

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>**

CASE NO. A-6549

PETITION OF FRANCESCA GOODALL

OPINION OF THE BOARD
(Opinion Adopted February 28, 2018)
(Effective Date of Opinion: March 8, 2018)

Case No. A-6549 is an application for a variance needed to allow construction of a rear second-story room addition. The proposed construction of a rear second-story room addition requires a variance of 4.17 feet as it is within 15.83 feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board held a hearing on the application on February 28, 2018. Petitioner Francesca Goodall appeared at the hearing in support of the application with her engineer, Robert Wixson, P.E.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 2, Block C, Massachusetts Ave Heights Subdivision, located at 5105 Worthington Drive, Bethesda, MD, 20816, in the R-60 Zone. Per SDAT, the primary structure on this 5,856 square foot property was built in 1938, and the property was purchased by the Petitioner in 2016. It is a four-sided lot with a sharply angled rear lot line such that the southern side lot line, which is perpendicular to the front lot line, is approximately 70 feet in length, while the northern side lot line, which is also perpendicular to the front lot line, is approximately 110 feet in length. See Exhibits 1 and 4(a).
2. The Statement submitted with the variance request references the "awkward shape of the rear lot," and asserts that the subject property has "one of the shallowest, most irregularly shaped backyards on the block." The property contains an existing "porch (original to the house) [that] already encroaches upon the required set back" which the Statement terms "an existing legal nonconforming structure." The Statement notes

that the Petitioner proposes to construct a second story addition over this existing porch. The southeast corner of the proposed addition would extend into the rear setback but would "rest well within the footprint of the existing porch." The Statement later notes that the proposed "extension above the porch, has been kept to a minimum to avoid it looking top-heavy." See Exhibits 3 and 4.

3. In discussing the impact of the variance requested on abutting and confronting neighbors, the Statement declares the following:

[T]he proposed alterations to 5105 Worthington Drive have made every effort to ensure that both practically and aesthetically – neighbors are not adversely affected. The variance in question is deliberately modest and does not exceed the existing footprint of the house, minimally affecting neighbors.

It also notes that "awarding the variance would not increase the house's footprint or water run off...." See Exhibit 3. The record contains letters of support for the grant of the requested variance from the Petitioner's abutting neighbors to the south, whose property abuts the side lot line closest to the proposed encroachment, and east, whose property abuts the rear lot line of the subject property. See Exhibits 9(a) and (b).

4. At the hearing, the Petitioner testified that the proposed 4.17 foot encroachment was triangular in shape, and was due to the shape of her property and its shallow depth, particularly in the area of the existing porch. She testified that the proposed second story addition would be located over this porch, and would be well within its footprint. She testified that the porch has been in its present location since the 1930's, long before her purchase of this property two years ago, and that it already encroaches on the setback.

The Petitioner testified that she had met with the two neighbors who would be most affected by the grant of this variance, and had gone over her drawings with those neighbors. She indicated that both had offered to write letters to the Board. See Exhibits 9(a) and (b).

CONCLUSIONS OF LAW

Based on 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 has a unique shape with a sharply angled rear lot line that results in an unusually shallow buildable envelope. In addition, the Board finds that with an area of 5,856 square feet, the subject property is substandard in size

for the R-60 zone, which has a 6,000 square foot minimum. The Board finds that these circumstances constitute an extraordinary condition that is peculiar to this property. See Exhibits 3 and 4.

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

Per SDAT, the Petitioner purchased this property in 2016, and thus is not responsible for the size or shape of this lot, including its sharply angled rear lot line.

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 requested 4.17 foot variance is the minimum necessary to overcome the practical difficulty that full compliance with the setbacks imposed by Zoning Ordinance would cause because of the constrained and shallow nature of the buildable envelope which results from the application of the setbacks to the property, on account of its unusual shape, angled rear lot line, and small size. The Board notes that the proposed encroachment for which this variance is requested is within the footprint of the existing porch.

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 granting of this variance will continue the residential use of the home, consistent with the applicable 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 grant of this variance will not increase the incursion of the footprint of the existing home into the rear setback and, per the Statement, will not increase runoff to neighboring properties. The Board notes that the record contains letters of support for the grant of this variance from the two abutting neighbors whose properties would be most affected, and no letters of opposition. Thus the Board finds that granting this variance, to allow a second story addition over an existing porch, will not be adverse to the use and enjoyment of abutting or confronting properties.


Accordingly, the requested variance of 4.17 feet from the rear lot line setback is **granted**, subject to the following conditions:

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

2. Construction shall be in accordance with Exhibits 4(a)-(b) and 5(a)-(g).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Stanley B. Boyd, with Edwin S. Rosado, Vice Chair, Bruce Goldensohn, and Katherine Freeman 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.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of March, 2018.



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.