

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. A-5664**

**PETITION OF ADAM AND AMY REYER**

(Hearing held November 28, 2001)  
(Worksession Decision, January 9, 2002)

**OPINION OF THE BOARD**

(Effective date of Opinion, March 8, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(1). The petitioners' enclosure of an existing screened porch requires a 1.70 foot variance as it is within 5.30 feet of the side lot line. The required setback is seven (7) feet.

Steve Carboni, a neighbor at 5408 Glenwood Road, appeared in support, and Barbara Grewe, a neighbor at 5414 Glenwood Road, appeared in opposition, to the variance request.

The subject property is Lot 5, Block E, Edgewood Subdivision, located at 5412 Glenwood Road, Bethesda, Maryland, in the R-60 Zone (Tax Account No. 006563154).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The existing enclosed screened porch requires a variance from the western side lot line.
2. The petitioner testified that the lots in the neighborhood are narrow and that his lot shares this characteristic. The petitioner testified that the original porch was built in 1938 and that the screened porch was re-built as shown on Exhibit Nos. 14(b) and 14(d). The petitioner testified that the roof of the porch changed, but not the footprint of the existing structure. The petitioner later amended his variance request to eliminate the peaked roof and to rebuild the porch with a flat roof.
3. The petitioner testified that he began construction with a valid building permit for the porch but that during the construction, it was determined that the walls and columns of the re-built structure would not support the peaked roof. The revised plans, without a permit, removed the existing structure to slab, and rebuilt the structure with a peaked roof.
4. The petitioner testified that the re-built porch provides a more usable and enjoyable living space and that the porch also provides privacy for his property and the

neighboring properties. The petitioner testified that the structure is similar to other improvements in the immediate neighborhood. See, Exhibit Nos. 15(a) through 15(d).

5. Ms. Grewe, the immediate adjoining neighbor most impacted, testified that the petitioners' lot is not unique and that the shape and width of the property is similar to the other lots in the neighborhood. Ms. Grewe testified that the porch was the re-built without a valid building permit and that had the structure had been built with a valid building permit, the required setbacks would have been known.
6. Ms. Grewe testified that the existing porch was removed to the slab then rebuilt and that the screened porch, as originally built, no longer exists. Ms. Grewe testified that the re-built porch is a new, peaked-roof structure. Ms. Grewe testified that the new structure is built of glass with walls and has heating and air-conditioning that the prior structure did not have. Ms. Grewe testified that re-built structure is not similar to the structure that existed before and that the re-built structure is not the minimum reasonably necessary.

### **FINDINGS OF THE BOARD**

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) 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 notes that although it has been the policy to approve long standing, existing structures as an exceptional circumstance as set forth in Courts and Judicial Proceedings Article, Section 5-114, (which bars the government from proceeding against a structure, in violation of the setback restrictions, which has been in existence for more than 3 years), a majority of the Board finds that in this case the rule does not apply. Because the structure was demolished and rebuilt, the structure is no longer treated as existing.

Given this fact, and the fact that the property has no other exceptional characteristics or conditions, the petition fails to meet the requirements set forth in Section 59-G-3.1(a). As such, the Board did not consider the other requirements for the grant of a variance as set forth in that section. Accordingly, the requested variance of 1.70 feet from the required seven (7) foot side lot line setback for the enclosure of the existing screened porch is denied.

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.

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo, in agreement, and Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in opposition, the Board adopted the following Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 8th day of March, 2002.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of 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.