

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
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(240) 777-6600**

Case No. A-6846

PETITION OF DAVID AND LORI ALPERIN

OPINION OF THE BOARD
(Opinion Adopted January 31, 2024)
(Effective Date of Opinion: February 14, 2024)

Case No. A-6846 is an application by Petitioners David and Lori Alperin (the "Petitioners") for variances needed for the construction of a front and rear addition, as well as for the construction of a deck. The proposed construction of a front addition requires a variance of 14.90 feet as it is within 25.10 feet of the front lot line. The required setback is forty (40) feet, in accordance with Section 59.4.4.7.B.2 of the Zoning Ordinance. The proposed construction of a rear addition requires a variance of 4.70 feet as it is within 25.30 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. Finally, the proposed construction of a deck requires a variance of 9.25 feet as it is within 21.75 feet of the front lot line. The minimum front setback for a deck in the R-200 Zone is thirty-one (31) feet, in accordance with Section 59.4.1.7.B.5.a of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on January 31, 2024. Petitioner Lori Alperin participated in the hearing in support of the requested variances, assisted by her architect, Russell Wickham, and lead designer Chris Papalambros.

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

EVIDENCE PRESENTED

1. The subject property is Lot 6, Block 10, Olney Mill Subdivision, located at 18909 Willow Grove Road in Olney, Maryland, 20832, in the R-200 Zone. The property is a five-sided corner lot, bordered to the north by Bamsley Lane and to the west by Willow Grove Road. The property is generally square in shape, except that its northwest corner, which

faces the intersection, is truncated, forming the property's fifth side. The property has an area of 16,108 square feet. It was recorded in 1964, and contains a house that was built in 1970. See Exhibits 1 and 3, and SDAT Printout.

2. The Petitioners' variance Application notes that the subject property is a corner lot, and that the application of two front setbacks to their property restricts their ability to add needed space to their home. The Petitioners' Application cites their property's shape and topography as features that cause the strict application of the Zoning Ordinance to cause them a practical difficulty. See Exhibit 1.

3. The Petitioner's Statement of Justification ("Statement") states that the Petitioners are seeking to construct an addition to their home that will initially be used as a four seasons room, and later will be used to allow them to age in place. It indicates that the addition will "replace the existing deck and add additional living space that would be utilized all year." The Statement indicates that the Petitioners are also proposing a new open walkway, rear deck, and "updated side egress." See Exhibit 3.

4. The Statement states that the subject property is subject to two 40-foot (40') front setbacks, and a 30-foot (30') rear setback. The Statement states that the rear setback "reduces [the] available rear construction area due to the angle of the house." The Statement states that the 40-foot setback along Barnsley Lane restricts the construction of an addition on the north side of the house, in the area of the property "where the most operable space is available." In addition, the Statement indicates that because the house was sited at an angle on the property relative to the property lines, any construction would also cross the property's rear setback line. See Exhibit 3.

5. The Statement states that the subject property is unusual because the original builder placed the house on the property in very close proximity to the setback for the northern property line, and at an angle relative to the property lines, leaving limited room for expansion. See Exhibit 3.

6. The Statement at Exhibit 3 asserts that the requested variances are the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would cause the Petitioners, as follows:

The minimum adjustment to a 21' setback variance for the front and a 24' setback variance for the rear facilitates the construction of a new enclosure (approx.: 187 sqft. bigger than the existing deck) with an open walkway to connect to the new rear deck. The new enclosure & open walkway needs to be constructed in the proposed location to facilitate existing access to the house via the pre-existing deck door & an additional access point to the front & "side yards".

7. The Statement states that the requested variances can be granted without impairment to the applicable Master Plan, noting that the proposed construction "will remain within existing property lines and will not challenge the integrity of the masterplan." The Statement also indicates that granting the requested variances to allow the proposed

construction will allow the Petitioners to make improvements similar to those made by others in their community who have "already updated their homes to meet the current times & today's homeowner's needs." See Exhibit 3.

