in 2004. Thus, the Statement concludes that the special circumstances or conditions pertaining to this property are not a result of actions by the Petitioners. See Exhibit 3.

6. The Statement states that the requested variance is the minimum needed to overcome the practical difficulties posed by full compliance with the Zoning Ordinance on account of the unusual features of this property, stating that "[w]ithout a variance, it would be impractical to build a standard sized addition on any side of the existing structure," and that "[t]he proposed addition is modest, and is built over the same footprint of the existing deck structure." See Exhibit 3.

7. The Statement indicates that the grant of the requested variance, and the resultant construction, would not be adverse to the use and enjoyment of neighboring property owners, noting that the proposed construction will maintain the existing front and side setbacks, in addition to maintaining the footprint of the existing rear deck. In addition, the Statement states that "[g]ranting a variance to locate the one-story addition to the south will not negatively impact the neighbor to the south," and that "[t]he addition will not negatively impact the character, health, safety, welfare, or security of the neighboring residents." See Exhibit 3.

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<sup>1</sup> The Board's records indicate that variance Case No. A-1183 was granted in 1984 to allow the construction of this swimming pool the side yard of the subject property. See Exhibit 7.

8. At the hearing, Mr. Saul testified that the Petitioners are proposing a small, one-story addition on the rear of their house. He testified that as shown on the Site Plan, the existing house is wedged into the buildable area on the property, with one corner already at thirty (30) feet from the rear lot line. See Exhibit 4. He stated that the curve of the cul-de-sac pushed the house back on the property, and that there is no way to build an addition without seeking variance relief. Mr. Saul testified that there is currently a deck on the house where the addition is proposed, and that the addition might extend one foot closer to the rear lot line than the deck, leaving it twenty-two (22) feet from the rear lot line at the closest corner. Directing the Board's attention to the elevations, Mr. Saul testified that the proposed addition is "pretty subtle" and smaller than the main house, adding that as such, it "does not impose" on the neighbors. See Exhibit 5. He testified that that the houses to the rear of the subject property are "far away."

9. Mr. Weinberg testified that there are woods behind his house and that his neighbors to the rear are far away, noting that he cannot see these neighboring houses except when the leaves are down. He testified that his neighbors have seen the variance sign and that he has talked to several of them, none of whom voiced any objections to the proposed addition.

#### **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 requested 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;*

Based on the Application, Statement, and Site Plan, the Board finds that the subject property has an unusual, shallow shape which restricts the buildable area available to the Petitioners to expand their home in any direction except to the west. The Board finds that the presence of a swimming pool, built by a previous owner close to and west of the existing house, in the only area that might otherwise be available for expansion of the house, further constrains the buildable area available to the Petitioners. See Exhibits 3, 4, and 7. The Board finds that this constitutes an extraordinary condition that is 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 the Petitioners, who purchased the subject property in 2004, are not responsible for the property's unusual shape or shallowness, or for the resulting constraints on the property's buildable area. In addition, the Board finds that the Petitioners are not responsible for the construction of the pool in the property's west side yard. 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 and the testimony of Mr. Saul, that the application of the setbacks to this unusually shaped, shallow property significantly constrain its buildable area and, coupled with the presence of the swimming pool, preclude meaningful expansion of the existing home without variance relief. See Exhibits 3 and 4. The Board further finds that this inability to expand their home without variance relief causes a practical difficulty for the Petitioners, and that the requested variance is the minimum necessary to allow the proposed rear addition, and is thus the minimum necessary to overcome this practical difficulty, 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 the property and accordingly can be granted without substantial impairment to the intent and integrity of the Potomac Subregion Master Plan (2002). 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, based on the Statement and the testimony of Mr. Saul, that the proposed construction will maintain the existing front and side setbacks, and will generally occupy the location of an existing rear deck. See Exhibit 3. In addition, the Board finds, per the Statement and the testimony of both Mr. Saul and Mr. Weinberg, that the proposed addition will not negatively impact the Petitioners' rear neighbors because of the distance between houses and the presence of trees. The Board notes that the record contains no letters of opposition to the grant of this variance, despite the hearing being noticed and the variance sign being property posted, and that Mr. Weinberg has testified that the neighbors with whom he spoke were supportive. In light of the foregoing, the Board finds that the grant of the requested variance 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 variance necessary to allow the proposed construction of a one-story rear addition is **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.

Therefore, based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by Caryn Hines, with John H. Pentecost, Chair, 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.

  
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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.

  
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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.