

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/boa/>**

Case No. A-6807

PETITION OF CLAIRE OLSZEWSKI

**OPINION OF THE BOARD
(Opinion Adopted May 3, 2023)
(Effective Date of Opinion: May 10, 2023)**

Case No. A-6807 is an application for a variance needed for the construction of a one-story addition. The proposed construction requires a variance of 4.80 feet as it is within 15.20 feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59.4.4.9.B.2 of the Montgomery County Zoning Ordinance.

The Board held a hearing on the application on May 3, 2023. Petitioner Claire Olszewski and her husband, Sebastian Rodriguez Gonzalez, appeared at the hearing in support of the application, assisted by their architect, Paul A. Wilson, AIA.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 8, Block 3, Brookdale Subdivision, located at 5201 Murray Road in Chevy Chase, Maryland, 20815, in the R-60 Zone. It is an unusually shaped, five-sided lot, located on the east side of Murray Road. Two of the property's three side lot lines are set at right angles to the property's front lot line, giving the front portion of the property a rectangular shape and a consistent width of 60 feet. The property's remaining side lot line and rear lot line meet the afore-mentioned right and left side lot lines at obtuse angles, and meet each other to form a right angle, giving the rear portion of the property a triangular shape. The Petitioner's variance Application describes this succinctly, referring to the property as a "five-sided lot that comes to a point behind the existing home." The Zoning Vicinity Map shows that the shape of the subject property is extremely unusual in this neighborhood. See Exhibits 1, 4(a)-(b), and 7.

2. The Petitioner's Statement of Justification ("Statement") states that there are unusual or extraordinary circumstances that pertain to the subject property, describing them as follows:

The subject lot is five-sided: rectilinear along each side lot line and triangular in the rear, representing an unusual and extraordinary condition. Two rear lot lines come to a point midway across the lot's width.

See Exhibit 3. The Statement states that the subject property contains a house that was "constructed in 1938, long before the Applicant's ownership of the property," and thus concludes that the property's unusual shape is not attributable to any actions by the Petitioners.

3. The Petitioners are proposing to construct a small addition to improve the functionality of their home. The Statement indicates that because of the shape of the property and the location of the existing house, the proposed addition will project 23 square feet into the property's rear setback "due to linear extension of the existing side and rear walls of the dwelling." The Statement indicates that the proposed design was selected "[a]fter a review of some alternatives," and that it "solves the functional needs of the clients, and it is achievable within the client's budget." See Exhibit 3.

4. The Statement states that "[t]he proposed one-story design is aesthetically compatible with the neighborhood and house regarding scale, character, materials and proportions," and that "[d]ue to the depth of the triangular rear yard, the new addition will in no way adversely affect the use or enjoyment of abutting properties." See Exhibit 3.

5. At the hearing, Petitioner Claire Olszewski testified that she and her husband moved into their house in 2019, and that since that time, their family has grown. She described the many things that she and her husband love about their neighborhood, but testified that their house has some flow and safety issues, particularly for small children. Of note, she testified that you enter the house from the garage at a landing for the stairs to the basement; she testified that the basement is currently unfinished and that she does not think the existing stairs are up to code. Ms. Olszewski testified that she and her husband are seeking a safer way to enter the house from their garage, as well as a safer way to access their basement, which they intend to finish for visitors. In addition, she testified that there is a room behind their garage that is only accessible from the garage. Ms. Olszewski testified that the proposed addition will connect that room to the rest of the house. She testified that the proposed addition respects the architecture and footprint of the existing home.

6. The Petitioner's husband testified that he and his wife have talked with their neighbors about the proposed construction over the past few months, and that all are supportive. He submitted letters of support from three of their immediate neighbors. See Exhibit 9. He later testified, regarding the proposed addition, that it would maintain the existing roofline and lines of the existing house.

7. Paul Wilson testified that the proposed addition would follow the lines of the existing house and garage, and would fill in the missing corner. He testified that the existing house has “thorny” circulation and functionality issues, and stated that the garage is a half level below the first floor of the house. Mr. Wilson testified that he has created a “knuckle” to solve these circulation problems. He testified that the proposed one-story addition continues the existing lines of the house, and is minimally intrusive. He further testified that the proposed addition has to be where it is because of the existing half level. Finally, Mr. Wilson testified that the proposed addition makes sense architecturally and keeps with the architectural language of the neighborhood.

CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the 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;

The Board finds, based on the Application, Statement, Site Plans, and Zoning Vicinity Map, that the subject property has an unusual, five-sided shape and sharply angled rear lot line that distinguishes the subject property from nearby properties. The Board further finds that the application of the required setbacks to this unusually shaped property results in a buildable envelope that is also unusual in shape, restricting the Petitioner’s ability to construct an orthogonal addition to the existing 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 1, 3, 4(a)-(b), and 7.

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 Ms. Olszewski, that the subject property was developed in 1938, long before it was purchased by the Petitioner and her husband in 2019. Thus the Board finds that the Petitioner is not responsible for the five-sided shape of the property, including its sharply angled rear lot line, or for the construction and siting of the existing house, in satisfaction of this element of the variance test. See Exhibit 3.

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 because of the property's unusual shape, and in particular, its angled rear lot line, the application of the required setbacks to this property does not leave room for the proposed addition to this existing home without variance relief, causing the Petitioner a practical difficulty. The Board notes that the proposed addition is regular in shape, that it is designed to be flush with the home's existing left and rear facades, and that it is modest in size. In addition, the Board notes that only the left rear corner of the proposed addition would project into the setback, and that the extent of the total encroachment (23 square feet) is very small. In light of the foregoing, the Board finds that the requested variances are the minimum needed to overcome the practical difficulties imposed by full compliance with the Zoning Ordinance, 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 construction permitted by this variance will continue the residential use of the home, and accordingly, the Board finds that the requested variance can be granted without substantial impairment to the intent and integrity of the applicable Bethesda-Chevy Chase Master Plan (1990). Thus, 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.*

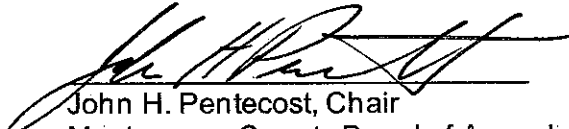
The Board finds, per the Statement, that the proposed addition is "aesthetically compatible with the neighborhood and house regarding scale, character, materials and proportions," and that "[d]ue to the depth of the triangular rear yard, the new addition will in no way adversely affect the use or enjoyment of abutting properties." See Exhibit 3. The Board further finds, based on the testimony of the Petitioner's husband, that he and his wife have spoken with their immediate neighbors about the proposed addition, and that all are supportive. The Board notes that three neighbors have submitted letters of support. See Exhibit 9. Finally, the Board finds that despite the property being properly posted, the record contains no letters of opposition to the grant of the requested variance, and that no one appeared in opposition at the hearing. In light of the foregoing, the Board finds that the grant of this 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 is **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)-(g) (exterior dimensions/elevations only).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Laura Seminario-Thomton, and Alan Sternstein 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 10th day of May, 2023.


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.