

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6852**

**PETITION OF PATRICK BYRNE**

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

Case No. A-6852 is an application for a variance needed to allow construction of an addition/alteration. The proposed construction requires a variance of 0.29 feet as it is within 6.71 feet of the left (east) side lot line. The required setback is seven (7) feet, in accordance with Section 59.4.4.9.B of the Zoning Ordinance.

The Board held a hearing on the application on March 13, 2024. Petitioner Patrick Byrne appeared at the hearing in support of the application.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 2, Block 5, Indian Spring Village Subdivision, located at 216 Williamsburg Drive in Silver Spring, Maryland, 20901, in the R-60 Zone. The subject property is an interior lot located on the south side of Williamsburg Drive. It is a four-sided property with an area of 6,815 square feet. See Exhibits 4 and 7.
2. The Petitioner's Justification Statement ("Statement") indicates that the existing house on the subject property was built in 1940 and was purchased by the Petitioner in 2015. The Statement states that "[s]ince the time of the purchase, no exterior renovations or alterations have been performed." See Exhibit 3(a).
3. The Statement states that the property's side lot lines are not parallel to one another, but rather converge slightly from front to rear, "creating a pinch point towards the rear of the structure as the structure can't be set parallel to both side property lines simultaneously." The Statement states that the required setback from the property's side lot lines is seven (7) feet. The Statement states that while the front left (northeast) and

right rear (southwest) corners of the existing house are set exactly seven (7) feet from their respective side lot lines, the left rear (southeast) corner encroaches six (6) inches into the required seven (7) foot setback, and the front right (northwest) corner of the house is located approximately nine and three-quarters (9¾) inches more than the required seven (7) foot minimum from the property's right side (western) lot line. See Exhibit 3(a).

4. The Petitioner's Description of Work states that the Petitioner is seeking to construct a two-story addition where he currently has a sunroom, and to expand the footprint and second story of his existing garage, as follows:

**West Side:**

Demolish 1-story existing 10'-0" x 11'-1" sunroom including slab on grade. Construct a new 2-story 14'-3" x 11'-1" attached structure over a crawlspace with concrete footings and CMU foundation walls.

**East Side:**

Partially demolish existing 2-story garage limited to the roof structure, 2nd floor framing and front façade. Construct a 6'-1" x 9'-11" addition to the front of the garage with a crawl space beneath the new 6'-1" addition only. Remaining slab on grade of the garage to remain with new floor framing installed on existing walls. Roof level and new second floor framing to be installed to match elevation of existing 2<sup>nd</sup> floor framing of the home.

See Exhibit 3(b). It is the work on the east (left) side of the house that needs variance relief, since the southeast (left rear) corner of the existing structure encroaches slightly into the left side setback. The area of the proposed second floor framing that will encroach into the left side setback is shown in red on the Petitioner's proposed Site Plan. That Site Plan indicates that the total area of encroachment is approximately 1.56 square feet. See Exhibit 4.

5. With respect to the proposed changes to the garage, the Statement states that the extent of the construction will depend on whether the existing foundation and walls can support the additional load, but regardless will not increase the extent of the existing encroachment, as follows:

Option 1 – If the foundation and existing framing are suitable for the alteration, new framing would be construction on top of existing non-compliant framing to extend the end wall vertically and would result in a new portion of wall that would otherwise be non-compliant.

Option 2 – If the existing first floor framing is deemed to be structurally unsuitable for the new work to bear upon, then the non-conforming foundations would remain in place and new framing would be constructed in the same location as the non-conforming framing.

See Exhibit 3(a). The Statement proceeds to state that "[if either option is acceptable to the Board, the final resulting footprint would be identical to the existing non-conforming structure. The footprint of the existing structure would remain static and would not

encroach further over the setback line. The only area affected is a portion of the second floor.”

6. The Statement states that the property’s convergent side lot lines make it unique for the purposes of satisfying Section 59.7.3.2.E.2.a.i of the Zoning Ordinance because they “create a pinch point ... causing portions of the existing home to be non-compliant” See Exhibit 3(a).

