

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Rockville, Maryland 20850
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(240) 777-6600

Case No. A-6428

PETITION OF SCOTT A. WALLACE

OPINION OF THE BOARD
(Opinion Adopted March 12, 2014)
(Effective Date of Opinion: March 27, 2014)

Case No. A-6428 is an application for variances for an existing porch and to construct a one-story room addition.

The proposed repairs to the existing porch require a variance of sixteen (16) feet, as the porch is within zero (0) feet of the front lot line. The required setback is sixteen (16) feet, in accordance with Sections 59-C-1.323(a) and 59-B-3.1.

The proposed construction of a one-story room addition requires a variance of five (5) feet, as it is within fifteen (15) feet of the rear lot line, and of 4.9% of the maximum lot coverage allowed. The required rear setback is twenty (20) feet, in accordance with Section 59-C-1.323(b)(2), and the maximum coverage allowed is 30%, in accordance with Section 59-C-1.328.

The Board of Appeals held a hearing on the application on March 12, 2014. Jody S. Kline, Esquire, appeared on behalf of the Petitioner, Scott A. Wallace. Mr. Wallace also appeared and briefly testified.

Decision of the Board: Requested Variances **Granted**.

1. The subject property is Lot 2, Parcel P784, Clear Drinking Subdivision, located at 8822 Hawkins Lane, Chevy Chase, Maryland, 20815, in the R-90 Zone. Mr. Kline explained that the subject property abuts the federal Walter Reed Hospital property to the west, a vacant lot at 8826 Hawkins Lane to the north, and

to the south, a lot improved with a house whose footprint is identical to the house Dr. Wallace proposes.

2. The subject property is improved with a one-story residence that is dilapidated and currently uninhabitable. The existing structure contains 982 square feet. It is located in a historic district and any modifications to the existing structure must proceed according to a Historic Area Work Permit (HAWP) by the Historic Preservation Commission (HPC). Dr. Wallace has already received such a permit. [Exhibit 3a]. Mr. Kline stated that the Historic Preservation Commission does not want the existing house to be demolished. In response to a Board question he stated that he believes the existing house has been designated as a primary resource.

The record contains a letter from William Kirwan, Chair of the HPC. [Exhibit No. 9]. The letter "respectfully recommends that the Board of Appeals grant this petition," and supports the proposed construction, saying, "The design solution, which the Commission approved with conditions on February 13, 2013, sensitively accomplishes the dual goals of preserving a historic resource while providing a small amount of additional living space in a manner the Commission found to be compatible with the Hawkins Lane historic District and the criteria for approval on a severely constrained lot."

3. Mr. Kline stated that the lot contains approximately 5875 square feet, and that with the application of the required setbacks, the buildable envelope is about 1750 square feet. Mr. Kline stated that the subject property is the only lot or parcel on Hawkins Lane which granted or dedicated right-of-way to widen Hawkins Lane. A prior owner of the subject property conveyed a strip of land across the front of the subject property to Montgomery County to make Hawkins Lane wider in front of the subject property than anywhere else along Hawkins Lane. This conveyance of right of way made the front porch almost coextensive with the front lot line and non-conforming under existing development standards. Thus, a front lot line variance is necessary to structurally rehabilitate the existing structure.

4. Mr. Kline stated that a variance of five feet is needed in order to accommodate an addition which contains effective living space at the rear of the house for two bedrooms. The proposed addition will comprise 291 square feet of building area, which the HPC found consistent with the existing structure's historic character. The HPC has already approved a HAWP for the addition, which would extend into the required 20-foot rear yard setback by five feet on the southern end and by 2.8 feet on the northern end.

5. Section 59-C-1.328 allows a maximum of 30% or 1762.5 square feet of lot coverage on the subject property which is in the R-90 zone despite having less square footage than an R-60 lot. In the R-60 zone, a maximum of 35% lot coverage is allowed. The existing house, proposed addition and an existing garage comprise 2054 square feet, or 34.9% coverage of the 5,875 square foot

lot, as compared to 2,100 square feet of coverage that would be allowed on a standard, R-60 lot.

FINDINGS OF THE BOARD

Under Section 59-G-3.1. of the Zoning Ordinance, 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 subject property is significantly substandard in size for the R-90 zone, in fact containing less square footage than the minimum 6000 square feet required in the R-60 zone. The Board further finds that the subject property is uniquely burdened by the past conveyance of right-of-way across the front of only this property. The Board finds that the requirement to preserve the existing structure and the HPC's limitation of the amount of buildable area according to historic consistency also limit the property owner's ability to utilize the subject property. The Board finds that the combination of these constraints with denial of the variances would prevent the property owner from restoring the historic resource as required by the HPC, and from creating even minimal viable living space in the house, which would pose a practical difficulty for him.

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

The Board finds that the requested front lot line variance will simply allow restoration of the existing house and porch in their current locations. The requested rear lot line variance and lot coverage variances will accommodate a modest, 291 square-foot increase in building area, with building coverage remaining below the maximum allowed in the R-60 zone.

- (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;

The Board finds that the requested variances will allow restoration of the historic resource on the property, which the Historic Preservation Commission has approved, and that the proposed construction is for a house identical to the adjoining house to the south. The Board finds that the variances support

construction that is entirely consistent with the intent, purpose and integrity of the 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 finds that the proposed construction will have no impact on the either the Walter Reed property to the west of the subject property or the undeveloped lot to the north. The Board notes that the proposed house will be identical to its neighbor to the south and that no variance is requested that will impact the southern property line. Thus the Board finds no impact that will be detrimental to the use and enjoyment of neighboring properties.

Accordingly the requested variances of 16 feet from the front lot line setback, and 5 feet from the rear lot line setback, and 4.9% of the maximum allowed lot coverage, are 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. 3(a-c), 4(a-c) and 5 (a-d).

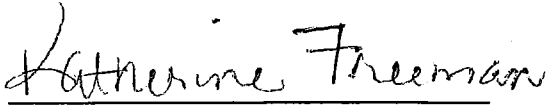
On a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with John H. Pentecost and David K. Perdue, Vice-Chair, in agreement and Catherine G. Titus, Chair, necessarily not participating:

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.



David K. Perdue
Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 27th day of March, 2014.

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 twelve (12) month period within which the variance granted by the Board must be exercised.

