

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
<http://www.montgomerycountymd.gov/boa/>
(240) 777-6600

**Case No. A-6779
PETITION OF PATRICIA HANRAHAN**

OPINION OF THE BOARD
(Hearing Date: December 14, 2022)
(Effective Date of Opinion: December 29, 2022)

Case No. A-6779 is an application by Petitioner Patricia Hanrahan for two variances needed for improvements to an existing accessory building (garage) to facilitate its conversion to an accessory dwelling unit. The proposed construction of a porch covering on this accessory building requires a variance of 12.20 feet as it is within 12.80 feet of the front lot line. The required setback is twenty-five (25) feet, in accordance with Section 59.4.4.9.B.2 of the Montgomery County Zoning Ordinance. In addition, the proposed construction of new walls on this accessory building within the setback line requires a variance of ten (10) feet as it is within fifteen (15) feet of the front lot line. The required setback is twenty-five (25) 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 December 14, 2022. Petitioner Patricia Hanrahan participated in the proceedings in support of the requested variances, assisted by her architect, Dana Haden, AIA.

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

EVIDENCE PRESENTED

1. The subject property is Block 86, Lot 6, Petty Estates Takoma Park Subdivision, located at 7421 Cedar Avenue in Takoma Park, Maryland, 20912, in the R-60 Zone. It is a four-sided corner lot, much deeper than it is wide, with roughly 60 feet of frontage along Cedar Avenue on its northwest side and 131.46 feet of frontage along Old Philadelphia Avenue, along its northeast side. The property narrows from front to rear, giving it a slightly trapezoidal, as opposed to rectangular, shape. See Exhibits 4(a)-(b) and 7.
2. The property contains a bungalow-style house, built in 1918, and an existing detached garage that was built "slightly later." Both structures existed when the Petitioner

purchased the house, which was in 1991 according to SDAT. See Exhibit 3 and SDAT printout. The Petitioner is seeking to convert the first floor of the existing garage into an accessory dwelling unit ("ADU").¹ The Petitioner's Statement of Justification ("Statement") states that the existing garage is an existing, legal nonconforming structure, and that its footprint is not changing. See Exhibit 3.

3. The Site Plan shows that the existing garage is set back 15 feet at its closest point from Old Philadelphia Avenue. See Exhibits 4(a)-(b). The required setback along that frontage is 25 feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance. See Exhibits 6(a)-(b).

4. The Statement states that the Petitioner is seeking to modify the wall of the existing garage that faces Old Philadelphia Avenue by changing the existing garage door to a new residential door and by adding windows. In addition, the Petitioner is seeking to add a 36-inch wood awning that would project from the face of the structure on that side; the awning would not extend to the ground. The Statement notes that the proposed awning provides some separation between the gravel parking and front door. See 3. The Petitioner includes drawings showing the existing and proposed elevations on this side of the structure with her request. See Exhibit 5(a). The Statement concludes that the requested variances are the minimum needed to convert this garage into an ADU. See Exhibit 3.

5. The Statement states that the proposed setting of the ADU "conforms well in the neighborhood," and that granting the requested variances "does not hurt the neighborhood" and is "a lovely solution that practically exists today," presumably referring to the fact that only the face, and not the footprint, of the existing structure is changing. The Statement states that there will be off-street parking on the property for both the main dwelling and the proposed ADU, and that "there will be nearly no impact on the neighborhood including parking" because Old Philadelphia Avenue is really a side street with almost no car traffic. The Statement observes that if a 15-foot side street setback, as opposed to a 25-foot front setback, had been applied along Old Philadelphia Avenue, no variances would have been needed for the proposed changes. See Exhibit 3.

6. At the hearing, Ms. Haden testified that the garage they are seeking to improve is an existing building in a historic district. She testified that if the requested variances are granted, they will seek approval of the proposed construction from the Historic Preservation Commission. Ms. Haden testified that the subject property is a corner lot with two front setbacks, and that if the setback from Old Philadelphia Avenue had been a 15-foot side street setback instead of a front lot line setback, the existing structure would be compliant. She explained the proposed changes to the façade of the existing structure, including changes to doors and windows, and the addition of a bracketed wood awning with shingles. In response to a Board question, Ms. Haden confirmed that the Petitioner was not proposing any changes to the footprint of the existing structure.

¹ The Statement states that the existing garage has a second floor that is accessed from the outside and is used for storage, and that this is not changing. See Exhibit 3.

7. The Petitioner testified that her home is a Sears house, and that based on the materials used in the construction of the garage, she believes that it dates to sometime around 1950. The Petitioner testified that her neighbors are generally supportive of her proposed improvements to the existing garage, and that more than one has expressed interest in renting the proposed ADU once it is finished.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the variances from the front lot line 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.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the proposed development involves changes to the façade of, and the addition of an awning to, an existing accessory structure (garage) that is located fifteen (15) feet from the front lot line along Old Philadelphia Avenue where the required setback is twenty-five (25) feet. The Board finds, per the Statement, that the existing structure was built sometime after 1918 (possibly as late as 1950, per the testimony of the Petitioner), and is a legal, nonconforming structure. See Exhibits 3 and 4(a)-(b). Because the proposed development uses this existing structure, the Board finds that this element of the variance test is satisfied.

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 SDAT printout, that the subject property was originally developed in 1918, with the accessory structure (garage) built sometime thereafter, and that both structures were in their current locations when the Petitioner purchased the property in 1991. Accordingly, the Board further finds, based on the Statement and the Site Plan, that the existing garage was located fifteen (15) feet from the property line along Old Philadelphia Avenue, in what is now the required setback, at the time of the Petitioner's 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 front lot line setback imposed by the Zoning Ordinance along Old Philadelphia Avenue poses a practical difficulty for the Petitioner with respect to her ability to convert her existing detached garage for use as an ADU, and that the requested variances, needed to allow improvements to the existing structure that do not increase its footprint, are the minimum needed to overcome this practical difficulty. In support of this finding, the Board reiterates that the Petitioner is not proposing any changes to the footprint of the structure, that the proposed awning is modest in size, does not extend to the ground, and is needed to separate the parking area from the ADU, and that if a side street lot line setback had been applied instead of a front setback, no variances would have been needed for the proposed construction. See Exhibits 3 and 4(a)-(b). In light of the foregoing, the Board finds that the variances requested are the minimum needed to allow the Petitioner to reuse this nonconforming garage for an ADU, and thus to overcome this practical difficulty that full compliance with the Zoning Ordinance would entail, 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;*

The Board finds that the requested variances, 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 Takoma Park Master Plan, which seeks to preserve “the existing residential character, encourage neighborhood reinvestment and enhance the quality of life throughout Takoma Park.” The Board notes that the subject property is in the Takoma Park Historic District, and that Ms. Haden has indicated that they will seek approval for the proposed construction from the Historic Preservation Commission.

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, per the Statement and the testimony of Ms. Haden, that with the grant of the requested variances, the footprint of the existing garage will not change, and the only additional incursion into the setback from Old Philadelphia Avenue will be the awning projection, which is modest and will not extend to the ground. The Board further finds, based on the Statement, that granting the requested variances will have “nearly no” impact on the neighborhood, including on traffic and parking. In addition, the Board finds, based on the testimony of the Petitioner, that her neighbors are generally supportive of the proposed construction and that some have expressed an interest in renting the ADU once it is completed. Finally, the Board notes that the record contains no opposition to the requested variances. 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 front lot line 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(a)-(b) and 5(a)-(d).

Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Laura Seminario-Thornton, with Caryn Hines in agreement, and with Richard Melnick, Vice Chair, 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 29th 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.