7. The Statement states that the proposed construction uses an existing legal nonconforming structure, in satisfaction of Section 59.7.3.2.E.2.a.ii of the Zoning Ordinance. In support of this, the Statement states that “the proposed renovation and addition uses the existing non-complaint foundation and potentially partial framing of the existing non-conforming structure,” noting that because the “[s]elective demolition has not yet occurred ... the condition of the existing wood stud framing is not known at this juncture.” See Exhibit 3(a). The Building Permit Denial confirms that the existing structure is non-conforming. See Exhibit 6.

8. The Statement states that the proposed construction is consistent with the development pattern of the neighborhood, in satisfaction of Section 59.7.3.2.E.2.a.v of the Zoning Ordinance. In support of this, the Statement states that “[t]he surrounding blocks are populated with cape cod, colonial, and Dutch colonial style homes, many of which have undergone renovations and additions over the years, with some being significantly more extensive than others.” See Exhibit 3(a).

9. The Statement states, given that the existing structure was built in 1940 and was purchased by the Petitioner in 2015, that “the current non-conforming conditions were not a result of any actions taken by the applicant,” in satisfaction of Section 59.7.3.2.E.2.b of the Zoning Ordinance. See Exhibit 3(a).

10. The Statement states that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this chapter would impose due to the unusual situation or condition of the property, in satisfaction of Section 59.7.3.2.E.2.c of the Zoning Ordinance. In support of this, the Statement states that “[t]he requested variance is the minimum necessary to renovate the home and construct the small addition to the front of the property while maintaining the existing structural foundation and as much of the first floor framing as possible.” See Exhibit 3(a). The Statement explains that the strict application of the Zoning Ordinance would cause the Petitioner a practical difficulty because it would prevent him from being able to reuse the existing foundation and framing, as follows:

Due to the location of the foundation and existing walls, [if the variance were not granted,] the foundation would need to be reconstructed in a conforming manner in order to support the new structure above. Demolishing an existing 2-story structure and excavating to remove an existing nonconforming foundation wall presents an undue hardship on the homeowner for an innocuous renovation.

See Exhibit 3(a). The Statement further elaborates on this hardship, stating that “[r]emoval of the first and second floor framing down to the top of foundation wall and

rebuilding in accordance with current setback requirements would require a structural revision to the foundation including demolition of the interior concrete slab and new foundation wall work to support the new framing in the code-compliant location." See Exhibit 3(a).

11. The Statement states that "[g]ranteeing the variance and allowing an extremely minor area of a home to continue to encroach on the side yard setback would have no effect on the intent and integrity of the general plan and overall master plan of the community." Thus the Statement concludes that the requested variance can be granted without substantial impairment to the intent and integrity of the applicable Four Corners Master Plan, in satisfaction of Section 59.7.3.2.E.2.d of the Zoning Ordinance. In support of this, the Statement observes that "[t]he Four Corners Master Plan describes the neighborhood as being a well-established residential neighborhood with a convenient location within the metropolitan area," and that "[m]ost of the houses are well maintained and many have an older charm with a variety of designs, styles and building materials." In addition, the Statement states that "[n]umerous homes throughout the neighborhood have undergone renovations and additions that have altered the look of the homes while maintaining the overall sense of community." See Exhibit 3(a).

12. The Statement states that because the "current nonconforming building footprint is not being revised," granting the requested variance "will not have a detrimental effect on any of the surrounding or confronting properties and will not negatively affect the health, safety or wellbeing of any of the neighbors." Thus the Statement states that Section 59.7.3.2.E.2.e of the Zoning Ordinance is satisfied. The Statement explains that the vast majority of the proposed addition complies with the Zoning Ordinance, and that the only portion of the proposed alteration/addition that requires variance relief is "a small section of the second floor alteration totaling 1.56 square feet." The Statement states that this minor encroachment will be "nearly invisible." See Exhibit 3(a).

13. At the hearing, Mr. Byrne testified that he purchased the subject property in 2015, and that it contains a house that was built in 1940. He testified that he has made no renovations to the house since purchasing it. Mr. Byrne testified about the proposed renovations, including extending the front of the garage towards the street and creating finished second floor space over the garage. Mr. Byrne testified that because he did not know the condition of the existing first floor walls, he did not know if they could be reused. He testified that if the variance was denied and the walls had to be moved farther away from the side lot line, they would not bear on the existing foundation.

