

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6917
PETITION OF MICHAEL DWYER**

OPINION OF THE BOARD
(Hearing Date: June 4, 2025)
(Effective Date of Opinion: June 18, 2025)

Case No. A-6917 is an application by Petitioner Michael Dwyer for variance relief needed for the proposed construction of a deck. The proposed construction requires a variance of four (4) feet as it is within five (5) feet of the right lot line. The required setback is nine (9) 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 June 4, 2025. The Petitioner participated in the proceedings in support of the requested variance, assisted by his contractor, Dave Kugler of Chase Remodeling.

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

EVIDENCE PRESENTED

1. The subject property is Lot 25, Block J, Hallowell Subdivision, located at 17431 Saint Theresa Drive, Olney, Maryland 20832 in the RE-2 Zone. It is a five-sided corner lot, bordered to the west by Saint Theresa Drive and to the north by Prince Philip Drive. The property's fifth side is a truncated corner that faces the intersection of these streets. The property's frontage along Saint Theresa Drive is slightly convex, following the curvature of the street. The property's right side lot line is set at a right angle to the property's front lot line along Saint Theresa Drive, and because of the curvature of Saint Theresa Drive, is not parallel to the property's Prince Philip Drive lot line, but rather converges toward that lot line, causing the lot—and notably the right side of the lot—to narrow from front to back (west to east). The subject property has a total area of 7,827 square feet. See Exhibits 4 and 7, and SDAT Printout.

2. Per SDAT, the subject property contains a house that was built in 1987, and it was acquired by the Petitioner in 2018. See SDAT Printout. The Petitioner's variance

Application and Site Plan show that the existing house faces Saint Theresa Drive, and that the right rear corner of the existing house is located only five (5) feet from the right side lot line, encroaching on the required setback from that lot line. See Exhibits 1 and 4. The Petitioner includes photographs showing this condition with his submission. See Exhibits 5(c)-(e). The rear of the subject property abuts open space. See Exhibit 8(a).

3. The Petitioner's Statement of Justification ("Statement") states that the house was located in the right side setback because "there is a common area and a public walkway restricting where the house could be situated," going on to state that "[i]f [the Petitioner's] property had not been subject to these public restrictions, the house could have been located further from the property line, and [the Petitioner] would not now need a variance" because he "would have more than enough room to expand [his] deck and still be well within the zoning structure and requirements." See Exhibit 3. The Petitioner includes photographs showing this walkway and common area with his submission. See Exhibits 5(c)-(e).

4. The Statement states that the Petitioner is seeking to "modestly extend [his] deck while keeping it within the footprint of [his] existing house," emphasizing that the "proposed new deck would not extend any closer to the property line than the corner of the existing house." The Statement states that the Petitioner's existing deck is too small to use for customary purposes. The Statement states that the construction of the proposed "very modest extension to the deck" would add "approximately 96 square feet of additional outdoor living/entertaining space" that would allow the Petitioner's family to more fully enjoy the use of the property "in the most cost effective and reasonable manner." See Exhibit 3.

5. The Statement states that the conditions that make the subject property unique are not the result of actions by the Petitioner, stating that "[t]he placement of the house in relation to the unusual conditions was done by the original builder and 100% of the limiting parameters were solely the responsibility of the builder and/or prior owners." The Statement states that the original placement of the house "severely limited the options of all future owners" of the property to make improvements. See Exhibit 3.

6. The Statement states that the requested variance is the minimum needed to overcome the practical difficulty that full compliance with the setbacks required by the Zoning Ordinance would impose. In support of this, the Statement states that the requested four (4) foot variance is the minimum needed to allow the proposed "very modest" extension to the Petitioner's existing deck. The Statement indicates that the proposed extension will add less than 100 square feet of outdoor living and entertaining space, but will allow the Petitioner's family to more fully use and enjoy the property. See Exhibit 3.

7. The Statement states that granting the requested variance "would not affect the integrity of the master plan." In addition, the Statement states that granting the requested variance would not have "any detrimental effect on [the Petitioner's] neighbors and their use and enjoyment of their properties." See Exhibit 3.

8. At the hearing, the Petitioner testified that he and his wife purchased the subject property in 2018. He testified that their current deck is very small and needs to be resurfaced. The Petitioner testified that they are seeking to extend their deck towards their property line, but still within the footprint of their home. He testified that when their house was built, it was located in the right side setback due to the presence of a public walkway on the opposite (Prince Philip Drive) side of their property. The Petitioner testified that the subject property has a trapezoidal shape that narrows from front to back, and that the property's right side lot line "slants in." He testified that if the house had not been sited as it was by the builder, the proposed deck could have been constructed without the need for a variance.