8. The Statement states that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties because it will not impede views around the corner, and because the proposed updates are consistent with the updates being undertaken at other homes in the neighborhood.

9. At the hearing, Mr. Wickham testified that the Petitioners have owned the subject property since 1999. He testified that they are trying to add flexible use, on-plane space to the left (northern) side of their house when viewed from Willow Grove Road, stating that this is the only place available on the property for construction that would maintain the aesthetics of their house and neighborhood. Mr. Wickham testified that the Petitioners' house is a "split-level," and that as designed, the use of the proposed addition could be changed to meet the needs of their family and extended family as those needs evolve, including to meet accessibility needs. Thus he testified that what is labelled as a fourseasons room on the plans could be used as a bedroom, and that the proposed deck stairs could be converted to a ramp. Mr. Wickham testified that the proposed addition will not block site lines around the corner.

Mr. Wickham testified that because the subject property is a corner lot located in the R-200 Zone, and because Barnsley Land and Willow Grove Road are both considered primary roads, the subject property is subject to two large front setbacks. He testified that other homes in the area have received variances, including the house across the street, which has a variance for its garage. Mr. Wickham testified that the subject property is less than 20,000 square feet in size, and is smaller than most others in the neighborhood. He testified that the rear variance is needed because of the angle at which the house is sited on the property.

10. In response to a Board question, Ms. Alperin testified that some of her neighbors who have seen the variance sign have inquired about the proposed construction, but that none of her neighbors have shared concerns about the proposed construction or its impact with her.

CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the variances can be granted. The requested variances comply 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 with an area of 16,108 square feet, the subject property is small and is substandard for the R-200 Zone, which has a 20,000 square foot minimum. The Board further finds, based on the Zoning Vicinity Map and the testimony of Mr. Wickham, that the subject property is smaller than others in the neighborhood. See Exhibit 7. The Board finds that these circumstances constitute an extraordinary condition, peculiar to this property, that uniquely constrains the property's buildable envelope, 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 Petitioners purchased this property in 1999, years after it was developed and built. Thus the Board finds that the small size of the property is not the result of actions by the Petitioners, 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, Site Plan, and the testimony of Mr. Wickham, that due to the property's small size, full compliance with the front and rear setbacks imposed by the Zoning Ordinance would cause the Petitioners a practical difficulty because of the significant limitations they place on the property's buildable envelope, and because adherence to those setbacks would preclude expansion of the Petitioners' home in a manner that is consistent with the aesthetics of their house and neighborhood. See Exhibits 3 and 4(a). The Board further finds that the requested variances are the minimum needed to overcome the practical difficulty posed by the property's constrained buildable envelope and to allow the proposed construction. Accordingly, the Board finds that the requested variances are the minimum needed to overcome the practical difficulty posed by full compliance with the Zoning Ordinance on account of the property's small size, 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 the requested variances to allow the Petitioners to proceed with the proposed construction will continue the residential use of this home, and thus the Board finds that the variances can be granted without substantial impairment to the intent and integrity of the applicable Olney 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 and testimony of Mr. Wickham, that the proposed construction will not be adverse to the use and enjoyment of abutting or confronting properties because the proposed addition will not block sight lines around the corner, and is generally in keeping with the aesthetics of the neighborhood. In addition, the Board finds, based on the testimony of Ms. Alperin, that while some neighbors have inquired about the proposed construction, none have expressed concerns. Finally, the

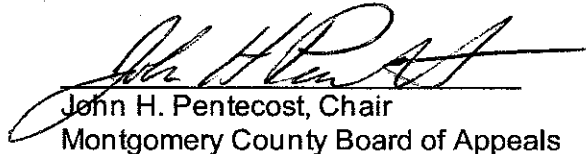
Board notes that the property was properly posted, and that the record contains no objections to the grant of the requested variances. Accordingly, the Board finds that granting the requested variances, to allow construction of the proposed addition and deck, will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variances are **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 Exhibit 4(a) and with those parts of Exhibit 5 that relate to the exterior appearance of the proposed addition and deck and/or to their overall size.

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