

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6902
PETITION OF DOUGLAS AND PATRICIA LAWRENCE**

OPINION OF THE BOARD
(Hearing Held: January 22, 2025)
(Effective Date of Opinion: January 29, 2025)

Case No. A-6902 is an application by Douglas and Patricia Lawrence (the "Petitioners") for a variance needed for the construction of an addition. The construction requires a variance of 1.70 feet as it is within 5.30 feet of the right side lot line. The required setback is seven (7) 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 Wednesday, January 22, 2025. Both Petitioners appeared in support of the requested variance. They were represented by Jody Kline, Esquire. Architect and former property owner Thomas Manion also appeared and testified in support of the requested variance, along with his associate, Maryam Vesal. David Wallace, who owns the abutting property to the right (east) of the subject property, appeared in opposition to the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Lot 55, Cabin John Park Sec 2 Subdivision, located at 8211 Caraway Street in Cabin John, Maryland, 20818, in the R-90 Zone. It is a four-sided property located on the north side of Caraway Street. The property is approximately 100 feet wide and is roughly rectangular in shape but for a slightly angled rear lot line. It has an area of 23,755 square feet. The subject property contains a house that was built in 1994. It was purchased by the Petitioners in 2021. See Exhibits 3, 4(a), and 8(a) and SDAT Printout.

2. The Petitioner's Statement of Justification ("Statement") states that in 2022, the Petitioners had a two-story addition constructed on the right (east) side of their home. The Statement states that the addition was designed by architect Thomas Manion, who had designed the original house and had lived on the property from 1995 until 2018. The

addition was constructed pursuant to Building Permit No. 977583, which was reviewed and issued by the Montgomery County Department of Permitting Services (“DPS”) on March 6, 2022. Construction began that Spring, and “was completed in December, 2022 at which time the Lawrences began to occupy the newly constructed space.” See Exhibit 3.

3. The Statement states that in September 2023, the owners of the abutting property to the right (east) of the subject property (i.e. the owners of Lot 54) expressed their belief that the Petitioners’ new addition encroached on the required seven (7) foot side setback from the shared property line. See Exhibit 3. The Statement then describes a boundary dispute that ensued and that culminated in the issuance by DPS of a Notice of Violation to the Petitioners, as follows:

In September of 2023, the owners of adjacent Lot 54 notified the Lawrences that they believed that the Lawrences’ addition had violated the 7 foot side setback requirement. The Lawrences provided the Lot 54 owners with a Boundary Line Survey created in April 2021 along with their architect’s interpretation that the retaining wall located between their respective properties was entirely located on 8211’s property, which appeared to be consistent with survey notations. Over the next three months additional survey work was contracted for by both parties.

On January 27, 2024 and January 30, 2024, Lot 54 owners filed complaints with the Montgomery County Department of Permitting Services claiming the Lawrences’ two-story addition encroached into Lot 55’s east side yard setback. After an inspection conducted by a County inspector, the Lawrences received a Notice of Violation (No. 504519, attached) indicating, in the County’s opinion, that a portion of the addition did extend into the east side yard setback in the maximum amount of 1.7 feet at the southeast corner of the addition but diminished to zero over 27 linear feet. That dimension was based on a survey dated December 28, 2023, paid for by the owners of Lot 54, showing only 5.3 feet of separation provided between the new structure and the common property line to satisfy the required 7.0 foot setback at the southeast corner of the addition. Notice of Violation Case No. 504519 issued on February 26, 2024 required corrective action described as:

“Must have the second-story addition at right side of the property meet the 7’ setbacks.”

4. The Statement states that the Petitioners “disputed the information contained in the complaint filed with the County and the conclusions of the Department of Permitting Services.” It states that their architect, Mr. Manion, “disagreed with the encroachment claim because it was his belief that the complainant and the County were using the wrong assumed common property line to measure the building’s setback distance.” See Exhibit 3. The Statement states that Mr. Manion has a “strong factual basis” for his position based on his personal involvement with the construction of the retaining wall that exists between the two properties, as follows:

Mr. Manion bases his claim that there was no encroachment into the right (east) side-yard setback area based on his belief that the complaining neighbor and the County inspector were relying on incorrect survey information indicating that the two-story addition came within 5.3 feet of the property line. Mr. Manion was involved in the location and construction of the parged concrete block retaining wall that was built between Lots 55 and 54 in 1993 and was intended to be located entirely inside Lot 55 but was now being treated as being co-extensive with a common property line between Lots 55 and Lot 54. Mr. Manion distinctly remembers his contractor placing rebar in the ground to string a line to make sure that the concrete block retaining wall would be situated inside of Lot 55. Therefore, in Mr. Manion's opinion, the concrete block retaining wall is located entirely within the boundaries of Lot 55 and a complaint filed on an assumption that the stone retaining wall is co-extensive with the property line was incorrect and invalid. Mr. Manion was so confident in his recollection of the situation at 8211 Caraway Street that he used the same house location plat prepared for the original 1993 construction when he filed the Lawrences' building permit application in 2023.

