

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6438**

**PETITION OF 4609 GLENBROOK PARKWAY, LLC**

OPINION OF THE BOARD

(Opinion Adopted September 17, 2014)  
(Effective Date of Opinion: October 21, 2014)

Case No. A-6438 is an application for variances to construct a new house with a porch. Construction of the house requires a variance of 18.80 feet, as it is within 6.70 feet of the front lot line. The required setback is 25.50 feet, in accordance with Section 59-C-1.323(a) of the Zoning Ordinance. Construction of the porch, with steps, requires a variance of 15.90 feet, as it is within 0.60 feet of the front lot line. The required setback is 16.50 feet, in accordance with Section 59-C-1.323(a).

The Board of Appeals held a hearing on the application on September 17, 2014. William J. Chen, Esquire appeared on behalf of the Applicant. He called John W. Lanier, an engineer, as an expert witness. Mr. Chen also called Mathew Hamilton, the principal of 4609 Glenbrook Parkway, LLC, as a witness. Marcia Zier, an abutting neighbor on Lot 7, also testified.

Decision of the Board:                      Variances Granted.

**EVIDENCE PRESENTED**

The subject property is Lot 6, Block 5A, Glenbrook Village Subdivision located at 4609 Glenbrook Parkway, Bethesda, Maryland, 20814, in the R-60 Zone.                      The lot contains 5,630 square feet. [See, Exhibit No. 4(a)].

2.        Mr. Chen stated that the subject property is unique because it fronts onto two road rights-of-way so that there are two applicable points of measurement for the 25-foot street setback requirement. This situation arises because the property

is subject to two different plats which created two different rights-of-way for Glenbrook Parkway. Plat 717 [Exhibit No. 4(e)], recorded in the Land Records of Montgomery County in 1936, created the Overbrook Subdivision consisting of lots on either side of Fairfield Drive near its "T" intersection with what the plat calls Proposed Parkway, and which became Glenbrook Parkway. Plat 717 created a 120-foot right of way for Glenbrook Parkway. Plat 1078 [Exhibit No. 4(d)], recorded in April, 1939, created the Glenbrook Village Subdivision, including the land at the top of the "T" intersection, which became Lots 6, 7, and 8 of Block 5A on Glenbrook Parkway. Plat 1078 required only a 100-foot right of way for Glenbrook Parkway. The front lot line for Lot 6 is in part, compliant with the 100-foot Right of Way for Glenbrook Parkway created by Plat 717 and, in part, with the 120 foot right of way created by Plat 1078. This results in an unusually shaped, constrained building area. [See, Exhibit No. 4(a)]. Without a variance, the proposed new house would be required to comply with a 25-foot setback from the 120 foot right of way, and would be set back considerably farther than the other houses on the north side of Glenbrook Parkway, which comply with a 25-foot setback from the 100-foot right of way.

3. As proposed, the house would have the same setback from Glenbrook Parkway as the existing dwelling and all of the other dwellings in the subdivision in Block 5A on the west side of Glenbrook Parkway. [Exhibit 3(a), p. 3]

4. Mr. Chen stated that, based on the fact that the property was subdivided in 1939, it appears that the existing house was built sometime between 1940 and 1942.

5. Mr. Lanier testified about his research regarding Plats 717 and 1078. He testified that the Department of Permitting Services advised him that a variance would be required to locate the house as proposed. In response to a Board question as to why the Applicant did not pursue re-subdivision of the property, Mr. Lanier stated that when he inquired about that process, he was told that it would first require abandonment of property by the county, and that it be a lot more difficult and less likely to succeed. [Transcript, p. 29].

