

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6811

PETITION OF KATHLEEN LEGG AND RAJIB CHANDA

OPINION OF THE BOARD
(Hearing Held May 31, 2023)
(Effective Date of Opinion: June 7, 2023)

Case No. A-6811 is an application by Kathleen Legg and Rajib Chanda (the "Petitioners") for a variance necessary for the construction of a rear addition that has a roof peak of 37 feet, 9 inches. The maximum allowed height is 35 feet, in accordance with Section 59.4.4.9.B.3 of the Montgomery County Zoning Ordinance (2014).

The Board of Appeals held a hearing on the application on Wednesday, May 31, 2023. Petitioner Rajib Chanda appeared at the hearing in support of the requested variance, assisted by his architect, William Kirwan.

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

EVIDENCE PRESENTED

1. The subject property is Block 46, Lot 40, Chevy Chase Section 2 Subdivision, located at 111 E. Melrose Street in Chevy Chase, Maryland, 20815, in the R-60 Zone. It is an interior, four-sided lot, regular in shape, with a width of +/-100 feet and depth of +/-125 feet. The property is located on the north side of E. Melrose Street. Per SDAT, it has an area of 12,504 square feet, contains a house that was built in 1988, and was purchased by the Petitioners in 2017. See Exhibits 3 and 4(b), and SDAT Printout.

2. The Petitioners' Statement of Justification ("Statement") states that the subject property contains an existing house that was built by a previous owner more than 30 years ago. The Statement further states that the "existing attic and main roof of the main block of the house" exceed the current height limitation by "a little under 3 feet," and that the Petitioners are seeking to build "an attic space towards the rear of the proposed addition that will have a ridge height that will not exceed the ridge height of the existing roof." The Statement states that the Petitioners are proposing to build a cupola "[t]o help

conceal this taller portion of the new addition from visibility from public space,” and notes that “[t]his will result in the taller portion of the addition that exceeds the height limit to only be visible from private property at the interior of the block, but with no greater impact to the neighboring properties than the existing house.” See Exhibit 3.

3. The Statement states that even with the proposed addition, only 13.24 percent of the roofed area will exceed the applicable height limitation. See Exhibit 3. The Statement then proceeds to note that this is less than the 25 percent of the roof on which certain height encroachments are permissible, as follows:

... the sum of all existing and proposed height encroachments (the area of the existing roof above the height limit, the area of the proposed addition roof that exceeds the height limit, the existing chimneys, and proposed cupola) total 524.34 sf of the total roof area of 3,961.18 sf. This is a percentage of 13.24% of the total roofed area that will exceed the height limit. Section 4.1.7.c.3.a allows for non-occupiable roof encroachments to the height limit up to 25% of the total roofed area. Thus, even with this taller proposed section of roof, we are well under the allowable area of encroachment that could otherwise be built as a matter of right on the roof of this residence.

4. The Statement states that the existing house is nonconforming on account of its roof height. See Exhibit 3.

5. The Statement indicates that the “existing useable attic space” is a result of the home’s nonconforming roof height, stating that “the existing useable portions of the attic are only possible due to the existing non-conforming roof height.” The Statement further indicates that “[t]he lot occupancy limit, location of the house on the site, and the rear yard components ruled out further expansion of the footprint” of the existing home, causing the Petitioners to have to look to expansion of the attic level in order to meet their need for additional space. See Exhibit 3.

6. The Statement asserts that the proposed development contains environmentally sensitive features, noting that the proposed construction does not expand lot coverage, and that by “[m]aintaining the existing amount of lot occupancy that results from expanding the attic over proposed and existing structures maintains the existing roof area and preserves permeable surfaces that help to mitigate stormwater runoff and erosion.” The Statement further states, in this regard, that “the owners will be installing Tesla solar shingles on the roof surfaces of their home reducing their environmental footprint.” See Exhibit 3.

7. The Statement states that while the home is located outside of the Chevy Chase Village Historic District, it constitutes a part of the history of the area because it was “built by legendary national television news journalist, David Brinkley,” and as such, “is significant to the history of residents of the Village of Chevy Chase.” See Exhibit 3.

8. The Statement indicates that the proposed construction substantially conforms to the established historic or traditional development pattern in the neighborhood, stating that “[t]he proposed development utilizes roof forms, scale, and traditional detailing that are intended to extend the characteristics of the existing traditionally designed residence, and thus extends the development patterns common to the neighborhood and the neighboring historic district.” See Exhibit 3.

9. The Statement reiterates that the height of the existing home is not due to the actions of the Petitioners, but rather to a previous owner. The Statement explains that the Petitioners’ “need for expanding the attic to create dedicated home office space did not exist prior to [the work at home orders of] the pandemic but has become a professional necessity not created by the actions of the owners.” It notes that the existing home lacks dedicated office space, which “has become a permanent necessity” for both Petitioners due to changed workplace expectations arising out of the pandemic. The Statement states that the requested height variance is the minimum needed to provide the needed additional space, noting that “[t]he proposed attic expansion, and the portion of the expansion that is requested to be built up to the existing height limit is only over the proposed office to enable adequate ceiling height,” and that “[n]o additional spaces are requested under this variance application.” See Exhibit 3.

10. Finally, the Statement states that granting the requested height variance will not be adverse to the use and enjoyment of neighboring properties. To this end, the Statement states that “[b]ecause [the Petitioners] are not requesting relief from the height limitation any taller than the existing residence, [they] believe the proposal does not create any new adverse condition to the use and enjoyment of abutting and confronting properties.” In addition, the Statement states that the Petitioners are “concealing the higher portion of roof from the street with a conforming cupola structure that is allowed to be taller than the height limit,” thus mitigating its impact on neighboring homes. See Exhibit 3.