5. The Statement states that DPS graciously gave the Petitioners "time to conduct field investigations to provide a survey that contradicted the survey evidence on which the complainant and the County had relied in formulating the Notice of Violation and the prescribed remedial course of action," but that "due to the passage of time and because of substantial construction activity for a wholly new residence on adjacent Lot 54, the Lawrences and their surveyors were not able to locate pipes, pins or markers that would support Mr. Manion's recollection regarding the location of the southeast property corner." The Statement notes that "[s]ubstantial land disturbance in the area where the southeast corner property markers would have been located has occurred over the past three years related to Lot 54 construction and electrical pole replacement." The Statement then states that because the Petitioners were not able to "provide any empirical evidence to disprove the location of the southeast property corner as shown in the survey data provided by the neighbor/complainant," they elected to "seek a variance to address the issue of the claimed encroachment of 1.7 feet into the east side yard setback (7.0 feet required) while maintaining that the actual encroachment into the 7.0 foot setback is not as great as 1.7 feet." See Exhibit 3.

6. The Petitioners have included an annotated version of the survey that the owners of Lot 54 had commissioned with their submission. See Exhibit 4(b). The annotated survey shows "the location and the maximum extent of the alleged encroachment (25 square feet) of the Lawrences' two-story addition into the Lot 55 east side 7.0 feet setback." See Exhibit 3. The annotated survey shows an elongated triangular sliver on the right side of the Petitioners' house that encroaches a maximum 1.7 feet into the seven (7) foot side setback at its south end (i.e. at the front of the structure), and steadily decreases, moving front to back, along a distance of approximately 27.75 feet to an encroachment of zero (0) feet. See Exhibits 3 and 4(b).

7. The Statement states that failure to grant the requested variance would result in no reasonable use of the subject property, in satisfaction of Section 59.7.3.2.E.1 of the

Zoning Ordinance. In support of this, the Statement states that “[f]ailure to grant the requested variance would eliminate the use of the garage and significantly constrain use of the rest of the existing structure,” and that it “would also result in significant expense if as much as 1.7 feet of the new two-story addition would have to be removed and/or relocated.” See Exhibit 3.

8. The Statement states that the property has extraordinary conditions that make it unique for the purpose of satisfying Section 59.7.3.2.E.2.a.i of the Zoning Ordinance. After acknowledging that the subject property “... is a rectangular lot common in size, shape and form for the Cabin John neighborhood and does not exhibit any unusual narrowness, shape or topographic condition,” the Statement goes on to explain that “[t]he extraordinary conditions that exist[] in this case [are] that pipes, pins or other survey markings that would show that the property line that is being used to demonstrate a zoning setback encroachment no longer exist, or cannot be located.” See Exhibit 3.

9. The Statement states that the Petitioners’ addition substantially conforms with the established historic or traditional development pattern of their neighborhood, in satisfaction of Section 59.7.3.2.E.2.a.v of the Zoning Ordinance. The Statement notes in furtherance of this assertion that “[t]he Cabin John neighborhood in which the subject property is located exhibits a rich variety of amendments and additions to original and/or existing structures so the Lawrences’ two-story addition, and its relationship with the adjacent property, does not appear to be unusual or inappropriate.” See Exhibit 3.

10. The Statement states that the conditions that make the property unique are not due to any actions of the Petitioners, stating that “[t]he circumstances that have caused the problem prompting this variance application are due to the absence of survey markers that would prove the Applicants’ contention, or an accident or unintentional oversight in the siting of the two-story addition by the architect and builder.” See Exhibit 3.

11. The Statement states that the requested variance is the minimum needed to overcome the practical difficulties that strict adherence to the Zoning Ordinance would cause the Petitioners. See Exhibit 3. In support of this, the Statement notes that the extent of the encroachment is minimal, and that the requested variance is the minimum needed to allow the Petitioners to keep their addition, as follows:

The Applicants wish to retain their existing two-story addition which represents the minimum relief necessary to address this extraordinary situation. The quantum of relief sought will be a maximum of a 1.7 foot intrusion, using a disputed survey, into the setback tapering to 0.0 feet over 27.75 feet as the addition runs to the rear of Lot 55. The attached survey drawing prepared by Meridian Surveys, Inc., calculates the entire area of the alleged encroachment to be 25 square feet of area.