In response to a Board question asking if he had received any comments from his neighbors regarding his proposed construction and variance request, Mr. Byrne testified that he had not received any unsolicited comments following the posting of the sign, and that as a result, he went knocking on his neighbors' doors. He testified that his abutting neighbor to the left has no objections to the grant of the requested variance, and that he believed that neighbor had sent the Board a letter to that effect.<sup>1</sup> Mr. Byrne further

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<sup>1</sup> Mr. Byrne's abutting neighbor at 220 Williamsburg Drive did, in fact, send the Board an email letter stating that he had no objections to the grant of the requested variance, but the Board did not receive this correspondence before the hearing. See Exhibit 9.

testified that his confronting neighbors, while interested, did not express any objections to the grant of the requested variance.

## 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.ii. - the proposed development uses an existing legal nonconforming property or structure;*

The Board finds, based on the Statement, that the proposed development uses the foundation, and potentially the walls, of an existing structure that was built in 1940. The Board further finds, based on the Statement and Site Plan, that the existing structure does not comply with the setbacks required by the Montgomery County Zoning Ordinance, and is therefore nonconforming, as confirmed on the Building Permit Denial. See Exhibits 3(a), 4, and 6. Accordingly, the Board finds that the 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, based on the Statement and the testimony of the Petitioner, that the existing house on the subject property was built in 1940, and was purchased by the Petitioner in 2015. Thus the Board finds that the Petitioner is not responsible for the nonconforming placement of the existing home on the 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 requested 0.29 foot variance from the left side lot line, needed to allow the Petitioner to reuse the nonconforming foundation of his existing home (and potentially its first floor walls, which he may reuse or may reconstruct in place, depending on their condition) in connection with the proposed construction, is the minimum necessary to overcome the development constraints that would otherwise be imposed on this property by the Zoning Ordinance on account of the nonconforming placement of the existing home. The Board finds that failure to grant the requested variance would cause the Petitioner a practical difficulty in that he would be unable to undertake the proposed improvements to his house in a manner that maintains the established location of the home and its foundation relative to the property's left side lot line. The Board notes that with the grant of the requested variance, the footprint of the structure in the encroaching area will not change. The Board also notes that the total area of encroachment of the proposed second story will be only about 1.56 square feet. See Exhibits 3 and 4(a). In light of this, the Board finds that the grant of the requested

variance is the minimum necessary to overcome the difficulties that full compliance with the Zoning Ordinance would impose, 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 the proposed construction will continue the residential use of the home, and thus can be granted without substantial impairment to the intent and integrity of the Four Corners Master Plan (1996), which seeks to "preserve and maintain the character and integrity of the existing, well-established Four Corners residential neighborhoods" by ensuring that new development is "compatible with the existing residential character" of the community, 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.*

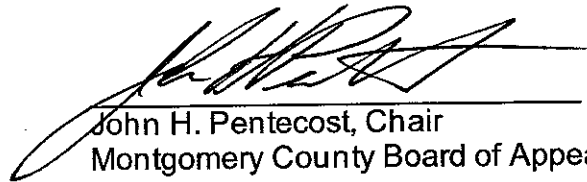
The Board finds, based on the Statement and Site Plan, that the Petitioner is seeking to maintain the footprint of the existing structure in the area of the existing encroachment, and thus to generally maintain the existing separation between homes in that area. See Exhibits 3 and 4. The Board further finds, based on the Statement, that with the proposed alteration/addition, the Petitioner's house will still be compatible with others in the neighborhood, many of which have additions or have been renovated. See Exhibit 3. In addition, the Board finds, based on the testimony of the Petitioner, that he has reached out to his abutting neighbor to left, who would arguably be most impacted by the grant of the requested variance and resultant construction, and that neighbor has no concerns. See Exhibit 9. The Board further finds that Petitioner's confronting neighbors have not expressed any concerns about the requested variance. Finally, the Board notes that despite being properly Noticed and posted, no one appeared at the hearing in opposition to the grant of the requested variance, and no written opposition was received. In light 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 of 0.29 feet from the left side lot line setback 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 (exclusive of internal layout).

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