

**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-6842  
PETITION OF DONALD HAWKINS**

OPINION OF THE BOARD  
(Hearing Date: December 20, 2023)  
(Effective Date of Opinion: January 10, 2024)

Case No. A-6842 is an application by Petitioner Donald Hawkins for variance relief needed for the proposed construction of a room addition. The proposed construction requires a variance of four (4) feet as it is within twenty-six (26) feet of the rear lot line. The required setback is thirty (30) feet, in accordance with Section 59.4.4.7.B of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on December 20, 2023. The Petitioner participated in the proceedings in support of the requested variance, assisted by his contractor, Steve Mitchell of Great Day Improvements.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 16, Old Georgetown Estates Clarkes Addition Subdivision, located at 11824 Danville Drive in Rockville, Maryland, 20850, in the R-200 Zone. It is a five-sided lot located on the north side of Danville Drive, near its terminus. The property could have been described as rectangular in shape except that a sizable portion of its front right (southeast) corner is cut off at approximately a 45-degree angle; this angled segment fronts on the terminus/turnaround for Danville Drive. As a result, the property's frontage on Danville Drive is in two segments, one that is parallel to the property's rear lot line and one that is angled. In addition, the property's right side lot line is much shorter than its left side lot line (approximately two-thirds as long) because of this truncated corner. The subject property has a total area of 18,561 square feet. See Exhibits 4 and 7, and SDAT Printout.

2. Per SDAT, the subject property contains a house that was built in 1981, and was acquired by the Petitioner in 2021. See SDAT Printout. The Petitioner's Statement of Justification ("Statement") indicates that he is seeking to construct a sunroom on the rear of his house where there is an existing deck. The Statement indicates that the existing house is set back 44 feet from the front lot line, and that this "does not leave a lot of space in the rear to keep [the proposed sunroom] 30ft from the rear property line." The Statement states that the existing house "sits 23.3 ft from the rear property line," encroaching on the required thirty (30) foot setback from that lot line. The Statement states that the proposed sunroom will not extend as close to the rear lot line as the existing house. See Exhibit 3. The Petitioner's Site Plan confirms this and shows that the proposed sunroom will be set back 26 feet from the rear lot line. See Exhibit 4.

3. The Petitioner's variance Application cites the property's shape and shallowness as extraordinary conditions that make the property unique. The Application further states that the siting of the house on the property and on a "dead end street" does not leave "a lot of rear setback room." See Exhibit 1.

4. The Statement states that the construction of the existing house 23.3 feet from the rear lot line is not due to any actions of the Petitioner. The Statement states that because the proposed sunroom will not extend as close to the rear property line as the existing house, its construction will not be adverse to the use of an enjoyment of abutting and confronting properties. See Exhibit 3. The Zoning Vicinity Map shows that the rear of the subject property borders Josiah Henson Parkway. See Exhibit 7.

5. At the hearing, Mr. Mitchell testified that the subject property was originally developed under the R-200 Density Control Development standards. He testified that the house is set back 44 feet from the front property line, and that the rear of the house encroaches on the 30-foot rear setback. Mr. Mitchell testified that because of this, there is not much room to build to the rear of the house without variance relief. Mr. Mitchell testified that the proposed sunroom would project eight (8) feet out from the house toward the rear lot line. He testified that the existing house extends closer to the rear lot line than the proposed sunroom would. Mr. Mitchell testified that the proposed sunroom is being built over an existing deck, and that the sunroom will not extend beyond the footprint of the deck.

In response to a Board question asking what was unique about the subject property, Mr. Mitchell testified that its shape is not rectangular. In response to a Board observation that the property is less than 20,000 square feet in size, Mr. Mitchell testified that the property's size is a limiting factor. Mr. Mitchell agreed with a Board assertion that the property's truncated right front corner might explain why the property does not meet the 20,000 square foot minimum lot size.