12. The Statement states that the requested variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan. To this end, the Statement states that the “nature of the construction” is “so

benign” that it “does not rise to a level where it is inconsistent with the goals and purposes of the Potomac Subregion Master Plan or alters the character of this section of the Cabin John Neighborhood.” See Exhibit 3.

13. With respect to satisfying Section 59.7.3.2.E.2.e of the Zoning Ordinance, the Statement acknowledges that “[s]atisfying this standard differs whether you live on Lot 55 or Lot 54.” The Statement then states that it is the belief of the Petitioners that “a modest (1.7 feet or less) protrusion into the 7.0 foot setback, covering a total area of only 25 square feet of land, does not affect the use, peaceful enjoyment, economic value or development potential of adjacent Lot 54.” See Exhibit 3.

14. At the hearing, Mr. Kline stated that the addition that is the subject of this variance request has already been built. He stated that the Statement explains the history of this construction, and sets forth the reasons the Petitioners did not believe that they needed a variance. Mr. Kline proffered that Mr. Manion built the house in 1993 and had pins put in the ground in connection with the construction of the wall between Lots 55 and 54 to ensure that the wall would be wholly located on his property (Lot 55). Mr. Kline stated that due to age, time, and construction activity, primarily on Lot 54, those pins can no longer be located, and his clients were unable to dispute the survey of their property that their abutting neighbors, the Wallaces, had commissioned. He stated that because of this, his clients elected to seek a variance, adding that even if they need the entirety of the 1.7 foot variance, it would not have an adverse effect on neighboring properties.

15. Mr. Manion was accepted as an expert in architecture. See Exhibit 10. He testified that he has been an architect in Cabin John for a very long time, and that the house on the subject property was the fourth house he had built for his family. Mr. Manion testified that the photographs in Exhibit 13(b) show the wall that he built between the subject property and Lot 54. He testified that there was an existing fence between the properties, that they built the wall six inches from the fence, and that they put a line in. Mr. Manion testified that they had had three surveys done showing that there was sufficient room to accommodate the garage addition on the right side of the Petitioners’ house, and so they proceeded with construction. Later in the hearing, Mr. Manion testified that the initial portion of the wall between the properties is the portion that is further from the road. He testified that he put a drainage ditch across the front of this original portion of the wall. See Exhibit 13(a).

Referring to Exhibit 11(a), Mr. Manion testified that the area at the right front (southeast) corner of the subject property has been disturbed, and that as a result, the survey pins cannot be located.¹ He testified that they had seen a number of surveys that had the Petitioners’ house in slightly different locations, with some showing it tilted relative to the side lot line. Mr. Manion testified that the green line on Exhibit 11(a) shows the location of the house according to the original permit set, and that the red line on that Exhibit is from a survey that was prepared for the Wallaces and that shows the most

¹ Mr. Manion later testified that the property next door (Lot 54) has been raised, and that the pin marking the property line is now buried or gone.

egregious encroachment into the side setback.² He testified that people think that either the building was tilted on the lot and the 1993 survey was wrong, or that the property line changed and the structure now encroaches.³ Mr. Manion testified that the variance request is for the relief needed according to the most egregious version (Wallace version) of the survey. He testified that according to that survey, the side setback line “trims” the front of the garage, with the right front corner of the garage encroaching up to 1.7 feet into the setback, and the extent of the encroachment steadily decreasing to zero (0) at the side stairs shown on that Exhibit. See Exhibit 11(a).

Mr. Manion testified that they did a number of studies regarding the encroachment and what would be entailed in correcting the encroachment. He testified that the total area of encroachment into the side setback is about 24 square feet, and is shown in pink on the top right drawing on Exhibit 12(b). Mr. Manion testified that in order to correct the encroachment, the area shown in blue on the bottom right drawing would have to be rebuilt. He testified that Exhibit 12(a) shows elevations of the Petitioners’ house with the work that would need to be done to bring it into compliance with the setback, and he estimated that this work would cost about \$275,000.

