

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/boa/>**

**CASE NO. A-6499**

**PETITION OF WELMOED LAANSTRA & DAVID CORN**

**OPINION OF THE BOARD**

(Hearing Held: September 7, 2016)

(Effective Date of Opinion: September 22, 2016)

Case No. A-6499 is an application by Welmoed Laanstra and David Corn (the "Petitioners") for a variance from the requirement in Section 59-4.4.9.B.1 of the Zoning Ordinance that the proposed construction be located twenty-five (25) feet from the front lot line. The proposed construction, a room addition, requires a variance of 8.17 feet as it is within 16.83 feet of the front lot line.

The Board of Appeals held a hearing on the application on Wednesday, September 7, 2016. Petitioner Laanstra appeared along with Richard Vitullo, AIA, Petitioners' architect, who spoke on the Petitioners' behalf at the public hearing.

Decision of the Board:                      Variance GRANTED.

**EVIDENCE PRESENTED**

1. The subject property is Lot P21, Block 20, B.F. Gilbert's Add'n Subdivision located at 38 Hickory Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone.
2. The house on the subject property was constructed in 1923, with a side porch located 17 feet from the property line along Elm Avenue. That porch is now nonconforming, for the reasons set forth below.

At the time this house and porch were constructed, the property was 15,130 square feet in size, and there was no house on the relevant block which faced on Elm Avenue (i.e. the abutting property along Elm Avenue and east of the subject property extended to the corner of Elm and Poplar Avenues, and the house on that property faced Poplar). In 1952, the property was subdivided into two buildable lots, such that the eastern portion

of the original property became a separate, 5,480 square foot lot with frontage on Elm Avenue. In 1953, a house was constructed on the new lot. Per the Petitioners' Justification Statement, this subdivision and construction had the effect of changing the required setbacks along Elm Avenue for the subject property from what had been a 15-foot side street setback to a 25-foot setback. See Exhibit 3. Per the testimony of Mr. Vitullo, the existing porch did not and does not meet the 25-foot setback, and is thus nonconforming.

3. The Petitioners are proposing an addition which would continue the massing of the existing screen porch along the Elm Avenue side of this house (i.e. the addition would be located on the southern side of the existing house and the eastern side of the existing porch). The proposed addition would be 8' 2" deep and 29' 6" long, no wider than the existing screen porch. See Exhibit 3.

4. The subject property is a "Contributing Resource" within the Historic District of Takoma Park. The Petitioners' have consulted with the Historic Preservation Commission (HPC) regarding their proposed construction plans, and the HPC, approving of the concept but having some recommendations concerning the design details, has recommended to the Petitioners that they pursue a Historic Area Work Permit (HAWP) since the project is "well on the way to getting an approval (with HPC) in the weeks ahead...." See Exhibit 3.

5. Mr. Richard Vitullo, AIA, testified on the behalf of Petitioners that the house was constructed in 1923. He testified that the house is an historic Aladdin kit house, which has a definite floor plan, with the private portion of the house on the left hand side, and the public portion of the house on the right/Elm Street side.

Mr. Vitullo restated the points summarized in paragraph 2, above. He described the proposed addition as following the line of the 8 foot, 2 inch wide porch which already projects into the setback. He indicated that it would be constructed on piers so as not to harm any trees. He stated that the Historic Preservation Commission had given permission for this construction. He noted that any construction to the rear of this house would not help the homeowner with the use of this historic home, and that the proposed location for this construction was the least intrusive.

6. Ms. Welmoed Laanstra testified that she purchased this home in 1998, and has lived in it for almost 20 years. She stated that all of the arguments in support of the grant of the requested variance are set forth in the Justification Statement. See Exhibit 3. She testified that her research shows that her one-story, bungalow home is a "Pasadena" model Aladdin kit home. Ms. Laanstra stated that with the grant of the variance, she is hoping to augment the communal space of her historic home by about 200 square feet, but that she intends to keep the front façade of the house intact.

Ms. Laanstra testified that her neighbor to the rear, along Elm Avenue, has built very close to the shared property line, such that any extension of her home to the rear would look down into her neighbor's kitchen and would steal all of her light, because of

the elevation of her house. Mr. Vitullo testified that the neighboring house on Elm Avenue was too close to the property line, and that the subject property is 6 feet higher than the Elm Avenue lot. Ms. Laanstra testified that trees screen the view of her home from Elm Avenue.

Ms. Laanstra went on to testify that her neighbor's house at 38 Hickory Avenue was also built very close to the shared property line (about three feet from that line), and that because of this, her lot is "hemmed in" such that any extension to the rear would adversely impact her neighbors. Ms. Laanstra testified that she has letters of support from three of her neighbors, that she received positive feedback on her proposed addition from the Historic Preservation Commission, and that her addition, as proposed, would have no impact on her neighbors.

## FINDINGS OF THE BOARD

Based on the Petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies 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.i - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds that the subject property was made more shallow by its 1952 subdivision, and that construction of a house on the lot that was carved out from the subject property through that subdivision had the effect of changing the setbacks applicable to the subject property.

*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 change in the setbacks applicable to this property rendered its screen porch, which met the requisite setbacks at the time of its construction and was existing at the time of the subdivision, nonconforming. The Board further finds that the proposed construction is connected to and uses this lawful, nonconforming porch.

*Section 59-7.3.2.E.2.a.iv. - the proposed development contains a historically significant property or structure;*

The Board finds that the home on the subject property is a Contributing Resource in the Historic District of Takoma Park, and that as a result, approval from the HPC and a HAWP are necessary for the proposed development. Thus the Board finds that the proposed development contains a historically significant property or structure.

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

The 1952 subdivision (and 1953 construction), which increased the setback applicable to this property along Elm Avenue, was undertaken by a previous owner; had the setback not been increased, the Board finds that the porch would not be nonconforming, and further finds that the requested variance would not be necessary. In addition, the Board finds that there is no evidence to suggest that the historic designation of this property was the result of actions by the Petitioners. Thus the Board finds that the special circumstances or conditions pertinent to this property are not the result of actions by the Petitioners.

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 variance requested is the minimum necessary to overcome the practical difficulties posed by the increased setback along Elm Avenue, the nonconforming status of the existing porch, and the need to integrate the proposed construction into this historic property in a manner acceptable to the HPC.

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; and*

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

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 the variance requested will not be detrimental the use and enjoyment of the adjoining and neighboring properties.

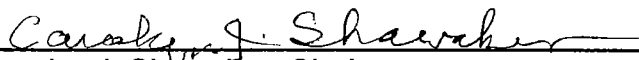
Accordingly, the requested variance of 8.17 feet from the required twenty-five (25) foot front lot line setback (Elm Avenue) for the construction of a room addition is granted, subject to the following conditions:

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 at Exhibit Nos. 4 and 5.

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

  
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Carolyn J. Shawaker, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 22nd day of September, 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.

