

**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-6421

PETITION OF IRIS BENNETT

OPINION OF THE BOARD

(Opinion Adopted December 11, 2013)
(Effective Date of Opinion: February 19, 2014)

Case No. A-6421 is an application by Iris Bennett for a variance to construct a one story addition. The proposed construction requires a 4.10-foot variance as it is within 15.90 feet of the rear lot line. The required setback is twenty (20) feet, under Section 59-C-1.323(b)(2).

The Board of Appeals held a hearing on the application on December 11, 2013. Iris Bennett appeared and testified. William Cawood, Ms. Bennett's architect, and Fred Schultz, a neighbor and member of the Takoma Park City Council, also testified.

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

EVIDENCE PRESENTED

1. The subject property is Lot 6, Block 4, New Hampshire Avenue Highlands Subdivision, located at 1103 Haverford Road, Takoma Park, Maryland, 20912, in the R-60 Zone.
2. Ms. Bennett proposes to enclose an existing, screened porch that is connected to her kitchen, in order to make the kitchen larger and more functional.
3. Ms. Bennett testified that her lot is an odd size and smaller than a number of her neighbors' lots. She testified that her lot is very shallow compared to neighboring properties, and that it has a unique shape. She noted that because her lot is a corner lot, it is subject to two, 25-foot front setbacks, and stated that her options for improving her property are limited.

4. Mr. William Cawood confirmed that the subject property contains about 400 square feet less than the 6000 square foot minimum for the R-60 Zone, and stated that the shape of the lot is "narrow front to back" [Transcript, December 11, 2013, p. 8]. He testified that granting the requested variance to allow enclosure of the existing screened porch is the least he could ask for and is the minimum reasonably necessary. He stated that the construction would only be one story in height, and that because the bulk of the structure was already existing, there would be no additional encroachment to any neighbors.

5. Mr. Fred Schultz also testified that the lot is "extremely small and narrow front to back". He also stated that "this lot is one of the smallest in the neighborhood" [Transcript, p. 13].

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 small size of the lot, its shallowness, and the two 25-foot front setbacks combine to substantially diminish the buildable area on the lot, creating a condition that is unique to this property and precluding construction elsewhere on the lot.

The Board further finds that the strict application of the rear yard setback, into which the existing screened porch already protrudes, would therefore prevent the Petitioner from constructing an addition anywhere on the lot, posing a practical difficulty for her.

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

The Board finds that the requested variance of 4.10 feet from the rear setback to allow enclosure of the existing screened porch, on its existing footprint, is the minimum reasonably necessary to overcome the lot's substantially constrained building envelope.

- (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 enclosure of the screened porch to improve the home's kitchen continues the single family residential use of the home, furthering the intent, purpose and integrity of the general plan and the approved and adopted area 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 enclosure of the existing porch, on its existing footprint, continuing the one-story height of the porch, will not increase the outward impact of the structure and will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

Accordingly the requested variance of 4.10 feet from the rear setback is granted, subject to the following conditions:

1. The Applicant shall be bound by her testimony and exhibits of record, and the testimony of her witnesses, 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. 4 and 5(a-f).

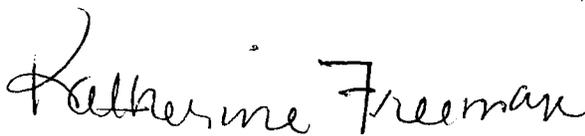
On a motion by Carolyn J. Shawaker, seconded by David K. Perdue, Vice-Chair, with Stanley B. Boyd, John H. Pentecost and Catherine G. Titus, Chair, in agreement, the Board adopted the following Resolution:

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.



Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 19th day of February, 2014.



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.