

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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Case No. A-6851
PETITION OF JAMES AUSTGEN

OPINION OF THE BOARD
(Hearing Date: March 13, 2024)
(Effective Date of Opinion: March 20, 2024)

Case No. A-6851 is an application by Petitioner James Austgen for variance relief needed for the proposed construction of an addition (garage extension). The proposed construction requires a variance of nine (9) feet as it is within sixteen (16) feet of the rear lot line. The required setback is twenty-five (25) feet, in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on March 13, 2024. Petitioner James Austgen participated in the proceedings in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Lot 22, Block 13, Foxhall Subdivision, located at 13310 Rippling Brook Drive in Silver Spring, Maryland, 20906, in the R-90 Zone. It is a three-sided, triangular lot, with an area of 11,613 square feet. The property is bordered to the southeast by Rippling Brook Drive, to the north (and east) by property owned by the Board of Education, and to the southwest by a "path" that meets Rippling Brook Drive at a right angle, and would, if built, connect Rippling Brook Drive to the Board of Education property.¹ The result is that the property has a severely angled rear lot line, and is much deeper on its left side than on its right side, where it tapers to a sharp point as the rear and front lot lines converge. See Exhibits 3 and 4(a).

¹ The Petitioner's Statement of Justification states that the "path" shown on the Site Plan has not been built, stating that it "is basically an undeveloped Right-of-Way in its current configuration." See Exhibits 3 and 4(a).

2. Per SDAT, the property contains a house that was built in 1979. It was purchased by the Petitioner in 2011. See SDAT Printout.
3. The Petitioner's variance Application cites the property's narrowness and shape as extraordinary conditions that make the subject property unique, and states that the lot "is a 3-sided triangle." The Application further states that no neighbors will be affected by the grant of the requested variance. See Exhibit 1.
4. The Petitioner's Statement of Justification ("Statement") indicates that he is seeking to extend his garage by seven (7) feet, thereby adding approximately 154 square feet of additional storage space that is needed by his family. His Statement states that the proposed garage expansion "would place the rear far corner of the garage 16 (sixteen) feet from the adjoining property" that is owned by the Board of Education. See Exhibits 3 and 4(a).
5. The Statement describes the shape of the subject property as "highly unusual," and states that the subject property is "in the shape of a triangle which makes it less than ideal for situating a house." The Statement further states that if the Petitioner's property "were in the same rectangular shape as most of the other properties in [his] neighborhood," he would not need a variance because he would have "more than enough room on all three sides of the garage to expand and still be well within the zoning structure and requirements." The Zoning Vicinity Map shows that the shape of the subject property is unique in the neighborhood. See Exhibits 3 and 7.
6. In addition, the Statement states that "the extreme slope of the [Petitioner's] front yard makes it unusable for all intents and purposes." See Exhibit 3. The Petitioner includes a photograph showing this slope with his submission. The caption on the photograph states that because of this slope, "the builder situated the house further back (closer to) the rear fence line making it difficult to expand and requiring a variance to do so." See Exhibit 9(c).
7. The Statement states that granting the requested variance would allow "a very moderate extension to the garage," and would add "approximately 154 additional square feet of storage space for [the Petitioner's] family to enjoy the use of [the subject] property more fully in the most cost effective and reasonable manner." See Exhibit 3.
8. The Statement states that granting the requested variance will not have "any detrimental effect on [the Petitioner's] neighbors and their use and enjoyment of their properties." The Statement notes that the proposed garage extension is on the right side of the Petitioner's house, and thus on the opposite side of his property from his neighbor to the left, whose property also abuts the undeveloped "path." In addition, the Statement indicates that the proposed construction will not impact the Petitioner's three confronting neighbors across Rippling Brook Drive. Finally, the Statement notes that the Board of Education property that borders the subject property to the north is buffered by "a fenced-in, untended 'No Man's Land' or alley" that was created because "the school which occupies that property has an additional fence between my fence and the school." The

Statement states that this area "is unlikely to ever be used by anybody but squirrels and birds." See Exhibit 3. The Petitioner includes a photograph showing this area with his submission. See Exhibit 9(a).

