

**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-6892

PETITION OF ANDREW FELDMAN

**OPINION OF THE BOARD
(Opinion Adopted November 20, 2024)
(Effective Date of Opinion: December 4, 2024)**

Case No. A-6892 is an application for a variance needed for the construction of a sunroom addition. The proposed construction requires a variance of 11.19 feet as it is within 18.81 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.

The Board of Appeals held a hearing on the application on November 20, 2024. Petitioner Andrew Feldman participated in the hearing in support of the requested variance, assisted by his architect, Robert Black.

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

EVIDENCE PRESENTED

1. The subject property is Lot 9, Block E, River Falls Subdivision, located at 7708 Masters Drive in Potomac, Maryland, 20854, in the R-200 Zone. The property is an irregularly shaped, four-sided lot, located on the west side of Masters Drive. The property's front lot line is significantly bowed, following the curvature of Masters Drive. The property's right side lot line is set at an acute angle to the front lot line, and meets the rear lot line at an angle just shy of 180 degrees. The property's left side lot line intersects the rear lot line at an acute angle, and intersects the front lot line at a right angle. As a result, the shape of the property could be described as almost triangular, and the right side of the property is much shallower than the left side. The subject property was recorded in 1970. It has an area of 15,298 square feet. See Exhibits 1, 3, 4(a), and 8.

2. The Site Plan contains contour lines that show that the elevation across the rear of the property increases about ten feet from the property's left (southern) side to its right (northern) side, and that a similar, although smaller, elevation change occurs across the front of the property. The property utilizes multiple retaining walls to shore up the slope and provide access/steps to the rear of the house. The Petitioner's Site Plan, Site Plan Detail, and photographs, including an aerial photograph, show these features. See Exhibits 4(a), 4(c), and 5(g).

3. The property contains a house that was built in 1972. The Petitioner purchased the subject property in 2023. See SDAT Printout. The Petitioner's Statement of Justification ("Statement") states that the Petitioner is seeking to construct a sunroom addition over a deck that was present on the property at the time of his purchase, and that extends more than the nine (9) feet allowed into the rear setback, rendering it nonconforming. See Exhibits 3 and 4(a)-(b). The Petitioner is seeking to reuse this deck in constructing the proposed sunroom, noting that "[t]he existing deck is constructed over masonry and stone piers," and that it "is sound, of high quality and is bound by extensive stone and masonry retaining walls, steps, patio, HVAC condensers and topography." The Statement states that the proposed sunroom would only increase lot coverage by 3%, and that even with the proposed sunroom, lot coverage would only be 14%, far less than the 25% allowed. See Exhibit 3.

4. The Petitioner's variance Application indicates that the narrowness, shallowness, shape, topography, and other extraordinary conditions of the subject property make it unique for the purpose of granting a variance, and states that the "[u]nusual lot shape, how the house was sited within the lot, existing site features (stone and masonry retaining walls & steps) and topography make it difficult to add practical improvements." The Application further states that this causes the Petitioner a practical difficulty, noting that "[t]he combination of the 30' rear yard setback, location of existing deck foundation, retaining walls, driveway and existing floor plan configuration will not allow for improvements in other locations on the site." See Exhibit 1.

5. The Statement states that the unusual shape of the property "makes expanding the house very difficult because of topography, extensive retaining walls and practical location for the improvement." The Statement states that "[o]ther locations are not feasible because of the house configuration, driveway location, large trees and side yard setbacks." See Exhibit 3. The Petitioner's Site Plan confirms the presence and location of these impediments. See Exhibit 4(a).

6. The Statement states that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would cause the Petitioner. The Statement notes that the Petitioner is taking an "adaptive reuse approach by using an existing structure of high quality" in the construction of the proposed sunroom, and that "[w]ithout the variance, the Petitioner would have to demolish the existing substantial deck structure, stone retaining walls, steps and relocate existing HVAC condensers." The Statement indicates that this would be very costly and "is not

feasible.” Finally, the Statement observes that locating the proposed sunroom elsewhere on the property “would likely require the removal of large oak trees....” See Exhibit 3.

7. The Statement states that granting the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties, and notes that the Petitioner “has received numerous letters of support from the adjoining property owners” for the proposed design. The Statement states that granting the requested variance will maintain the open, large lot feel of the neighborhood. It states that the “scale” of the proposed sunroom is “appropriate” to the house, and that “[t]he use of expansive glass creates an open and airy appearance vs. a structure with solid walls and minimal glazing.” Finally, the Statement states that “[t]he roof design is flat to maintain egress from the second-floor windows and to reduce the scale of the addition,” and that the aesthetic of the proposed addition “complements the original neighborhood and architecture.” See Exhibit 3.

8. The record contains two emails from the Petitioner’s neighbors evidencing their support for the proposed sunroom and the grant of the requested variance. See Exhibits 7(a)-(b).

9. At the hearing, the Petitioner testified that the back of his property is sloped and has large stone retaining walls, a stone walkway, large trees, and a deck that is supported by stone pillars. He testified that the deck on the back of his house was present when he purchased the property, and that one corner of the deck extends farther into the rear setback than is allowed, making it nonconforming. See Exhibits 4(a)-(b). The Petitioner testified that he is seeking to construct an all-seasons room on the deck. He testified that he has spoken to his neighbors, and that they support the proposed construction.