11. At the hearing, Mr. Chandra testified that he and his wife moved into their home in 2017. He testified that they have two young children, and that his father may be moving in with them. Mr. Chandra testified that he has been working from home at least a couple of days a week, and that having a third floor office is a need, not a want, because it is too noisy to work on the first floor of the home. In response to a Board question asking if he had spoken with his neighbors about the proposed construction, Mr. Chandra testified that the neighbors to his rear were fully supportive of the variance request.¹

12. Mr. Kirwan testified that the Petitioners are planning to tear down the existing garage wing of their house and rebuild it on the same footprint, to renovate the primary bedroom and to add a mudroom. He testified that the primary bedroom is located over the garage, and that the floor level of that bedroom is slightly lower than the rest of the

¹ The Board received letters of support from two of the Petitioners’ neighbors after it had already considered and voted to grant the Petitioners’ variance request, but before this written decision was issued. These letters were from the Petitioners’ abutting neighbor to the rear (106 Newlands Street), and from their confronting neighbor across E. Melrose Street (6134 Nevada Avenue).

home's second floor, such that the Petitioners need to go down a few stairs to access the primary bedroom. Mr. Kirwan testified that with the proposed renovation, the floor of the primary bedroom will be on the same level as the rest of the second floor, eliminating these stairs. He indicated that the Petitioners would also be adding an elevator.

Mr. Kirwan testified that the Petitioners need two separate home offices, and that the only possible space to use for this purpose is in the attic. He testified that the proposed addition was placed towards the rear of the house to minimize its visibility, and that the peak of the addition's roof is being concealed with a cupola. Mr. Kirwan testified that the proposed rear addition would continue the existing attic level and roof height into the new space, and would not exceed the height of the existing house. He noted that the ridge of the roof over the front-facing portion of the renovated garage would still be lower than the ridge of the roof over the main portion of the existing house. See Exhibit 5(d). Mr. Kirwan testified that if one were to consider the portion of the existing roof that encroaches on the height limit, the existing chimneys, the proposed cupola, and the portion of the proposed addition that will exceed the height limit, approximately 13.2 percent of the roofed area would exceed the height limit, which he stated is just over half of the 25 percent encroachment allowed by the Zoning Ordinance.² Mr. Kirwan testified that the requested variance is the minimum necessary to provide this space, and that the addition has been designed so as to not be adverse to the use and enjoyment of neighboring property owners, adding that the Petitioners' house would not "stand out" amongst neighboring properties.

In response to a Board question asking if the portion of the proposed addition that would exceed the height limit would be occupied, Mr. Kirwan testified that it would not. In response to a Board question asking if existing improvements on the property precluded expansion of the home's footprint to the rear, Mr. Kirwan testified that they did, noting that the property has an existing pool that the Petitioners did not build but have maintained.

FINDINGS OF THE BOARD

Based on the binding testimony and 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 of the Zoning Ordinance, 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;

² Section 59.4.1.7.C.3.a of the Zoning Ordinance reads as follows: "The following roof structures may occupy a maximum of 25% of the roof area: a spire, belfry, cupola, dome not intended for human occupancy, chimney, flue or vent stack, flagpole, monument, water tank, television antenna or aerial, air conditioning unit, or similar structure or mechanical appurtenance (not including a rooftop renewable energy system). A larger area may be approved by the Planning Board under optional method development in the Commercial/Residential and Employment zones.

The Board finds, based on the Statement, that the Petitioners' existing house was legally built over 30 years ago, but exceeds the current height limit by almost three (3) feet, and is therefore nonconforming. The Board further finds that the proposed rear addition will be attached to the existing, nonconforming house. See Exhibits 3 and 5(hh). Thus 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 that the Petitioners' existing house was built in 1988, and that they purchased the property in 2017. 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, the Site Plan, and the testimony of Mr. Kirwan, that pre-existing improvements on the property and lot coverage restrictions prevent the Petitioners from being able to expand the footprint of their house to create the needed office space. See Exhibits 3 and 4(b). The Board further finds, based on the Statement, that "[a]vailable space in the attic of the existing house" arising from the home's nonconforming height and "extension of the attic into the proposed addition" provide the "only" means by which to create this needed space, with adequate ceiling height, and that the inability to use and extend the space created by the home's nonconforming height would cause the Petitioners a practical difficulty. The Board notes that the proposed rear addition/attic extension will be no taller than the existing house, and has been designed to minimize its visibility. Accordingly, the Board finds that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the height limitations set forth in the Zoning Ordinance would impose, 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 this property, consistent with the recommendations of the Bethesda Chevy Chase Master Plan, which generally seeks to "[p]rotect the high quality residential communities throughout the Planning Area." 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, elevations, and the testimony of Mr. Kirwan and Mr. Maghamfar, that granting the requested variance, to allow the proposed rear addition, will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test. In support of this, the Board finds that the addition has been designed so as to not be adverse to neighboring property owners, that it will not be taller than the existing house, and that any view of the addition from the street will be mitigated by a cupola, which is permitted to exceed the height limit. In addition, the Board finds that even with the proposed addition, the total percentage of roof area that would exceed, or that would contain structures that exceed, the height limitation would be 13.24 percent. Finally, the Board notes that the Petitioners' neighbors to the rear support the grant of the variance. See Exhibits 3 and 5(d).

Accordingly, the requested variance, needed for the construction of a rear addition that has a roof peak of 37 feet, 9 inches, 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 the Site Plans at Exhibits 4(a)-(d) and the elevations/plans of record included in Exhibit 5 (interior floor plans/layouts excluded).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Richard Melnick, Vice Chair, Laura Seminario-Thornton, 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 7th day of June, 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.