9. At the hearing, the Petitioner testified that his house was built in 1979, and that he moved into it about 12 years ago. He testified that he is seeking to extend his garage by approximately seven (7) feet. The Petitioner testified that his property has a unique triangular shape, and that it is the only property with that shape in the entire subdivision. He testified that his house was likely moved back on the property when it was sited because of the property's unusual shape and because of an electrical easement on its left side. The Petitioner testified that the proposed garage extension would have no impact on his neighbors, and that the only impact would be to a County-owned, wooded area.

In response to a Board request, the Petitioner narrated the photographs in the record at Exhibits 9(a)-(c). He testified that Exhibit 9(a) was taken from his back door looking towards the school, that Exhibit 9(b) was taken from the northwest corner of his property looking back towards the garage, and the Exhibit 9(c) shows the rise in the front of his property. The Petitioner testified that this rise likely impacted the placement of his house.

In response to a Board question asking if he had received any comments from his neighbors about the proposed garage extension after posting the variance sign, the Petitioner testified that he had not. He reiterated that none of his neighbors would be directly impacted by the proposed construction, and that his neighbors were generally pleased with other improvements to his home.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the variance from 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, based on the Application, Statement, Site Plan, Zoning Vicinity Map, and the testimony of the Petitioner, that the subject property has a highly unusual triangular shape that distinguishes it from other properties in the neighborhood, most of which are rectangular or at a minimum, have four sides. The Board finds that the unusual shape of the Petitioner's property, with its severely angled rear lot line and pointed right

side, significantly constrains the buildable area available for construction on the subject property, and constitutes an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 1, 3, 4(a), 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, based on the Application, SDAT Printout, and the testimony of the Petitioner, that the subject property was developed in 1979, and was purchased by the Petitioner in 2011. See Exhibit 1 and SDAT Printout. Thus the Board finds that the unusual shape of the subject property is not the result of actions by the Petitioner, and that this element of the variance test is satisfied.

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 garage, on account of his property's unusual, triangular shape, and its resultant severely angled rear lot line and pointed right side, which significantly constrain his property's buildable envelope. See Exhibit 4(a). The Board further finds, based on the Statement, that the requested variance is the minimum needed to allow the proposed modest extension of the Petitioner's garage in light of the unusual shape of his property, and that if his property were rectangular, a variance would not be needed. See Exhibit 3. Thus the Board finds that the variance requested is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would pose for the Petitioner, 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 granting the requested variance to allow the Petitioner to proceed with the proposed construction will continue the residential use of this home, and therefore the Board finds that the variance can be granted without substantial impairment to the intent and integrity of the Kensington-Wheaton Master Plan, which seeks, among other things, to "protect and stabilize the extent, location, and character of existing residential and commercial land uses," and to "maintain the well established low- to medium-density residential character which prevails over most of 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 and the testimony of the Petitioner, that granting the variance will not be adverse to the use and enjoyment of neighboring

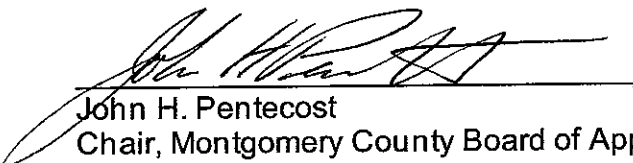
properties. The Board finds, in support of this, that there is a wide, treed buffer between the subject property and the Board of Education property to its rear that will obscure the view of the proposed extension from that property. See Exhibits 3 and 9(a)-(b). In addition, the Board finds that any view of the proposed extension by Petitioner's neighbor to the left will be obscured by the Petitioner's house. See Exhibit 3. Finally, the Board notes that the property was properly posted, that the Petitioner testified that the posting of the sign did not elicit any concerns about the proposed construction from his neighbors, that the record contains no written opposition to the grant of the requested variance, and that no one appeared at the hearing in opposition to the variance. On the basis of the foregoing, the Board finds that this element of the variance test is satisfied.

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(a) and 5.

Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Alan Sternstein, and Amit Sharma 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 20th day of March, 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.