

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
<http://www.montgomerycountymd.gov/boa/>

(240) 777-6600

Case No. A-6507

PETITION OF TODD TREANGEN

OPINION OF THE BOARD

(Hearing Held: December 7, 2016)

(Effective Date of Opinion: December 14, 2016)

Case No. A-6507 is an application by Todd Treangen (the "Petitioner") for two variances necessary for the construction of a proposed two-story addition to an historic single family dwelling. The proposed construction requires a variance of forty (40) feet as it is within forty (40) feet of the front lot line. The required front lot line setback is forty (40) feet, in accordance with Section 59-4.4.7 of the Montgomery County Zoning Ordinance (2014). In addition, the proposed construction requires a variance of seven (7) feet as it is within seven (7) feet of the right side lot line. The required side setback is seven (7) feet.¹

The Board of Appeals held a hearing on the application on Wednesday, December 7, 2016. Mr. Treangen appeared pro se at the hearing, along with Brian J. Titus, a representative of the design and build company retained for this project.

Decision of the Board: **Variances Granted.**

EVIDENCE PRESENTED

1. The subject property, known as the "Davis House," is Lot P35, Block 21, 0001 Subdivision, located at 26020 Frederick Road, Clarksburg, Maryland, 20871, in the R-200 Zone. It has an area of 10,890 square feet. See Exhibit 3.

¹ Although the Building Permit Denial cites Section 59-4.4.7.2 for this requirement, a letter from DPS, dated October 26, 2016, and included in the record, indicates that the seven (7) foot side setback was established pursuant to the 1928 zoning code, in accordance with Section 59-7.7.1.D.3 of the Zoning Ordinance (2014).

2. The Davis House was originally constructed in 1810. It has been registered with the Friends of Historic Hyattstown since 1977, and is included in a Deed of Easement with the Maryland Historical Trust, which describes the property as having "substantial historic, aesthetic and cultural character" and notes that the Easement will "promote the preservation and maintenance of the property and its historic, cultural, scenic and aesthetic character." See Attachment B to Exhibit 3.

3. Mr. Titus testified that the Davis House is currently abandoned, and has not been lived in for about 80 years. He testified that the house has been partially renovated in the past. Mr. Titus testified that the house is uninhabitable because it has no running water, no indoor plumbing, no cooking facilities, is not connected to public sewer and had no on-site sewage disposal system. Per SDAT, the Petitioner purchased this property in 2014. He had a well installed in 2015. Mr. Titus testified that the Petitioner intends to restore this historic home to its originally intended use, that of a single family home, and that the proposed addition will add the elements necessary to make the home livable. See Exhibits 3, Attachment K to Exhibit 3, and Exhibit 4. He testified that the company he works for has been retained to design and build the addition.

4. On September 27, 2016, the Petitioner filed an application with the Maryland Historical Trust to construct a two-story addition off the rear of the structure, which will replace an earlier rear addition that was torn down in the 1960's. See Exhibits 3, Attachment K to Exhibit 3, and Exhibit 4. On October 18, 2016, the Maryland Historical Trust granted conditional approval for the proposed addition. See Exhibits 3 and 7.

5. On October 26, 2016, Mr. Titus applied for a building permit on behalf of the Petitioner to construct the proposed addition. On October 27, 2016, DPS denied the permit application, citing the fact that the existing structure was nonconforming, and that as a result, the proposed addition would not meet the required front (40 foot) or side (7 foot) setbacks. See Exhibits 3, 6(a) and 6(b). Mr. Titus testified that there are a number of nonconforming homes in historic Hyattstown.

6. Mr. Titus testified that the proposed addition is as small as it can possibly be and still make the home habitable, that its width had been reduced from 20 feet to 18 feet, and that the addition will step in from the property line along the alley [on the north side of the house]. See Exhibit 4.

7. Mr. Treangen testified that he intends to live in the house.

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.ii. – the proposed development uses an existing legal nonconforming property or structure;

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

The Board finds that the Davis House is both a historically significant property or structure, and a nonconforming structure, and that the proposed construction is a two-story addition to this historical, nonconforming structure. Therefore, the Board finds that the application satisfies Sections 59-7.3.2.E.2.a.ii and iv of 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;*

The Board finds that the Davis House was built in 1810, and that the Petitioner, who only recently purchased this property (2014), took no actions to create its unusual characteristics.

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, based on the testimony of Mr. Titus and the Justification Statement in the record at Exhibit 3, that the requested variances are the minimum necessary to allow the proposed construction to proceed and this property to be rendered a livable single family dwelling. The Board further finds that full compliance with the Zoning Ordinance is not possible on this property without removing the existing structure, which is a protected historic resource and thus cannot be demolished, and that this is a practical difficulty for the Petitioner. Thus the Board finds that the requested variances are the minimum necessary to overcome the difficulties that full compliance with the Zoning Ordinance would impose.

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 allow restoration of the historic Davis House physically and with respect to its residential use, consistent with provisions in the Clarksburg 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 can find no evidence that granting these variances, which will allow for the restoration and occupancy of this abandoned historic property, will adversely affect the use and enjoyment of abutting or confronting properties. Indeed, the Board believes that the restored use of this property will, if anything, be a benefit to surrounding

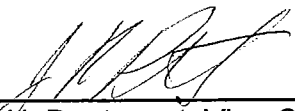
properties, and thus makes a finding that the grant of these variances will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variances to allow construction of a two-story addition are **granted**, subject to the following condition:

1. Petitioner shall be bound by his testimony and that of Mr. Titus, and by exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion.

Therefore, based upon the foregoing, on a motion by Stanley B. Boyd, seconded by Bruce Goldensohn, with John H. Pentecost, Vice Chair, and Edwin S. Rosado in agreement, and with Carolyn J. Shawaker, Chair, necessarily absent, 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.



John H. Pentecost, Vice Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 14th day of December, 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.