6. The Petitioner testified that he purchased the subject property two years ago, and that it is improved with a one-level house. He testified in response to Board questioning that the property was developed about 40 years ago, and that he did not know if it was reduced in size in connection with the construction of Josiah Henson Parkway because

that would have happened before he acquired the property. The Petitioner testified that he has talked to his neighbors on both sides, and they had no concerns with the proposed sunroom. Finally, in response to a Board question, the Petitioner testified that the existing house is about two (2) feet closer to the rear lot line than the proposed sunroom would be.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and the evidence of record, the Board finds that the requested variance from the setback for the rear lot line can be granted. The Board finds that 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 that at 18,561 square feet, the subject property is small for the R-200 Zone, which has a minimum lot size of 20,000 square feet. In addition, the Board finds that the subject property has a sharply angled right front lot line which gives the property a five-sided shape that is distinct and unusual relative to other properties in the immediate vicinity. The Board finds that the property's angled front lot line makes the right side of the property shallow, transforming what would otherwise be a rectangular buildable envelope into a buildable envelope with a right side that is significantly less deep than its left. The Board surmises that this condition likely caused the existing house to be constructed further back on the property than it may have been had the property been rectangular, such that the rear of the existing house already encroaches into the required rear setback. In light of the foregoing, the Board finds that the property's small size and unusual shape combine to significantly constrain the buildable area available on the subject property, and that this constitutes an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 3, 4, 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, per the SDAT Printout and in accordance with the testimony of the Petitioner, that the subject property contains a house that was built in 1981, and that the Petitioner acquired the property in 2021. The Board further finds that there is nothing in the record to indicate that the shape of the property has changed since the Petitioner acquired it, and that the Statement indicates that the Petitioner was not responsible for the construction of the existing house. See Exhibit 3. Accordingly, the Board finds that the Petitioner is not responsible for the unusual shape of the property or the shallowness of its buildable envelope, 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 compliance with the rear lot line setback imposed by the Zoning Ordinance poses a practical difficulty for the Petitioner with respect to his ability to expand his home to the rear due to his property's small size, unusual shape, and sharply angled right front corner, and due to the constraints that these features impose on the property's buildable envelope. The Board further finds, based on the Statement and Site Plan, and based on the testimony of the Petitioner and Mr. Mitchell, that the Petitioner's proposed sunroom addition is a modest eight (8) feet deep, and that it will not extend as close to the rear lot line as the existing house, which already encroaches into the rear setback. See Exhibits 3 and 4. In light of the foregoing, the Board finds that the variance requested is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would entail and to allow the Petitioner to construct a reasonable expansion of his house to the rear, 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 allowing the Petitioner to proceed with the proposed construction is consistent with the residential uses contemplated by the North Bethesda/Garrett Park Master Plan, which seeks to "protect and reinforce the integrity of existing residential neighborhoods." 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, based on the testimony of the Petitioner, that he has spoken with the neighbors on both sides of his house, and that they have no objection to the proposed construction. The Board further finds, based on the Statement and the Site Plan, and the testimony of record, that the proposed sunroom addition will not extend as close to the rear lot line as the existing house. See Exhibits 3 and 4. In addition, the Board finds, based on the Zoning Vicinity Map, that the Petitioner's property backs to a parkway, and thus that there are no homes immediately behind his house. See Exhibit 7. Finally, the Board notes that the property was properly posted, and that the record contains no opposition to the requested variance. On the basis of the foregoing, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

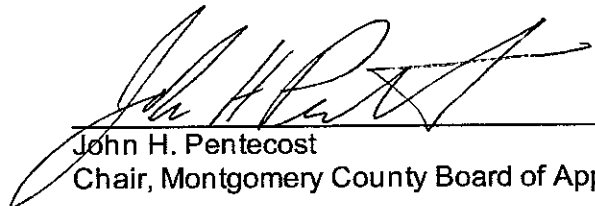
Accordingly, the requested variance from the rear lot line is **granted**, subject to the following conditions:

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)-(m).

Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines and Laura Seminario-Thornton in agreement, and with Alan Sternstein 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 10<sup>th</sup> day of January, 2024.



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.