

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
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<http://www.montgomerycountymd.gov/boa/>**

CASE NO. A-6496

PETITION OF PAUL BAINES

**OPINION OF THE BOARD
(Opinion Adopted July 6, 2016)
(Effective Date of Opinion: July 21, 2016)**

Case No. A-6496 is an application for three variances necessary for the proposed construction of a second story addition on an existing house. The proposed construction requires a variance of 12.20 feet as it is within 12.80 feet of the front lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance. In addition, the proposed construction requires a variance of 0.90 feet as it is within 6.10 feet of the side lot line. The required setback is seven (7) feet, in accordance with Section 59-4.4.9.B.2. Finally, the proposed construction requires a variance of 14.60 feet as it is within 5.40 feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59-4.4.9.2.

The Board of Appeals held a hearing on the application on July 6, 2016. Petitioner Paul Baines appeared at the hearing pro se.

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

EVIDENCE PRESENTED

1. The subject property is Lot 52, Block 53, Flower Avenue Park Subdivision, located at 600 Maplewood Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone.
2. Mr. Baines testified that the subject property contains an existing home that was constructed in 1924, before the adoption of the County's first Zoning Ordinance. The positioning of the house on the subject property is non-conforming in terms of setbacks. See Exhibit 3.
3. Mr. Baines testified that he is seeking to put a second story on this existing home, which he described as having "good bones." He testified that the proposed construction would not exceed the footprint of the existing home (including the

wood porch). He testified that most of the surrounding homes are two-story, as shown in the photograph at Exhibit 5(j), and thus argued that being able to put a second story on this house would make it better fit the established historic or traditional development pattern of this street.

4. Mr. Baines testified that after speaking with his neighbors, he concluded that the location of the existing house is the best position on this property for a house. He explained that that his neighbors have come to enjoy and appreciate the green space created by the fact that the property's existing home is situated to the rear of the property, and that building elsewhere on the property would have a greater impact on the neighbors than building a second story on the existing house. He testified that he plans to retain the existing trees and landscaping.
5. Mr. Baines' written Justification Statement is included in the record at Exhibit 3 and sets forth additional evidence supporting his variance requests. The Board informed Mr. Baines at the hearing that there was no need for him to read this statement into the record.

FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-7.3.2.E 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.ii the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the existing house on this property was built in 1924 (before the enactment of the County's first Zoning Ordinance) and does not conform to the required setbacks, making it a legal nonconforming structure. The Board further finds that the Petitioner is proposing to add a second story to this existing structure. Thus the Board finds that the proposed development uses an existing legal nonconforming structure, and satisfies this element of the variance test. See Exhibits 3 and 4.

Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the testimony of Mr. Baines and the site plan in the record at Exhibit 4, that the proposed addition of a second story on the existing structure, especially when compared with the potential for new construction in the buildable envelope otherwise available to Mr. Baines without the grant of these variances, preserves the historic development pattern of this street or neighborhood by maintaining the large green space created by the usually deep placement of the existing home on the

subject property, which the neighborhood appreciates and to which the neighborhood has become accustomed over the last 90-plus years.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioner purchased this property on May 6, 2016, and did not construct or have control over the placement of the existing house, which (again) was built in 1924. See Exhibit 3. Thus the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioner.

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 requested variances are minimal in that they do not permit construction on this property to extend beyond the footprint of the existing structure, which has been in place on this property for over 90 years. The Board further finds that there are other two-story homes in the immediate vicinity of this property, as is evidenced by the photograph at Exhibit 5(j), and thus that these variances, which will allow the construction of a second story on this home, are the minimum needed to allow construction on this property commensurate with that in the surrounding neighborhood, and to overcome the practical difficulties that would otherwise be imposed by compliance with the setback restrictions of the Zoning Ordinance.

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;*

The Board finds that the construction of a second story addition continues the residential use of the home, and is consistent with the Takoma Park Master Plan, which seeks, among other things, "to support stable residential neighborhoods."

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 that allowing the construction of a second story on top of this existing home will not infringe on the use and enjoyment of abutting or confronting properties. The Board notes that the Petitioner specifically testified that the neighbors he spoke with indicated that they appreciate the green space provided by the siting of the current home on the subject property. In addition, the Board notes that the Petitioner states in his written Justification Statement that "No trees will be cut, no greenspace will be built on, development will be limited to the existing footprint," and that "the renovation and rejuvenation of this derelict structure and surrounding landscape will improve the use, enjoyment, and property values of abutting and confronting lots." See Exhibit 3.

Accordingly, the requested variances to allow the construction of a second story addition on this existing home are **granted**, subject to the following condition:

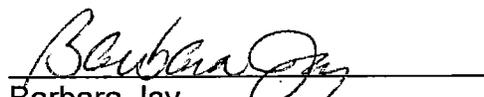
1. The Petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting these variances.

Therefore, based upon the foregoing, on a motion by Edwin S. Rosado, seconded by John H Pentecost, Vice Chair, with Carolyn J. Shawaker, Chair, Stanley B. Boyd, and Bruce Goldensohn 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.


Carolyn J. Shawaker, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st day of July, 2016.


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.