The Petitioner testified that the cross-hatched area on the Site Plan shows the new deck. He stated that a portion of the new decking will be built where the stairs to the existing deck are currently located, and that the stairs will be relocated. The Petitioner testified that he has talked with his neighbors about the proposed construction, and that they had to sign on to his application in order for him to get approval for the proposed construction from his homeowners' association.¹ He testified that there is a common area behind this house.

In response to a Board question asking what having a "truncated corner" meant, the Petitioner testified that it meant that the corner of his property that faces the intersection is "chopped" at the front.

9. Mr. Kugler testified that the fact that the corner of this property facing the intersection is cut off likely forced the public walkway to be located closer to the center of the subject property than would otherwise have been the case. See Exhibit 10(a). Mr. Kugler explained that he believed this is why the builder located the house on the right side of the subject property. Referring to Exhibit 5(a), Mr. Kugler testified that the expanded deck would not extend any closer to the right side lot line than the corner of the existing house.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variance from the setback for the right side lot line can be granted. The Board finds that the requested variance complies with the applicable standards and requirements set forth in Section 59.7.3.2.E as follows:

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

Section 59.7.3.2.E.2.a.i. – exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

¹ The Board requests that the Petitioner submit a copy of the approval issued by his homeowners' association for the Board's files.

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 Site Plan and the testimony of record, that the subject property has an unusual five-sided shape, with a truncated corner facing the intersection, a curved front lot line that follows the abutting street, and an angled right side lot line. The Board finds that these factors, taken together, cause the subject property to narrow from front to back, constraining its buildable envelope such that the right rear corner of the existing house was built five (5) feet from the side property line, an aspect of the property's development that was likely exacerbated by the presence of a public walkway along the property's Prince Philip Drive frontage. The Board finds that this constitutes an extraordinary condition peculiar to this property in satisfaction of Section 59.7.3.2.E.2.a.i of the Zoning Ordinance. See Exhibit 4. In addition, the Board finds that the encroachment of the existing house into the required side setback appears to make the existing house nonconforming. Because the proposed deck would be connected to the existing house, the Board finds that Section 59.7.3.2.E.2.a.ii of the Zoning Ordinance is satisfied as well.

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, per the SDAT Printout and in accordance with the testimony of the Petitioner, that the subject property contains a house that was built in 1987, and that the Petitioner and his wife purchased the property in 2018. The Board further finds that there is nothing in the record to indicate that the shape of the property has changed since the Petitioner acquired it, and that the Statement indicates that the Petitioner was not responsible for the construction of the existing house. See Exhibit 3. Accordingly, the Board finds that the Petitioner is not responsible for the unusual shape of the property, the narrowness of its buildable envelope, or the nonconforming location of the existing house, 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 compliance with the right side setback imposed by the Zoning Ordinance poses a practical difficulty for the Petitioner with respect to his ability to expand his deck due to his property's narrowness and unusual shape, and due to the original nonconforming siting of his home in the right side setback. The Board further finds, based on the Statement, Site Plan, and the testimony of record, that the proposed new deck will not extend any closer to the right side lot line than the Petitioner's existing house. See Exhibits 3 and 4. In light of the foregoing, the Board finds that the variance requested is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would entail and to allow the Petitioner to construct a reasonable expansion of an existing deck, in satisfaction of this element of the variance test.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the construction undertaken pursuant to the grant of the requested variance would continue the residential use of the property, and thus finds that the variance can be granted without substantial impairment to the intent and integrity of the Olney Master Plan (2005), which seeks to "reinforce the concept of Olney as a satellite community" and to maintain the existing zoning of developed properties. Accordingly, the Board finds that this element of the variance test is satisfied.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds, based on the testimony of the Petitioner, that he has received approval for the proposed construction from his homeowners' association, and that in connection with securing that approval, he had spoken with his neighbors about the proposed construction, since he needed to get their signatures before seeking HOA approval. The Board further finds, based on the Statement, Site Plan, and the testimony of record, that the proposed deck will not extend any closer to the side lot line than the Petitioner's existing house. See Exhibits 3 and 4. Finally, the Board notes that the property was properly posted, and that the record contains no opposition to the requested variance. On the basis 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 from the right side 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 and 5(a)-(b).

Based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by Alan Sternstein, with Caryn L. Hines, Chair, 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.



Caryn L. Hines

Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 18th day of June, 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.

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.