

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/index.asp

CASE NO. A-6417

PETITION OF GREGORY M. BORDYNOWSKI

OPINION OF THE BOARD

**(Opinion Adopted September 25, 2013)
(Effective Date of Opinion: October 21, 2013)**

Case No. A-6417 is an application by Gregory Bordynowski for an 8.33 foot variance to enclose an existing porch within 16.67 feet of the front lot line. The required setback is 25.00 feet, under Section 59-C-1.32 of the Montgomery County Zoning Ordinance.

The Board of Appeals held a hearing on the application on September 25, 2013. Gregory Bordynowski appeared and testified in support of his application.

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED

1. The subject property is Lot P-15, Block 7, 025 Subdivision, located at 7113 Holly Avenue, Takoma Park, Maryland 20912, in the R-60 Zone.
2. Mr. Bordynowski wishes to install screen panels to replace existing lattice panels, on the lower level of a porch, with no change in the footprint of the porch. The Historic Preservation Commission (HPC) has approved a historic area work permit to perform this change. Mr. Bordynowski expressed doubt that the HPC would approve construction of a porch elsewhere on the property. Mr. Bordynowski testified that the proposed construction will greatly improve the appearance of the porch.
3. The house was constructed in 1923.

4. The lot is a corner lot and is fifty feet wide. The required 25-foot setback from Tulip Avenue, enacted after the house was built, bisects the lot, severely restricting the buildable area on the lot and creating a setback violation for the existing house, including the area of the porch enclosure that requires a variance. [Exhibit No. 4].

5. Mr. Bordynowski stated that most of the corner lots in the neighborhood are 20-100 percent larger than his.

FINDINGS OF THE BOARD

Section 59-G-3.1. Authority – Board of Appeals

The Board of Appeals may grant petitions for variances as authorized in Section 59-A-4.11(b) upon proof by a preponderance of the evidence that:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property;

The Board finds that the existing house pre-dates current zoning standards and that the subject property is exceptionally narrow. The Board further finds that application of the required 25-foot setback from Tulip Avenue significantly restricts the buildable area on the lot, constituting an unusual practical difficulty for Mr. Bordynowski. The Board notes that the property's historic designation further constrains opportunities for construction on the site.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions;

The Board finds that installation of screen panels inside the existing columns of the porch, with no change in the structure's footprint, is a minimal and reasonable change.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property; and

The Board finds that the proposed construction continues the property's residential use and has garnered the approval of the Historic Preservation Commission and conforms to the requirements of the Takoma Park Master Plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties. These provisions, however, shall not permit the board to grant any variance to any setback or yard requirements for property zoned for commercial or industrial purposes when such property abuts or immediately adjoins any property zoned for residential purposes unless such residential property is proposed for commercial or industrial use on an adopted master plan. These provisions shall not be construed to permit the board, under the guise of a variance to authorize a use of land not otherwise permitted.

The Board concurs with Mr. Bordynowski that the proposed screen panels will improve the appearance of the porch and finds that the proposed installation inside the existing columns of the porch will create no infringement upon the privacy of neighboring properties, and no conditions leading to nuisance or trespass upon those properties, and that the variance therefore will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

Accordingly, the requested variance of 8.33 feet from the required 25-foot front lot line setback is granted, subject to the following conditions:

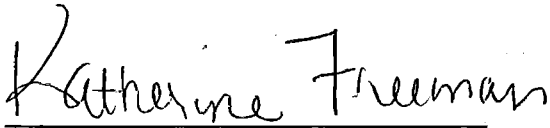
1. The Applicant shall be bound by his testimony and exhibits of record, to the extent that such evidence and testimony are identified in this Opinion.
2. Construction must be completed according to the plans entered in the record as Exhibit Nos. 4 and 5(a)

On a motion by Catherine G. Titus, Chair, seconded by Carolyn J. Shawaker, with Stanley B. Boyd, John H. Pentecost and David K. Perdue, Vice-Chair, 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.


Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st day of October, 2013.

A handwritten signature in cursive script that reads "Katherine Freeman". The signature is written in dark ink and is positioned above a horizontal line.

Katherine Freeman
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 (See Section 59-A-4.63 of the County Code). 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-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.