Referring to Exhibit 13(a), Mr. Manion testified that the new survey (“Wallace survey”) shows that the Wallaces own most of the wall that separates their property from the Petitioners’ property. He testified that when the home on the Petitioners’ property was originally built, everything was surveyed multiple times, the County checked everything that was done, the construction met all codes, and the construction was approved. Mr. Manion testified that the Petitioners’ new addition was also approved by the County, and that it was built with an approved building permit.

Mr. Manion testified that the Petitioners’ addition is not inconsistent with the established character of the neighborhood, and that it meets the required front setback. He testified that the Wallaces’ house sits forward of the Petitioners’ house. See Exhibit 13(d). Mr. Manion testified that the Wallaces’ permit drawings show their house located several feet farther back on their property than it is actually sited.

In response to a question from counsel asking if there was ever a time while he was working on the Petitioners’ addition that he thought there was a setback problem, Mr. Manion testified that there was not, adding that he thought, based on the location of the wall, that the setback was met. Mr. Manion testified that based on his experience as an architect in Cabin John, the abutting neighbors on Lot 55 are not adversely affected by the Petitioners’ addition.

16. Ms. Vesal testified, referring to Exhibit 12(a), that the Site Plan on the upper right hand side of that Exhibit shows that encroachment is small, and that the drawing on the lower right hand side of that Exhibit shows what would need to be rebuilt to correct the

² Exhibit 12(b) contains a comparison of the property lines and setbacks according to the 1993 survey and according to the new (Wallace) survey.

³ Mr. Manion later testified that he believed the surveys may have been done using the rebar from the wall instead of the survey pins, or that the pins may have been moved to match the wall, and that the issue was that the new survey shows the house tilted to the side. See Exhibit 11(a).

encroachment. Referring to Exhibit 13(a), she testified that moving the house the requested 1.7 feet further from the right side lot line is not a big change and will not be very noticeable.

17. Mrs. Lawrence testified that she and her husband had acted in good faith, that any encroachment of their addition was not intentional, and that they regret the circumstances in which they now find themselves. She testified that there were surveys that showed the boundary wall entirely on their property. Mrs. Lawrence testified that after the Wallaces had a survey done that showed an encroachment into the right side setback, she and her husband had additional surveys done which showed a maximum encroachment of 1.7 feet.

Mrs. Lawrence testified that she and her husband hired Mr. Manion to construct a garage addition with additional space because they wanted their addition to fit in with the neighborhood, and because Mr. Manion knew the house and the neighborhood. She testified that the total area of encroachment is 24 square feet, and that if they have to correct that, the demolition and reconstruction project will cost them about \$300,000. Mrs. Lawrence testified that the porch "jut out" on the right side of their home is compliant with the required setback, and that any adjustment to the existing construction would only apply to the area forward of that porch. Thus Mrs. Lawrence testified that if the encroachment were corrected, you would not see a big difference from the street because the porch and the area behind the porch would remain as a "dog leg" out from the corrected front, and thus the visual space between the houses would not change. She also noted that part of the addition that would need to be corrected is only one story in height as opposed to two stories, and that in their opinion, the encroachment is minor.

18. Mr. Lawrence thanked the Board for their time and consideration. Mr. Wallace asked him if he recalled standing near the street by the wall between their properties with their builders, and seeing a yellow-capped pipe in the ground. Mr. Lawrence testified that he recalled seeing flags in the ground and either a red-capped pipe or red-capped rebar.

Later in the hearing, Mr. Lawrence testified that a survey done in April 2021 shows an iron pipe found at the rear of the shared side property line, and that this survey shows that the Petitioners have a wider back yard than is shown on the Wallace survey. He testified that there is thus some disagreement over the location of the corner pin, and the possible resetting of that pin to reduce the width of the Petitioners' yard and cause the setback violation. Mr. Lawrence testified that this 2021 survey disputes the Wallace survey, on which the variance request is based.

19. Mr. Wallace, who owns the abutting property to the right of the subject property (Lot 54), testified in opposition to the requested variance. Mr. Wallace testified that he and his wife purchased the abutting property about a year before the Petitioners purchased the subject property. Mr. Wallace testified that he and his wife had the old house on their property torn down, and that they had a new house built. He testified that he works as a realtor and had previously worked as a patent attorney, and that his wife designs new homes.

Mr. Wallace testified that he and his wife are always very careful to obey the applicable regulations in connection with their construction projects. He testified that their house is ten (10) feet from the side lot line shared with the Petitioners instead of the required seven (7) feet. Mr. Wallace testified that these are big houses on big properties with small spaces between them. He testified that when they originally purchased their property, it contained a small house with reasonable space between it and neighboring homes.

