

**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-6814

PETITION OF BIN ZHANG

OPINION OF THE BOARD
(Opinion Adopted June 7, 2023)
(Effective Date of Opinion: June 14, 2023)

Case No. A-6814 is an application for a variance needed for the construction of a sunroom addition. The proposed construction requires a variance of six (6) feet as it is within twenty-four (24) 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 Zoning Ordinance.

The Board of Appeals held a hearing on the application on June 7, 2023. Petitioner Bin Zhang participated in the hearing in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Lot 20, Flint Hill Community Subdivision, located at 7301 Broxburn Court in Bethesda, Maryland, 20817, in the R-200 Zone. The property is a four-sided corner lot with 115.97 feet of slightly bowed frontage on Broxburn Court along its southwest side, and 131.77 feet of linear frontage on Nevis Road along its southeast side. The property's lot lines abutting these streets converge at a slightly acute angle and are joined by a 40.37 foot "arced" corner; both of these lot lines are treated as front lot lines for setback purposes. The property has a rear (northeast) lot line that meets both Nevis Road and the property's side (northwest) lot line at a right angle and measures 139.61 feet in length, and a side (northwest) lot line measuring 135.04 feet. The overall effect is that the property is roughly diamond-shaped, with a rounded southern corner. The subject property was recorded in 1958. It has an area of 20,840 square feet. See Exhibits 1, 3, 4, and 7.

2. The property contains a house that was built in 2007. The Petitioner purchased the subject property in 2019. See SDAT Printout.
3. The Petitioner is seeking a variance to allow construction of a sunroom addition on the rear of the existing house. The Petitioner's Statement of Justification ("Statement") indicates that there is a currently a deck on the rear of the house "which will be removed and replaced in kind." The Statement states that the proposed sunroom "is going over a portion of the footprint currently occupied by an open deck." See Exhibit 3.
4. The Petitioner's variance Application indicates that the narrowness and shallowness of the subject property make it unique. The Application further states that "[a]s a corner lot, the house is confined by two large required front yards on the street sides, creating a rear yard where the BRL is right at the ex[isting] house." Finally, the Application states that "[w]ithout a variance for any improvement on the rear, the ex[isting] house cannot enjoy added living space, desperately needed, like nearly all other neighboring properties can enjoy." See Exhibit 1.
5. The Statement states that due to the exceptional shallowness and shape of the lot, the property has "only one small side yard (on the left side) and a very shallow rear yard." See Exhibit 3. In addition, the Statement states that the existing house extends to within one (1) foot of the rear setback line in two places, leaving no room for expansion to the rear without variance relief. The Statement further states that the proposed sunroom will be located "on a portion of the existing deck that does sit further back than the closest façade of the rear of the house, in an area that bumps in away from the rear lot line," and that this "drastically helps the situation and reduces the amount of the variance needed." Finally, the Statement indicates that "no practical size sunroom could be constructed anywhere on the rear of the house that would not require a variance application due to the shallowness of the lot mixed with the placement of the dwelling at time of construction due to setbacks." See Exhibit 3.
6. The Statement states that the fact that "[t]here is no room for any improvement in the rear without requesting a variance" is not the fault of the Petitioner because the Petitioner was not responsible for the development of the subject property. The Statement further states that this circumstances "is unique to the [Petitioner] due to the peculiar shape due to the fact that it is a corner lot, and positioning of the dwelling." See Exhibit 3.
7. The Statement at Exhibit 3 states that the requested variance is the minimum needed to construct a sunroom of reasonable size, as follows:

The requested variance is the absolutely the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual conditions in that the structure is very modest in size. There is no smaller size that would render the proposed sunroom as practical to build. In fact, as stated, there are areas of the rear of the house where there is only 1 foot of space before the building restriction line. Clearly there is no practical use for a 1' sunroom.

The sunroom is a three-season room made almost entirely of glass. This was intentional as it is not a full addition and aims to allow more light and visibility through the structure. There is no better location on the dwelling that the sunroom could go in order to avoid the variance. In fact, anywhere else on the rear of the house would actually necessitate a larger variance request. The applicant simply seeks to utilize more of their property and increase some needed floor space of the dwelling.

8. The Statement states that the proposed sunroom will not be adverse to the use and enjoyment of neighboring properties. See Exhibit 3. To this end, the Statement states that:

As has already been shown, the existing dwelling is actually constructed nearly to the building restriction line. This sunroom will set back 24' from the closest property line and therefore will have no more impact to that property than *[sic]* this existing house has. Also, to restate, the proposed sunroom is planned for the location that is currently occupied by an open deck. This proposal is simply to enclose a portion of that open deck for expanded use. Furthermore, as a small sunroom amenity, it will not loom or impact other properties in any way.

9. At the hearing, the Petitioner testified that her house was built in 2007 by a previous owner. She attested that the variance sign was properly posted, and testified that none of her neighbors had asked her about the proposed construction.

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 a review of the variance Application, Statement, and Zoning Vicinity Map, that the subject property is unusually shallow relative to neighboring properties. In support of this, the Board finds that as shown on the Zoning Vicinity Map, most of the properties in this neighborhood are narrower and deeper than the subject property, which has a more square shape, similar to a baseball diamond. See Exhibit 7. In addition, the Board finds that the siting of the existing house compounds the impact of the property's shallowness, leaving an exceptionally shallow buildable area for improvements behind the house. Accordingly, 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 Petitioner purchased this property in 2019, after it was developed and built. Thus the Board finds that the unusually shallow shape of the subject property is not the result of actions by the Petitioner, 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, per the Application, Statement, and Site Plan, that due to the property's unusually shallow shape, full compliance with the rear lot line setback imposed by Zoning Ordinance would cause the Petitioner a practical difficulty because adherence to that setback eliminates the possibility of expanding the existing home to the rear without variance relief. See Exhibits 1, 3, and 4. The Board further finds, based on the Statement, that the proposed sunroom has been sited to minimize its projection towards the property's rear lot line, and that its size is the minimum needed to make construction practical. See Exhibit 3. Thus, the Board finds that the requested variance is the minimum needed to overcome the practical difficulty posed by full compliance with the Zoning Ordinance on account of the property's shallowness, 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 granting this variance to allow the Petitioner to proceed with the proposed construction will continue the residential use of this home, and thus the Board finds that the variance can be granted without substantial impairment to the intent and integrity of the general plan and applicable master plan, in satisfaction of this element of the variance test.

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.*

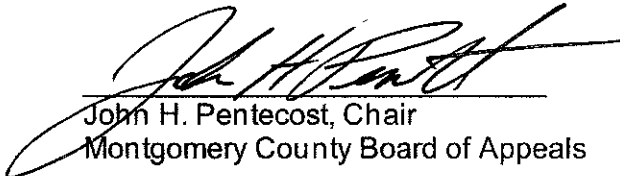
The Board finds, based on the Statement, that the proposed construction will not be adverse to the use and enjoyment of abutting or confronting properties because the proposed sunroom will be constructed primarily of glass, minimizing its mass, and has been sited to minimize its projection towards the property's rear lot line. In addition, the Board notes that the sunroom will occupy space currently occupied by an open deck. See Exhibit 3. Finally, the Board notes, per the Petitioner, that the property has been properly posted, and that the record contains no objections to the grant of the requested variance. Accordingly, the Board finds that granting this variance, to allow construction of the proposed sunroom, 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 of six (6) feet from the rear lot line 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 and 5(a).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, 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 14th 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.