

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6861

PETITION OF LUKE HOLIAN AND ALICE HOLIAN

OPINION OF THE BOARD
(Opinion Adopted May 1, 2024)
(Effective Date of Opinion: May 10, 2024)

Case No. A-6861 is an application for a variance needed in connection with the construction of an accessory structure (side yard garage). The proposed construction requires a variance to be located forward of the rear building line. Section 59.4.4.9.B.2.a of the Zoning Ordinance requires that accessory structures be located behind the rear building line of the principal building.

The Board of Appeals held a hearing on the application on May 1, 2024. Petitioners Luke Holian and Alice Holian, who own the subject property, appeared in support of the requested variance. Their contractor, Paul Kuzma, was also present. In addition, the Petitioners' abutting neighbor to the west also appeared, to support the proposed construction with conditions.

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

EVIDENCE PRESENTED

1. The subject property is Lot P7, Block A, Chevy Chase Section 6 Subdivision, located at 111 Primrose Street in Chevy Chase, Maryland, 20815, in the R-60 Zone. It is an unusually shaped, multi-sided property, located on the north side of Primrose Street. The property's rear lot line is significantly longer than its front lot line, causing the property to widen from front to rear. Per SDAT, the subject property has an area of 9,924 square feet and contains a house that was built in 1923. It was purchased by the Petitioners in 2020. See Exhibits 4, 7, and 10, and SDAT Printout.

2. The Petitioners' updated Statement of Justification ("Statement") states that their house is "sited towards the rear of the property, creating a shallow rear yard which moderately slopes down to the rear property line." The Statement states that the property

contains an existing detached garage (accessory building) that “is a grandfathered structure in the side yard toward the rear of the principal building.” The Statement states that the existing garage is “in disrepair” and “needs to be renovated and rebuilt for full and proper use.” It states that the Petitioners are seeking to renovate and rebuild the existing garage “on its current location.” The Statement notes that “the rebuilt garage will be significantly setback from the front property line as well as the front building line of the principal structure which effectively gives the appearance that it is set in the rear of the property” such that it “appears to be behind the home and is not prominently visible from the street.” Finally, the Statement states that “[m]oving the garage behind the rear building line of the principal structure would be impractical because of the shallowness and slope of the rear yard.” See Exhibit 10.

3. The Statement states that “[t]he proposed development uses an existing legal nonconforming property or structure.” In support of this, the Statement states that “[t]he proposed garage will replace the current garage which is a grandfathered structure.” The Statement further states that “[t]he garage will remain in its current location” and that the garage “will not change in height nor prominence on the property or in the neighborhood.” See Exhibit 10.

4. The Statement states that the Petitioners purchased the subject property in 2020, and that they are not responsible for the special circumstances or conditions pertaining to their property, noting that they “did not have any say or influence on the placement of the principal structure or the grandfathered accessory building.” The Statement states that the Petitioners’ home “has been longstanding in Chevy Chase Village,” and that the existing garage, which “had not been maintained by previous owners,” has “been on the property for an unknown length of time.” See Exhibit 10.

5. The Statement states that placing the garage behind the rear building line of the house would “negatively impact the petitioners’ and abutting neighbor’s properties,” and notes that the Petitioners’ abutting neighbors to the left (west) have explicitly requested that the proposed garage not extend beyond the rear building line of their home. The Statement states that if the garage were placed behind the rear building line of the Petitioners’ home, “[b]ecause of the [property’s] shallowness, the petitioners and abutting property owners will have the garage run nearly the full length of their shared property line,” which would cause the Petitioners’ neighbors to “lose beautiful views of trees and green” and would cause the Petitioners to “lose trees and green space in their limited rear yard.” The Statement further states that this would also cause the Petitioners to “have to lengthen and reconstruct the driveway and make further structural changes to the proposed garage to accommodate the downward slope toward the rear.” See Exhibit 10.

6. The Statement states that granting the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties. The Statement states that while “[t]he granting of the variance will have no effect” because “there is already a garage in the location,” the denial of the variance and enforcement of the requirement that accessory structures be located behind the rear building line of the principal structure “will certainly be adverse to the beauty, use, and enjoyment of abutting neighbor’s property.” The Statement also notes that the proposed garage will “conform[] to the aesthetics of the principal building and surrounding neighborhood.” See Exhibit 10.

7. The Statement states that the requested variance can be granted without substantial impairment to the intent and integrity of the general plan and application Master Plan because the “Petitioners’ plans do not change the neighborhood nor change the intent of Chevy Chase Village,” noting that “there is already a garage located on the proposed site,” and that the “Petitioners’ plans will only serve to enhance the character and beauty of the neighborhood.” In addition, the Statement states that “[p]rior to submitting plans for a permit to Montgomery County, these plans were submitted to Chevy Chase Village and approved.” See Exhibit 10.