Mr. Wallace testified that they assumed that because the construction on the subject property was done with permits that it met all the applicable regulations. He testified that when a dispute arose about the location of the wall between the properties, they measured the distance from the Petitioners' house to the wall to be about five (5) feet, and filed a complaint with the County.

Mr. Wallace testified that he wanted to make three points. He testified that the first point he wanted to make is that there are no extraordinary conditions on the subject property. He testified that the Petitioners' claim that there are no survey pins or that the pins cannot be located is false. Mr. Wallace testified that they have had multiple surveys done showing that the end points of the shared property line were found, and that all of the surveys said the same thing. He further testified that the silt fence they erected in connection with their construction was located about a foot inside of their property line, that they did not disturb anything on the property line, and that the survey pin or pipe at the front of the shared lot line was not disturbed. Mr. Wallace testified regarding the rear of the shared lot line that an old metal fence that is on their property near that lot line still stands, and that the survey pipe at the rear of the shared lot line is there as well.

Mr. Wallace testified that the second point he wanted to make is that the encroachment of the Petitioners' home into the side setback interferes with his wife's and his peaceful enjoyment of their property, and that allowing the encroachment to remain in the setback would decrease their property value. Mr. Wallace testified that the homes are close together, with windows facing windows, which he testified impacts privacy.

Mr. Wallace testified that the third point he wanted to make is that the need for a variance cannot be self-inflicted. He testified that the Petitioners' actions and failures led to the need for the requested variance. Mr. Wallace testified that he and his wife have no personal grudge against the Petitioners, but that they believe whoever drew up their permits did something "very misleading," either intentionally or as the result of negligence. Mr. Wallace testified that the complaint he and his wife originally filed with the County contained the permit drawing for the Petitioners' home, and that while the internal plans show the front "bump-out" on the right side of the Petitioners' house (garage) that encroaches into the side setback, the site plan did not. He testified that the permit would not have been issued if the bump-out had been correctly shown.⁴ See Exhibits 11(a) and 14. Following an expression of disagreement with this conclusion by a Board member, Mr. Wallace testified that from his experience, when you file for a permit, you

⁴ The Board notes that the Wallaces did not appeal the issuance of the Petitioners' original building permit.

have to show the entirety of the construction. He testified that in his opinion, the Petitioners' documents did not show the bump-out, and the bump-out extends into the side setback. He stated that the fact that it was not shown is negligence at a minimum. In response to an assertion by Mr. Kline that the impact of the encroachment is not commensurate with the cost to fix the encroachment, Mr. Wallace argued that it is not the Board's job to rule on that basis. He testified that he and his wife do things "by the book."

On cross examination, in response to a question by Mr. Kline asking Mr. Wallace if his house was constructed as shown on their permits, Mr. Wallace testified that it was. In response to a question asking why his house was located several feet forward of what was shown on their building permit application, Mr. Wallace replied that this was a red herring, and that their house sits so far forward on their property because the previous house was situated that far forward. In response to questions asking about the windows on his house that are shown on Exhibit 13(c) and that face the portion of the Petitioners' addition that encroaches into the setback, Mr. Wallace acknowledged that the large window on that side of the house is a stairway and is glazed. In response to a Board observation that the area of the addition that encroaches into the setback includes a garage that would not be considered "living area," and asking if the privacy impact of the Petitioners' addition would therefore arise from the rear of that addition, Mr. Wallace testified that the Petitioners' addition has second story windows.

CLOSING STATEMENTS

Mr. Kline stated that the Petitioners have to work with the conditions as they are, but that they did not create those conditions. He stated that the cure for this encroachment is not commensurate with its impact. Finally, Mr. Kline stated that the Petitioners' addition is not inconsistent with the character of their neighborhood.

Mr. Wallace stated that the Petitioners' permit application was misleading, and that there are no extraordinary conditions on the Petitioners' property. He stated that all of the surveys found pipes and are consistent about the border between the properties. Mr. Wallace testified that they did not move the survey pipes, which he noted would be illegal. He stated that the Petitioners are taking advantage of a situation which has resulted in their garage being located closer to his house than is allowed, causing a decrease in the value of his property.

FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the requested variance from the right side property 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 of the Zoning Ordinance, 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.v. – v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds that the Petitioners' addition substantially conforms with the established historic or traditional development pattern of their street or neighborhood, in satisfaction of this element of the variance test. In support of this, the Board finds that the Mr. Manion, who was accepted as an expert in architecture, testified that the addition is not inconsistent with the established character of the neighborhood, and that it meets the required front setback. The Board notes, in accordance with the Statement and with the testimony of Mrs. Lawrence and Mr. Manion, that Mr. Manion was hired to construct the Petitioners' addition because the Petitioners wanted their addition to "fit in" with the neighborhood, and because Mr. Manion "knew the house and the neighborhood." In addition, the Board finds, per the Statement, that "[t]he Cabin John neighborhood in which the subject property is located exhibits a rich variety of amendments and additions to original and/or existing structures so the Lawrences' two-story addition, and its relationship with the adjacent property, does not appear to be unusual or inappropriate." See Exhibit 3. Finally, the Board finds, based on Exhibits 3 and 4(b), that the area of encroachment is a long, thin, triangular-shaped area that extends over 27.75 feet and is only 1.7 feet wide at its widest point, resulting in a total encroachment of approximately 25 square feet, which the Board finds to be de minimis in light of its configuration and total size. Thus the Board finds that even with this de minimis encroachment, the addition *substantially* (emphasis added) conforms with the established historic or traditional development pattern of this neighborhood, which was developed in compliance with the development standards set forth in the Zoning Ordinance, 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, based on the Statement and the testimony of Petitioners, that the Petitioners are not responsible for the discrepancies between the various surveys or for the unintentional de minimis encroachment of their addition into the side setback that the Wallace survey indicates is applicable to their property. See Exhibit 3. Accordingly, the Board finds that the Petitioners took no actions to create the special circumstances or conditions peculiar to this 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 and the testimony of Mr. Manion, that the Petitioners and their architect understood that the Petitioners' new addition complied with the required right side setback at the time of its construction, and that the construction was undertaken and completed pursuant to a building permit issued by the County. The

Board further finds, based on the Statement, that a subsequent survey of the subject property, commissioned by the Wallaces, shows that the Petitioners' addition encroaches on the required setback from the right side lot line, and that while the Petitioners contest the accuracy of the Wallace survey, they have accepted it for the purpose of seeking the requested variance. See Exhibit 3. As noted above, the Board finds, based on the Wallace survey, that an elongated, triangular portion of the Petitioners' addition encroaches a maximum of 1.7 feet into their right side setback, and that the total area of encroachment is 25 square feet. See Exhibits 3 and 4(b). The Board further finds that the extent of the encroachment steadily decreases from 1.7 feet to zero (0) feet, moving from front to back along a distance of approximately 27.75 feet along the right side of the Petitioners' house. See Exhibits 3 and 4(b). The Board finds, on this basis, that the total area of encroachment is extremely small and substantially complies with the development pattern in the neighborhood, that compliance with the setbacks required by the Zoning Ordinance would cause the Petitioners a practical difficulty in that it would necessitate removal of this small, existing portion of their home, and that the requested variance is the minimum needed to allow this de minimis encroachment to remain. 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 addition to the Petitioners' home will continue the residential use of this property, consistent with the recommendations of the Bethesda Chevy Chase Master Plan, which generally seeks to "[p]rotect the high quality residential communities throughout the Planning Area" and to "[p]erpetuate and enhance the high quality of life" that exists in 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 that granting the variance from the right side lot line will not be adverse to the use and enjoyment of abutting and confronting properties, in satisfaction of this element of the variance test. In support of this, the Board finds that the construction is existing, that the extent of the encroachment is minimal, and that allowing the existing addition to remain as it has been since late 2022 will not change its visual impact on neighboring properties, as illustrated on Exhibits 13(a) and (b) and as indicated by Mrs. Lawrence and Ms. Vesal in their testimony. See Exhibits 3 and 13(a)-(b). The Board recognizes that Mr. Wallace has testified that allowing the addition to remain where it is will negatively impact his property value, but finds that Mr. Wallace has not provided any evidence to support this assertion. The Board further finds that the back half of the Petitioners' addition, beginning with the side porch, is compliant with the required side setback, and that Mrs. Lawrence has testified that the rear portion of the addition would remain as is, preserving the distance between the Petitioners' house and the Wallaces' house, even if the front portion of the addition were to be relocated. Finally, the Board cites the expert testimony of Mr. Manion that based on his experience as an architect in

Cabin John, the abutting neighbors on Lot 55 are not adversely affected by the Petitioners' addition, in support of this finding.

Accordingly, the requested 1.7 foot variance from the right side lot line is **granted**, subject to the following condition:

1. Petitioners shall be bound by the testimony and exhibits of record.

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



Caryn L. Hines
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 29th day of January, 2025.



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.