

**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](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

(240) 777-6600

**Case No. A-6454**

**PETITION OF JAMES MICH AND TRACEY DENNING**

OPINION OF THE BOARD

(Opinion Adopted March 4, 2015)  
(Effective Date of Opinion: April 2, 2015)

Case No. A-6454 is an application for a 5.10-foot variance from the side street lot line setback required by Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance. The Petitioners propose to extend their screened porch.

The Board of Appeals held a hearing on the application on March 4, 2015. James Mich appeared and testified in support of the application.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 10, Block C, Section 8 Subdivision located at 4400 Walsh Street, Chevy Chase, Maryland, 20815, in the R-60 Zone. The property is located at the corner of Walsh Street and East Avenue. The house was built in 1923 with a nine-foot wide open porch that was enclosed. The Petitioners built an addition in 2001 that extended the house sixteen feet into the back yard, and included a screen porch.
2. The Petitioners seek a variance to extend the screen porch five feet toward East Avenue. They state the porch's "narrow configuration prevents the two of us from fully enjoying it." [Exhibit No. 3].
3. Mr. Mich testified that he and his wife would like to age in place in their home.

4. Mr. Mich testified that two other houses on his side of East Avenue have variances, “one behind us and one a block down, that have a bump out, have a variance of five foot....One of them is for a garage with an addition on top, and the other one is for a screen porch with an addition on top.” [Transcript, March 4, 2015, p. 7].

5. Mr. Mich stated that the proposed construction is “the most logical place for the porch. It’s less costly for us, and it’s just the most logical fit.” [Transcript, p. 8]. He stated that he does not want a two-story addition and that he would be amenable to a condition of approval that the variance is for a screen porch only.

6. Finally, Mr. Mich stated that there was room to expand the house to the rear, but that he would have to move utility lines in order to do so. [Transcript, p. 9].

## FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the requested variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-7.3.2.E.

1. *Section 59-7.3.2.E.2.a: one or more of the following unusual or extraordinary situations or conditions exist:*

The Board makes no finding under this section except to confirm that the fact that the subject property is a corner lot is not, by itself, an unusual or extraordinary situation or condition. The Board bases its decision on two other provisions in the Zoning Ordinance.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

*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 Petitioners constructed an addition in 2001 that extended their house 16 feet into the rear yard and included the screen porch that the Petitioners are seeking to expand. The Petitioners now assert that this porch—which they built within the required setbacks—is too narrow. They state that the most logical and cost-effective place to extend the house (porch) is into the side street lot line setback, and that although they have space to the rear, they cannot extend the house further to the rear because that would involve the relocation of utility lines. Thus they seek a variance to expand their house (porch) into the side street setback along East Avenue.

3. The Board finds, per the admission of Mr. Mich and the site plan (Exhibit No. 4(b)) that there is room on the property for the Petitioners to expand their home to the rear, in compliance with the established setbacks and without the need for a variance. Thus the Board finds that the requested variance is not necessary to overcome any practical difficulty that full compliance with the Zoning Ordinance would impose; there is room within the confines of their buildable envelope to accommodate their desired addition.

4. The Board recognizes that the Petitioners have testified that any construction to the rear would involve the relocation of utility lines, and thus their desired location for this construction in the side street yard would be "less costly." The Board notes that any financial hardship that may result from the cost of relocating utilities is not a sufficient reason to justify the grant of a variance.<sup>1</sup> The Board further finds that because it was the Petitioners who designed and constructed the prior addition to the house and included a screen porch, which they now regard as too narrow, that to the extent that this could be said to pose a hardship, this hardship is self-created, and cannot be the basis for a variance.<sup>2</sup>

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<sup>1</sup> The Petitioners have not demonstrated that but for the grant of this variance, it will be impossible for them to make reasonable use of their property. Petitioners now occupy the house, with a significant addition, already located on this property. See *Montgomery County, MD v. Frances Rotwein*, 169 Md. App. 716, 732-33; 906 A.2d 959, 968 (2006) ("Economic loss alone does not necessarily satisfy the "practical difficulties" test, because, as we have previously observed, "[e]very person requesting a variance can indicate some economic loss." *Cromwell*, 102 Md. App. at 715 (quoting *Xanthos v. Bd. of Adjustment*, 685 P.2d 1032, 1036-37 (Utah 1984)). Indeed, to grant an application for a variance any time economic loss is asserted, we have warned, "would make a mockery of the zoning program." *Cromwell*, 102 Md. App. at 715. Financial concerns are not entirely irrelevant, however. The pertinent inquiry with respect to economic loss is whether "it is impossible to secure a reasonable return from or to make a reasonable use of such property." *Marino v. City of Baltimore*, 215 Md. 206, 218, 137 A.2d 198 (1957). But Rotwein has not demonstrated that, unless her application is granted, it will be "impossible [for her] to make reasonable use of her property." *Id.*)

<sup>2</sup> In *Salisbury Board of Zoning Appeals v. Bounds*, 240 Md. 547, 554-55, 214 A.2d 810, 814 (1965), the Maryland Court of Appeals agreed with 2 Rathkopf, *The Law of Zoning and Planning*, 48-1, that,

If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves caused or created by the property owner or his predecessor in title, the essential basis of a variance, i.e., that the hardship be caused solely through the manner of operation of the ordinance upon the particular property, is lacking. In such a case, a variance will not be granted; the hardship, arising as a result of the act of the owner or his predecessor, will be regarded as having been self created, barring relief.

See also *Montgomery County, MD v. Frances Rotwein*, 169 Md. App. 716, 733, 906 A.2d 959, 968-9 (2006) ("the 'hardships' about which Rotwein complains are self-created and, as such, cannot serve as a basis for a finding of practical difficulty. See *Cromwell*, 102 Md. App. at 722. Rotwein contends that the requested location for her garage is the only feasible location. But that is so only because of the location of the other improvements to the property, and the decision whether to build those improvements and where to place them was Rotwein's.").

5. Because the application fails to meet the requirements of Sections 59-7.3.2.E.2.b, and c, the application must be denied and the Board does not address its compliance with the other standards under Section 59-7.3.2.E.

On a motion by Carolyn J. Shawaker, Vice-Chair, seconded by John H. Pentecost, with Stanley B. Boyd and David K. Perdue, Chair, in agreement, and Edwin S. Rosado not in agreement, the Board adopted the following Resolution:

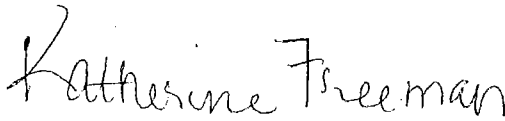
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



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David K. Perdue  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 2<sup>nd</sup> day of April, 2015.



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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.