8. The Zoning Vicinity Map shows that Primrose Street, which is an otherwise straight street, bends significantly in front of the subject property and to a lesser extent, the abutting property to the left (west) (109 Primrose). The result of this “bend” is that the section of Primrose Street to the left (west) of the subject property runs due west to Connecticut Avenue, whereas the section of Primrose Street to the right (east) of the subject property extends in a straight line in a southeasterly direction from the subject property towards Western Avenue. The Zoning Vicinity Map further shows that the rear lot lines of the properties on the north side of Primrose Street are generally parallel to their front lines, such that most of these properties have a rectangular shape. In addition, the Zoning Vicinity Map shows that despite the bend in the street in front of the subject property, the front of the house on the subject property is aligned with the fronts of the houses to the left (west), which are generally set back a consistent distance from Primrose Street, whereas the rear lot line of the subject property is parallel to the section of Primrose Street that extends to the right (east) of the subject property and runs southeast to Western Avenue. The effect of this is that the house on the subject property is set back further from the street than the houses to its left because of the bend in the street, leaving it with a smaller area behind the rear building line of the house. The constraints placed on this area by the property’s relatively large front setback are further compounded by the property’s angled rear lot line—which matches those of the properties to the east of the subject property—relative to the front of the Petitioners’ house. See Exhibit 7.

9. The Site Plan shows that the proposed replacement garage will be deeper than the existing structure. See Exhibit 4.

10. The Petitioners’ abutting neighbors at 109 Primrose Street submitted a letter, with an attached survey of their own property, offering conditional support for the grant of the Petitioners’ requested variance. See Exhibits 9 and 9(a). Their letter states that they have lived in their home since 1986, and that in the 1990s, they worked with the previous owners of the subject property to have a fence constructed along their shared property line. Significantly, the neighbors’ letter indicates that the survey submitted in connection with construction of the proposed replacement garage is inaccurate, as follows:

First and foremost, the Site Plan map prepared by Kuzma Construction and dated April 7, 2023, seems to be based on an erroneous plot survey that shows the property line of 111 Primrose Street to be within inches of our residence at 109 Primrose Street. Please find the attached 2020 plot survey based on the actual markers that the surveyor found in the ground that confirm that the property line between the two parcels is where the fence is located, which is within a foot or two

of the garage at 111 Primrose Street, rather than the 9.5 feet away from the garage as indicated on the Site Plan on which the variance is based.

11. The Petitioners' neighbors state in their letter at Exhibit 9 that in light of their friendly relationship with the Petitioners, they do not object to proposed garage provided three conditions are met, as follows:

First, because "[a]ny variance based on the map filed as part of this request could be interpreted as confirming this incorrect placement of the property lines between the two houses," the Petitioners' neighbors "strongly object to the variance unless the Site Plan is revised to reflect the correct 2020 plot survey that is attached."

Second, while "the variance submission states that the new garage would be constructed on the original footprint of the current garage except that it would be extended north by a few feet," the drawings submitted with the variance request "suggest that the new garage might be constructed right up to the current fence even though the current garage is one or two feet away from the fence (the property line and the fence are on a slant)." The Petitioners' neighbors thus state that they "do not object to the variance if in fact the garage is constructed no closer to the fence than the current garage."

Finally, the letter submitted by the Petitioners' neighbors states that "the extension of the garage by a few feet north of the current garage means that a large holly tree that provides substantial privacy and beauty between the two houses would be removed." As a result, the Petitioners' neighbors request that "any variance be predicated on the requirement that a comparable tree be planted between the two houses to replicate this privacy screen."

12. The Petitioners' neighbors include a 2020 plot survey with their letter that they state is "based on the actual markers that the surveyor found in the ground that confirm that the property line between the two parcels is where the fence is located." See Exhibits 9 and 9(a).

13. At the hearing, Petitioner Alice Holian testified that she and her husband purchased the subject property in 2020, with an intent to renovate the existing house and garage. She testified that the garage is a grandfathered structure, and that it is in disrepair and not fully functional for its intended purpose. Ms. Holian testified that she and her husband are proposing to use the site of the existing garage for their new garage. She testified that while the new garage will not be any closer to the road than the existing structure (i.e. any further south), and will not be any taller than the existing garage, it will be extended about four (4) to five (5) feet to the rear (north). Ms. Holian testified that the garage is "pretty hidden" in its current location, as shown in the photographs that they submitted. See Exhibits 5(l)-(o). She testified that the concrete slab under the existing garage is broken, and that the existing structure will be removed and replaced.¹

In response to a Board question asking how far the proposed replacement garage would be from the Petitioners' left (west) side lot line, Ms. Holian testified that the location

¹ Mr. Kuzma testified that the new garage will have a new foundation.

