

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6921
PETITION OF ALEXANDER AND EMILY VAN BUREN**

OPINION OF THE BOARD
(Opinion Adopted July 9, 2025)
(Effective Date of Opinion: July 16, 2025)

Case No. A-6921 is an application for variances necessary for an existing accessory structure (detached garage). The existing structure requires a variance of six (6) feet as it is within fifty-nine (59) feet of the front lot line. The required setback is sixty-five (65) feet, in accordance with Section 59.4.4.7.B.2 of the Zoning Ordinance. In addition, the existing structure requires a variance of 388.65 square feet because it has a footprint size 988.65 square feet. The required footprint size is 600 square feet, in accordance with Section 59.4.4.7.B.2.b of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on July 9, 2025. Petitioners Alexander and Emily Van Buren were present in support of the requested variances. Chanel Thomas was also present in support of the requested variances.

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

EVIDENCE PRESENTED

1. The subject property is Parcel P427, PT MT Pleasant Subdivision, located at 20601 Whites Ferry Road in Poolesville, Maryland, 20837, in the R-200 Zone. It is a four-sided property, 2.73 acres in size, located on the north side of Whites Ferry Road. The property is deeper than it is wide, and it narrows towards the rear. It contains a house that was built in 1900 and a detached garage that was built in 2006. The Site Plan appears to show that the garage is located behind the rear building line of the house. See Exhibits 3(a), 4, and 8, and SDAT Printout.
2. The Petitioners' variance Application indicates that they are seeking variance relief so that they can obtain building permits for an existing detached two-car garage that was built on the subject property in 2006 without permits. See Exhibit 1.

3. The Petitioners' Statement of Justification ("Statement") states that their property is unique because it is a 2.73 acre lot in the R-200 Zone, and because "[t]here is essentially no close neighbor to the right side of the property." The Statement further states that the Petitioners "essentially have just one neighbor to [their] left." See Exhibit 3(a). The Site Plan shows that the garage is located behind and to the right of the Petitioners' house. See Exhibit 4.

4. The Statement states that the Petitioners purchased the subject property on April 21, 2025. The Statement states that the property was advertised as including a two-car garage when it was marketed for sale, and that in purchasing the property, the Petitioners learned that the existing garage was built without permits. The Statement states that the Petitioners were not responsible for the construction of this garage. See Exhibit 3(a). The previous owner submitted a letter explaining the history of the garage, stating that it was built by a person who had experience remodeling homes in Montgomery County, and that if building permits had been needed for the garage, this person, who is since deceased, would have secured those permits. See Exhibit 3(b).

5. The Statement states that the requested variances are the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would entail because their garage "is already constructed on the property." In addition, the Statement states that the requested variances can be granted without substantial impairment to the intent and integrity of the general and the applicable master plan." See Exhibit 3(a).

6. The Statement states that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties. In support of this, the Statement states that the garage "has existed on the property since 2006," and that it "has not posed any issues to abutting properties in nearly 20 years." The Statement states that granting the variances to allow the Petitioners to get permits for this garage "will not cause harm" to their neighbors. The Statement notes that the property is nearly 3 acres in size. Finally, the Statement states that the Petitioners "essentially have just one neighbor" who lives to the left of their property, and notes that the Petitioners have "several letters of support to substantiate support by all of [their] neighbors." See Exhibits 3(a) and 7(a)-(c).

7. At the hearing, Ms. Thomas testified that she was hired by the previous owners, and was charged with trying to help the new owners obtain the approvals needed for the garage. She testified that the former owners had the garage constructed two decades ago, and that it was built without permits. Ms. Thomas testified that the new owners are seeking to obtain proper permits for the garage, and need a setback variance from the front lot line and a size variance from the footprint limitation.

In response to a Board question asking what had prompted this variance request, Ms. Thomas testified that when the Petitioners purchased the property in April, they learned that the garage had been built without permits and wanted to get it permitted. In response to a Board question seeking confirmation that the garage was already on the property when the Petitioners purchased it, Ms. Thomas testified that it was.

8. Mr. Van Buren testified, in response to a Board question, that he didn't know that he and his wife knew the garage violated the Zoning Ordinance when they purchased the property. He testified that they have an agreement with the seller to resolve this issue. In response to a Board question asking what they would do if the footprint variance were denied, Mr. Van Buren testified that he was not sure. He testified that their property is nearly three (3) acres, and that there is a creek and farm to the right of their property, characterizing that property as a large property with large outbuildings. Thus Mr. Van Buren testified that granting the variances necessary to allow the garage to remain where it is would cause no disturbance to their neighbors, and that removing the garage would actually make things worse for the neighbors. In response to a Board question asking if the garage impacted the value of the property for sale purposes, Mr. Van Buren testified that the garage was factored into the sales price.

FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the requested variances can be granted. The requested variances comply 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.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds, based on the Statement, that the subject property contains a detached garage that has existed without complaint in its current location since 2006. See Exhibit 3(a). The Board finds that this condition constitutes an extraordinary condition peculiar to this property, 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 that the Petitioners' home was built in 1900, that their garage was built in 2006, and that they purchased the property in April of this year. See Exhibit 3(a) and SDAT Printout. Thus the Board finds that the Petitioners are not responsible for the construction of the existing garage, 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 long-standing existence of a detached garage that is of a size and in a location that does not comply with the Zoning Ordinance, and that was built without proper permits, causes the Petitioners a practical difficulty as the new owners of the property on which the garage is located in that they are unable to obtain building

permits for this existing structure without first obtaining variances. The Board further finds that the requested variances are the minimum needed to allow the Petitioners to seek permits for the existing garage, and thus to overcome the practical difficulty caused by the current size and location of the garage. On the basis of the foregoing, 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 granting the variances would allow the Petitioners to obtain permits for this existing structure and would continue the residential use of the property. Thus the Board finds that the requested variance can be granted without substantial impairment to the intent and integrity of the applicable Master Plan, 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, that the garage has existed in this location for nearly 20 years, and has not caused any issues with the neighbors. The Board further finds, based on the Statement and the Site Plan, that the Petitioners' garage is located to the right side of their house, where there are no immediate neighbors, and that their "one neighbor" lives to the left. See Exhibits 3(a) and (4). The Board notes that the record contains several letters of support for the requested variances. See Exhibits 7(a)-(c). Finally, the Board notes that despite the variance sign being posted and the hearing having been properly Noticed, the record contains no opposition to the requested variances, and that no one appeared at the hearing to oppose them. On the basis of the foregoing, the Board finds that the grant of this variance 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 variances, needed to allow the Petitioners to pursue permits for their existing garage, are **granted**, subject to the following condition:

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

Therefore, based upon the foregoing, on a motion by Donald Silverstein, seconded by Amit Sharma, with Caryn L. Hines, Chair, in agreement, and with Richard Melnick, Vice Chair, and Alan Sternstein not 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 16th day of July, 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.

