

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

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

(240) 777-6600

Case No.A-6449

PETITION OF PERRY AND JUDITH LINDER

OPINION OF THE BOARD

(Opinion Adopted January 21, 2015)

(Effective Date of Opinion: February 13, 2015)

Case No. A-6449 is an application for variances to allow the construction of a covered, unenclosed porch and code compliant steps. The existing single family dwelling requires a variance of 8.30 feet, as it is within 16.70 feet of the front lot line. The required setback is twenty-five (25) feet, under Section 59-4.4.9.B.2. The proposed porch requires a variance of 5.30 feet, as it is within 10.70 feet of the front lot line. The required setback is sixteen (16) feet, under Section 59-4.1.7.B.5.a.i.

The Board of Appeals held a hearing on the application on January 21, 2015. Sara O'Neil-Manion, the Petitioners' Architect, appeared and testified in support of the application.

Decision of the Board: Requested Variances Granted.

EVIDENCE PRESENTED

1. The subject property is Lot 15, Block 24, 0009 Subdivision located at 18 Hesketh Street, Chevy Chase, Maryland, 20815, in the R-90 Zone.
2. Ms. O'Neil-Manion testified that the house was constructed before there were zoning codes.

3. Ms. O'Neil Manion testified that of 14 houses on the same block, eight are in front of the 25-foot setback line [See Exhibit No. 15].
4. Ms. O'Neil-Manion stated that the proposed construction is intended to bring the front steps up to building code, and to meet the National Fire Protection Association (NFPA) life safety code, which requires prevention of snow accumulation, by covering the entry to the house. Ms. O'Neil-Manion stated that the existing, side-loaded steps are uneven and of different depths and heights, which does not meet code.
5. Ms. O'Neil- Manion stated that there is a steep slope upward, "a full floor difference between the street and...the garage, which is a half floor down from the first floor." [Transcript, January 21, 2015, p. 8].
6. Ms. O'Neil-Manion stated that the existing stoop is too small for a person to stand on and open the door, and that Mrs. Linder, who has limited vision, has fallen trying to open the door without sufficient room to stand on the stoop.
7. Ms. O'Neil-Manion stated that the amount that the porch would extend further into the setback is minimal.
8. Ms. O'Neil-Manion referred to the photographs attached to Exhibit No. 8 [pp. 13-26] and stated that the subject property is the one house on the block that does not have stairs coming straight down to the street.
9. The Board of Managers of Chevy Chase Village granted variances and authorized a Village building permit for the proposed construction. [Exhibit No. 7].
10. The Historic Preservation Commission granted a Historic Area Work Permit for the proposed construction. [Exhibit No. 8].

FINDINGS OF THE BOARD

Based on Ms. O'Neil-Manion'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 59-7.3.2.E as follows:

Section 7.3.2.E.2.a. - one or more of the following unusual or extraordinary situations or conditions exist:

1. *Section 7.3.2.E.2.a.ii - the proposed development uses an existing legal nonconforming property or structure*

The subject property was platted prior to the 1928 Zoning Code and thus is a legal, nonconforming property

2. *Section 7.3.2.E.2.a.v - the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood*

Ms. O'Neil-Manion testified, and photographs included in Exhibit 8 show that the proposed front-loading steps conform with the other houses on the block. In addition, the Historic Preservation Commission and Chevy Chase Village have approved the proposed construction, which the Board views as confirmation that the proposed construction substantially conforms with the historic and traditional development pattern of the street.

3. *Section 7.3.2.E.2.b - the special circumstances or conditions are not the result of actions by the applicant*

The Board finds that neither the date the subject property was platted nor the traditional development pattern of the street can be attributed to the Petitioners.

4. *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 requested variance is largely needed because the existing, legal nonconforming house does not meet the required front setback. Ms. O'Neil-Manion also testified that the proposed reconstructed stairs and porch will extend a minimal distance beyond the extent of the current stairs. The Board therefor finds that the requested variances are 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.

5. *7.3.2.E.d- the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The proposed construction continues the single family use of the home and is entirely consistent with the master plan.

6. *7.3.2.E.e - granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that the proposed construction will have little, if any effect on abutting or confronting properties.

Accordingly, the requested variances of 8.30 feet for the existing house, and 5.30 feet for the proposed porch are granted, subject to the following conditions:

1. Petitioners shall be bound by the testimony presented and the exhibits of record, to the extent that such testimony and evidence are mentioned in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered into the record as Exhibit Nos. 4 (a & b) and 5.

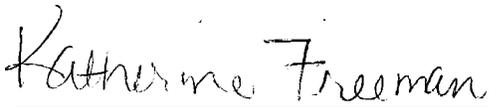
Therefore, on a motion by David K. Perdue, Chair, seconded by Stanley B. Boyd, with Carolyn J. Shawaker, Vice-Chair, John H. Pentecost, and Edwin S. Rosado in agreement, the Board adopted the following Resolution:

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.



David K. Perdue
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
This 13th day of February, 2015.



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.