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 Statement and Site Plan, that the subject property has an unusual, multi-sided shape, and is wider at the rear than at the front. See Exhibits 4 and 10. The Board further finds, based on the Zoning Vicinity Map, that the subject property is the only property on the block with this shape. See Exhibit 7. In addition, the Board finds, based on the Statement, that the subject property has a shallow rear yard that slopes down to the rear property line. See Exhibit 10. Finally, the Board finds, again based on the Zoning Vicinity Map, that the subject property is located along a curve in the abutting roadway, and that the placement of the Petitioners' house on the subject property aligns with the front setback of the homes to its left (west), placing the Petitioners' home farther back on the property than would have been the case if it had been aligned with the front setbacks of the houses to the right (east), and constraining the buildable area behind the rear building line. See Exhibit 7. The Board finds that these circumstances, taken together, constitute an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test.

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 and Site Plan, that the proposed development is intended to replace an existing detached garage that was built forward of the rear building line and is considered a "grandfathered" structure. See Exhibits 4 and 10. Thus the Board finds that the Petitioners' existing garage does not comply with the current locational requirements of the Montgomery County Zoning Ordinance, and is a nonconforming structure. Accordingly, the Board finds that the application satisfies 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' house was built in 1923, and that the subject property was purchased by the Petitioners in 2020. See SDAT Printout. In addition, the Board notes, based on the Statement, that the garage that the Petitioners are seeking to replace is a "grandfathered" structure that pre-dates their ownership of the property. See Exhibit 10. Thus the Board finds that the Petitioners are not responsible for the special circumstances or conditions applicable to their 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, based on the Statement, that the Petitioners' existing, nonconforming garage is located forward of the rear building line on the left side of their house, and is in disrepair. The Board further finds that without the grant of the requested variance, the Petitioners will be unable to construct a replacement garage where their

of their left side lot line is inaccurately depicted on the Site Plan that was submitted with the variance application, and that the fence is in fact on the shared property line, as stated by their abutting neighbors. In response to a Board question asking about the holly tree that would be affected by the proposed construction, Ms. Holian testified that she and her husband have talked with their neighbors about that tree, and that it is their intent to increase, not decrease, the "natural aesthetic" of that area of their property, going on to state that they were holding off on doing any planned planting until construction was finished. In response to a Board question asking if the existing garage was grandfathered, Ms. Holian testified that that was her understanding. Finally, in response to a Board question asking if the proposed construction had been approved by the Village of Chevy Chase, Ms. Holian testified that it had been, and the Chair then asked that the Petitioners submit a copy of the approval from the Village of Chevy Chase to the Board for the record.²

14. Petitioner Luke Holian testified that the garage is located one (1) to two (2) feet from the fence. He testified that the foundation for the new garage will not be any closer to the house of their abutting neighbors to the left (west) than the existing garage, but that the new garage will extend slightly farther to the north (rear) than the existing garage. Following an observation by the abutting neighbor that the plans that were filed with this variance show the construction extending to within inches of that neighbor's house, the Board Chair asked the Petitioners to submit a corrected survey/Site Plan for the record, and Mr. Holian testified that they would do so.

15. The Petitioners' abutting neighbor at 109 Primrose Street testified that the existing fence between his property and the Petitioners' property is located on their shared side property line. He testified that he would like the Petitioners to submit a corrected survey/Site Plan that accurately reflects the location of this property line, noting that the Petitioners' current survey/Site Plan shows the proposed construction extending to within inches of his house.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variance can be granted. The variance complies with the applicable standards and requirements set forth in Section 59.7.3.2.E.2, as noted below:

1. *Section 59.7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

² The Petitioners' neighbor to the left (west) initially indicated that to the best of his knowledge, the Village of Chevy Chase had not yet approved the proposed construction. Ms. Holian steadfastly maintained that the construction had been approved, and the two of them engaged in a friendly conversation regarding potential reasons for this difference of opinion. This will presumably be resolved by the Petitioners' submission of a copy of the Village's approval for the record.

2. The Petitioners shall submit a corrected survey/Site Plan to the Board, and shall provide a copy of that survey to the Department of Permitting Services in connection with the procurement of building permit(s) for the proposed garage.
3. The Petitioners shall submit to the Board a copy of the approval for the proposed construction from the Village of Chevy Chase.
4. Construction shall be in accordance with Exhibits 5(a)-(c).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Alan Sternstein in agreement, and with Caryn Hines and Amit Sharma 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 10th day of May, 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.