

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**CORRECTED OPINION:
VARIANCE GRANTED**

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-6445

PETITION OF MAHMOOD PRADHAN AND DEBORAH LYNN PERRY

OPINION OF THE BOARD

(Opinion Adopted December 17, 2014)
(Effective Date of Opinion: January 16, 2015)

Case No. A-6445 is an application for variances under Section 59-4.4.9.B.2 of the Zoning Ordinance. The proposed construction of a second floor room addition requires a variance of fifteen (15) feet, as it is within five (5) feet of the rear lot line. The existing house requires a variance of nineteen (19) feet, as it is within one (1) foot of the rear lot line. In each instance, the required setback is twenty (20) feet, under Section 59-4.4.9.B.2.

The subject property is Lot 2, Block 1, 0044 Subdivision, located at 4919 Cumberland Avenue, Chevy Chase, Maryland, 20815, in the Zone R-60.

As authorized by Section 59-7.3.2.A, the Board of Appeals held a hearing on the application on December 17, 2014. Michael Greigg, an architect with Soe Lin Associates, LLC, appeared in support of the application. Deborah Lynn Perry also appeared.

Decision of the Board: Requested Variances Granted

EVIDENCE PRESENTED

1. Referring to Exhibit No. 12, Mr. Greigg testified that the proposed addition will be located above an existing covered porch in the northwest corner of the house.
2. He stated that the existing house is "located in a nonconforming situation that is within two feet of the existing property line." [Transcript, December 17, 2014, page 7]. Along that property line, the property abuts park land.

3. Referring to Exhibit No. 13, Mr. Greigg stated that the proposed second-story addition will be located behind the two-story garage and to the left (west) of the main house. He added, "So, from the street you really can't see it. To the right hand side...the east side, the neighbors wouldn't see it, and there's limited views based on where the house is located, to the left side. Because the house to the west is sort of pushed forwards." [Transcript, December 17, 2014, page 11].
4. Mr. Greigg stated that the proposed addition is consistent with the neighborhood and the applicable master plan. He emphasized that the proposed construction will be above an existing portion of the house.
5. Mr. Greigg stated that it is an extraordinary situation that the existing house is located within two feet of the rear property line.

6. Ms. Perry stated that she was shocked to learn, after purchasing the home, that the stairs depicted in Exhibit 5(e) are actually partially on park property.

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

The Board finds that under Section 7.3.2.E.a.ii, the proposed development uses an existing, legal nonconforming structure: According to Mr. Greigg's testimony and the Board's records, the original house is was constructed in 1910, prior to zoning standards, within two feet of the rear property line.¹

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

The Petitioners, owners of the house subsequent to its construction, are not responsible for the nonconformity.

3. *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;*

¹ Evidence and testimony in prior Board of Appeals Case Nos. A-1350 (May 24, 1985) and A-3398 (October 9, 1991) indicated that the house on the subject property was constructed circa 1910, prior to the imposition of zoning standards. The Board granted an 18-foot variance from the 20-foot rear yard setback for the existing house (Case No. A-1350) and, later, variances from the rear lot line for one and two-story additions and an open porch (Case No. A-3398).

The Board finds that the requested variances for the existing house and for the proposed construction, located over an existing porch and within the existing building envelope are the minimum reasonably necessary.

4. 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; and*

The Board finds that construction of the addition continues the residential use of the property and is entirely consistent with the applicable master plan.

5. 7.3.2.E.e. *granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

Mr. Greigg testified that the proposed addition, located at the northwest side of the house, behind the existing garage will not be visible from the street or from the east, and will be minimally visible from the west. Thus the Board finds that the proposed construction will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance of nineteen (19) feet from the required twenty (20) foot rear lot line setback for the existing house and a variance of **fifteen** (15) feet from the required twenty (20) foot rear lot line setback for the construction of a second story addition are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witness, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4, 5(a) through 5(d), and 12.

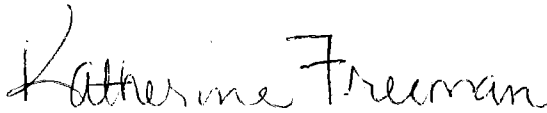
Therefore, based upon the foregoing, on a motion by Stanley B. Boyd, seconded by Edwin S. Rosado, with John H. Pentecost, Carolyn J. Shawaker, Vice-Chair, and David K. Perdue, Chair, in agreement:

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.



David K. Perdue
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 16th day of January, 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.