10. Mr. Black testified that the Petitioner’s property has an unusual, trapezoidal shape. He testified that the rear of the subject property has a steep slope and topographical issues. Mr. Black testified that the subject property contains a house that was built in the 1970s. He noted that the right rear corner of the house was positioned only 21 feet from the right side property line, and questioned whether the house could have been sited differently on the property.

Mr. Black testified that the west side of the Petitioner’s property contains a rectangular deck whose northwest corner encroaches more than the permissible nine (9) feet into the required rear setback. He testified that the deck is surrounded by stone stairs, retaining walls, a large patio, and large oak trees. Mr. Black further testified that the existing deck is supported by stone masonry columns. He testified that the proposed sunroom will not increase the footprint of the existing deck.

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.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds, based on a review of the variance Application, Statement, Site Plan, and Zoning Vicinity Map, and on the testimony of Mr. Black, that the subject property has an unusual shape relative to neighboring properties, and a rear lot line that is angled relative to the rear face of the house, resulting in the right side of the Petitioner's property being much shallower than its left. See Exhibits 1, 3, 4(a), and 8. The Board finds that these factors combine to produce an exceptionally shaped and constrained buildable envelope. In addition, the Board finds, based on the testimony of the Petitioner and Mr. Black, and based on the Site Plan, aerial, and other photographs, that the topography of the subject property is sloped such that improvements to the property's rear yard necessitate the use of retaining walls. See Exhibits 4(a), 4(c), and 5(g). Based on the foregoing, the Board finds that this element of the variance test is satisfied.

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, Site Plan, and the testimony of the Petitioner and Mr. Black, that the Petitioner's existing deck was built prior to his acquiring the subject property, and does not comport with the required rear setback, rendering it nonconforming. See Exhibits 3 and 4(a)-(b). The Board further finds that the proposed sunroom addition will reuse the existing deck. Because the proposed development uses the existing legal nonconforming structure, the Board finds that 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 Application, Statement, and SDAT Printout, that the Petitioner purchased this property in 2023, after it was developed, and after the existing deck was constructed. See Exhibits 1 and 3, and SDAT Printout. Thus the Board finds that the unusual shape and topography of the subject property, and the presence of the existing nonconforming deck, are not the result of actions by the Petitioner, 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, per the Application, Statement, and Site Plan, that due to the property's unusual shape and topography, full compliance with the rear lot line setback imposed by Zoning Ordinance would cause the Petitioner a practical difficulty because it would preclude reuse of the Petitioner's existing deck in the proposed construction. The Board notes, per the Statement, that the existing deck is not only "sound" and "of high

quality,” but is also “bound by extensive stone and masonry retaining walls, steps, patio, HVAC condensers and topography” that pre-existed the Petitioner’s ownership of the property and limit the area available for construction. The Board finds that the requested variance is the minimum needed to allow adaptive reuse of the existing nonconforming deck in connection with the proposed construction, and thus to overcome that practical difficulties that full compliance with the Zoning Ordinance would entail on account of the property’s unusual shape and topography, and the extent of preexisting improvements. See Exhibits 1, 3, and 4(a)-(b). The Board notes, based on the testimony of Mr. Black, that the proposed construction will not increase the footprint of the existing deck. Thus the Board finds that this element of the variance test is satisfied.

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 Petitioners’ proposed sunroom addition will continue the residential use of their home. Thus the Board finds that the requested variance, which is needed to allow the Petitioners to proceed with the proposed construction, can be granted without substantial impairment to the intent and integrity of the Potomac Subregion Master Plan (2002), 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.*

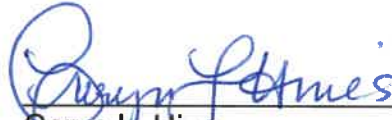
The Board finds, based on the Statement, Site Plan, and drawings/elevations, that the proposed construction will not be adverse to the use and enjoyment of abutting or confronting properties because the proposed sunroom will replace an existing deck, will be of a scale that is “appropriate” to the house, has “extensive” glass to “create[] an open and airy appearance,” will have a flat roof to “reduce” its scale, and will have an aesthetic that “complements the original neighborhood and architecture.” See Exhibits 3, 4(a), and 5(b)-(f). The Board further finds, per the letters of support and the testimony of the Petitioner, that the Petitioner’s neighbors have no objection to the grant of the requested variance. See Exhibits 7(a)-(b). Finally, the Board notes that despite the property having been properly posted and the hearing having been properly noticed, the record contains no opposition to the grant of the variance, and no one was present at the hearing in opposition. Accordingly, the Board finds that granting this variance, to allow construction of the proposed sunroom addition, 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 variance of 11.19 feet 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)-(b) and 5(a)-(d) (exterior dimensions/elevations only).

Therefore, based upon the foregoing, on a motion by Caryn L. Hines, Chair, seconded by Richard Melnick, Vice Chair, with Alan Sternstein, Amit Sharma, and Donald Silverstein 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.



Garyn L. Hines
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 4th day of December, 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.