6. Mr. Lanier stated that the topography of the property rises to the rear. He stated that compliance with the setback from the 120-foot right of way would locate the house right at the 20-foot rear lot line setback, and would necessitate "a lot more grading" [Transcript, p. 31]. He said that setting the house back that far would prevent the location of stormwater management measures in the rear yard, as they are required to be at least 20 feet away from the foundation of the house. He further stated that the front of the property would have limited area to locate stormwater management features because they cannot be located in the public right of way and the soils in the front of the property are not conducive to dry wells [Transcript, p. 32]. Mr. Lanier testified that he has discussed waivers from the stormwater management requirements with the Department of Permitting Services before, and that such waivers are not easily obtained. [Transcript, p. 53].

7. Marcia Zier expressed her concern that the proposed porch will be forward of where the existing house is now, and will obstruct the view.

8. Mr. Hamilton stated that the proposed house "would still be at the same spot or maybe just a little bit back of the existing front of the existing house...on lot 6, " and that "There would be an open, not screened-in porch, just like the neighbor. So your lines of sight and everything would not be affected." [Transcript, p. 40]. In response to a Board question about how far the proposed porch would extend, Mr. Hamilton referred to the depiction of the house on Lot 4 in Exhibit No. 5(d) and said, "that's where I'm legally allowed to put the porch, in addition to the house." [Transcript, p. 48].

9. Mr. Hamilton stated that he built the houses on Lots 4 and 5, east of the subject property on Glenbrook Parkway. He stated that given the required 25-foot setback from the 120-foot right of way, he cannot even renovate the existing house without a variance. He stated that a new house built in compliance with that setback would "basically start at the back" of the other houses on the block and "would look very odd," and that he doubted that "the neighborhood would accept a house that looks like that." [Transcript, p. 44].

10. Mr. Hamilton also noted the difficulty of locating stormwater management features if the house were at the required setback, and explained that building in compliance with the required setback would require construction of a retaining wall at the rear of the property and that he was concerned this would create an area that retained water and could flood the basement of the proposed house. [Transcript, p. 45].

## **CONCLUSIONS OF LAW**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (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 impact of two different rights-of-way, particularly the required 25-foot setback from the 120-foot right of way imposed by Plan No. 1078, creates an unusually shaped, constrained building area. The Board finds that construction on the lot is further limited by its topography and that it is

substandard in size for the zone. The Board finds that these factors combine to create an unusual practical difficulty for the property owner, who cannot renovate the existing house because it violates the setback. Location of the house in compliance with the setback has the potential to create serious drainage problems on the lot and could foreclose compliance with stormwater management requirements, absent obtaining a waiver from those requirements. The Board finds that these eventualities would be "unnecessarily burdensome to the property owner," as contemplated by the Court of Appeals in *McLean v. Soley*, 270 Md. 208, at 214-215. The Board further finds that the impact of the 120-foot right of way on the owner's ability to renovate or build on the property would deny him "reasonable and significant use" of his property. *Belvoir Farms v. North*, 355 Md. 259, at 282.

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

The Board finds that the requested variances are the minimum reasonably necessary to overcome the lot's constraints. The proposed construction will be set back the same distance as the existing house on the lot and the other lots along its block on the north side of Glenbrook Parkway.

- (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 of a house located where the existing house sits now, and at the same setback as the other houses on the block, continues the residential use of the property and is entirely consistent with 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 is designed to be consistent with the existing streetscape on the block. Mr. Hamilton testified that the proposed house and porch would not obstruct the lines of sight from Lot 7.

Therefore, based upon the foregoing, on a motion by Stanley B. Boyd, seconded by John H. Pentecost, with Catherine G. Titus, then Chair, in agreement and David K. Perdue, then Vice-Chair and Carolyn J. Shawaker not in agreement:

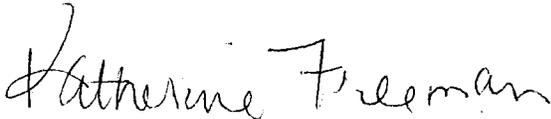
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



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David K. Perdue  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 21<sup>st</sup> day of October, 2014.



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Katherine Freeman  
Executive Director

**NOTE:**

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.

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.