

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6819
PETITION OF DAVID AND JENNIFER TYGIELSKI**

OPINION OF THE BOARD
(Opinion Adopted July 26, 2023)
(Effective Date of Opinion: August 2, 2023)

Case No. A-6819 is an application for a variance necessary for the proposed construction of an accessory structure (garage). The proposed construction requires a variance of 1.8% from the lot coverage limitation, as with that construction, the proposed lot coverage would be 11.8%. The maximum lot coverage in the AR Zone is ten (10) percent, in accordance with Section 59.4.2.1.F.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on July 26, 2023. Petitioner David Tygielski participated in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Block B, Lot 5, The Ponderosa Subdivision, located at 26200 Rudale Drive in Clarksburg, Maryland, 20871, in the AR Zone. The property is rectangular in shape, with 134 feet of frontage along Rudale Drive and a depth of 200 feet, giving it an area of 26,800 square feet. See Exhibits 4(a)-(b). The minimum lot size in the AR Zone is 40,000 square feet, in accordance with Section 59.4.2.1.F.2 of the Zoning Ordinance.
2. The Petitioners' variance Application indicates that the subject property was recorded in 1972. See Exhibit 1. Per SDAT, the subject property contains a house built in 1973, and was purchased by the Petitioners in 2012. See SDAT Printout.
3. The Petitioners are proposing to construct a 624 square foot accessory structure (garage) at a distance of fifteen (15) feet from both their rear and right side lot lines, in accordance with the setbacks imposed by the Zoning Ordinance. The Site Plan shows that the Petitioners have a well in their front yard, underground power lines in their front

and right side yards, and a septic field and tank behind their house in their rear yard. See Exhibits 4(a)-(b) and Section 59.4.2.1.F.3 of the Zoning Ordinance.

4. The Petitioners' Justification Statement ("Statement") states that the Petitioners intend to use the proposed garage to house vehicles and lawn equipment, and as workshop space. The Statement states that being able to keep "unsightly" lawn equipment, like their riding mower, wheelbarrow, and leaf blower, inside the proposed structure will improve the appearance of their property. The Statement notes that many of their neighbors have "sizable storage sheds" on their property. See Exhibit 3.

5. The Statement states that the Petitioners intend to use materials that match the siding, brick, and roof of their house for the proposed garage. The Statement states that even with the proposed structure, their property "will not appear crowded" and that they "will still have plenty of wooded areas and lawn." The Statement states that the proposed garage "will be situated in the far back corner of [their] property abutting to one neighbor's unused and wooded portion of their land and another neighbor's back corner of their property where they store their firewood," and that the garage "will in no way interfere with the agrarian feel of the neighborhood." See Exhibit 3.

6. The Statement states that if the Petitioners are permitted to build the proposed garage, their lot coverage will exceed the allowable lot coverage by 1.8% of their total lot size, or approximately 482 square feet. The Statement refers to the amount of this coverage as "minimal," and states that the additional lot coverage would have "minimum impact" on the Petitioners' neighbors and community. See Exhibit 3.

7. At the hearing, Mr. Tygielski testified that he currently has to store his lawn mower, wheelbarrow, lawn furniture, and other items outdoors on his property. He testified that this is unsightly, and that he would like to store these items in the proposed garage. In addition, Mr. Tygielski testified that he has a truck that is currently kept outside that he would also like to house in the proposed garage. Mr. Tygielski testified that the proposed garage was designed to look like their house, and that it will improve the property. He testified that the size of the proposed garage is the minimum necessary to meet their needs. Finally, Mr. Tygielski testified that his neighbors have accessory structures, one of which is similar in size to the proposed garage.

In response to a Board question asking if he had received any comments from his neighbors about the proposed construction, he testified that he had not, and noted that he is friendly with his neighbors.

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.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that at 26,800 square feet, the subject property is significantly substandard for the AR Zone, which has a 40,000 square foot minimum lot size. See Exhibits 4(a)-(b). The Board finds that the property's small size constitutes an extraordinary condition for a property located in this Zone, 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 subject property was recorded in 1972, and that the Petitioners purchased the property in 2012. Thus the Board finds that the Petitioners are not responsible for the small size of the subject 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 that the unusually small size of the subject property causes the lot coverage restriction in the Zoning Ordinance to have an extraordinarily burdensome impact on the subject property, posing a practical difficulty for the Petitioners by restricting their ability to construct an accessory structure of reasonable size. By way of example, the Board notes that if the subject property met the 40,000 square foot minimum lot size for the AR Zone, this restriction would allow up to 4,000 square feet of lot coverage, but that because the lot is only 26,800 square feet in size, coverage on the subject property is limited to 2,680 square feet. The Board finds that with the additional 462 square feet (+/-) of lot coverage requested by the Petitioners, their property would still have just over three-quarters of the lot coverage that would have been allowed if their property met the minimum size for the Zone.¹ The Board further finds, based on the Statement, that the additional 1.8% of coverage being sought by the Petitioners is the minimum needed to allow the Petitioners to construct the proposed accessory structure, and thus to overcome the difficulty posed by the strict application of the lot coverage limitation in the Zoning

¹ In addition, by way of comparison, the Board notes that like the AR Zone, the minimum lot size in the RE-1 Zone is also 40,000 square feet, but the lot coverage allowed in the RE-1 Zone is 15%, whereas the lot coverage allowed in the AR Zone is only 10%. See Sections 59.4.2.1.F.2 and 59.4.4.6.B of the Zoning Ordinance. The Board further notes that the R-200 Zone, which has a minimum lot size of 20,000 square feet and thus could potentially be used to develop properties that are similar in size to the subject property, has a lot coverage limitation of 25%. See Section 59.4.4.7.B of the Zoning Ordinance. The Board mentions these sections not because they are applicable to the subject property—they are not—but because they help to illustrate how restrictive a 10% lot coverage limitation is on a lot the size of the subject property.

Ordinance to this substandard property, in satisfaction of this element of the Zoning Ordinance.

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, and thus can be granted without substantial impairment to the intent and integrity of the Damascus 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.*

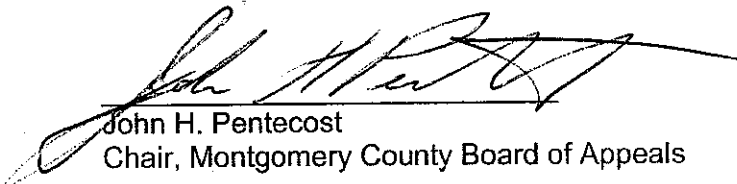
The Board finds that the location of the proposed garage meets the required setbacks from the side and rear lot lines, and that its size does not trigger the need for a variance from the requirement that the cumulative footprint of all accessory buildings on the property not exceed 50% of the footprint of the house. The Board further finds, based on the testimony of Mr. Tygielski, that none of his neighbors have expressed concerns about the proposed construction to him, despite the variance sign being posted and this hearing having been properly Noticed. Finally, the Board notes that the record contains no opposition to the proposed construction, and that no one appeared at the hearing in opposition to the grant of this variance. On the basis 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 from the lot coverage limitation, needed to allow the proposed construction of an accessory structure (garage), 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(a)-(b) and 5(a)-(e).

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


John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 2nd day of August, 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.