

**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-6562

PETITION OF GAYLE GIROD

OPINION OF THE BOARD

(Opinion Adopted May 30, 2018)
(Effective Date of Opinion: June 6, 2018)

Case No. A-6562 is an application for a five (5) foot variance necessary for the proposed construction of a covered porch and stairs within eleven (11) feet of the front lot line. The required setback is sixteen (16) feet, in accordance with Section 59-4.1.7.B.5.a.i of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on May 30, 2018. Petitioner Gayle Girod appeared pro se at the hearing in support of her application.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 15, SS Carrolls Addition to Takoma Park Subdivision, located at 22 Grant Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone. It is a five-sided, corner lot located on the south side of the intersection of Grant and Hancock Avenues. The property is subject to 25-foot setbacks along both Grant and Hancock Avenues, and along its "fifth side," a severely truncated corner which fronts the intersection of those two streets. See Exhibit 4(a).
2. The Petitioner's Statement indicates that her house "was built in Georgetown around 1900 and moved to its current site, along with a number of [her] neighbors' houses, in the early 1920s." This is consistent with the SDAT records for this property, which show that the home was constructed in 1923, before the adoption of the County's first Zoning Ordinance. The Statement notes that "[a]s placed in the early 1920s, the house sits within the current setback, which extends approximately 6 feet into my living room." The positioning of the house on the subject property is therefore non-conforming in terms of setbacks. See Exhibit 3.

3. The Statement explains that "at some point, someone added a front porch, narrow porch roof, and an aluminum awning to the house," and asserts that the proposed improvements to her porch will "result in [her] house fitting better in the style of a farmhouse that is common in Takoma Park" See Exhibit 3.
4. At the hearing, the Petitioner testified that she purchased the house a year and a half ago. She recounted some of the history of her house, noting that it had been constructed in Georgetown around 1900 and moved to its current location around 1920, and that a front porch was added with a narrow roof and an aluminum awning. She testified that the house was in place on the subject property before the enactment of the first Montgomery County Zoning Ordinance.
5. The Petitioner testified the front porch is located a couple of feet into the front lot line setback on Grant Avenue, and that she is proposing to extend it a couple of feet to the north so that she can increase the width of the porch on the Hancock Avenue side of the house to match the 5' 11" width of the porch on the Grant Avenue side. See Exhibit 4(b). She testified that this would allow access for visitors such as her father who use a wheelchair or scooter for mobility. She noted that no variance is required along Hancock Avenue. She testified that the stairs to the porch from Grant Avenue are in need of replacement for safety reasons and that a variance is required for that construction.
6. The Petitioner clarified that she is not increasing the width of her porch along Grant Avenue, and that the minor increase in the width of her porch along Hancock Avenue did not require a variance from the Hancock Avenue setback. She testified that the grant of the requested variance would not have an adverse impact on her neighbors.

FINDINGS OF THE BOARD

Based on the Petitioner's 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;

The Board finds that the house on this property dates to the early 1920s, before the enactment of the County's first Zoning Ordinance, and does not conform to the required setbacks, making it a legal nonconforming structure. The Board further finds that the Petitioner is proposing to add a covered porch and replace the stairs to this existing structure. Thus the Board finds that the proposed development uses an existing legal nonconforming structure, and satisfies this element of the variance test. See Exhibits 3 and 4(a)-(b).

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioner testified that she purchased this property one and a half years ago, and therefore the Board finds that she did not construct or have control over the placement of the existing house, which occurred in the early 1920s. See Exhibit 3. Thus the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioner.

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 variances are minimal in that they allow for the replacement of existing stairs, for the construction of a wooden porch roof in lieu of a narrow porch roof and aluminum awning over the porch that faces Grant Avenue, and for a minor extension of the north side of that porch and roof needed in connection with the widening of the porch along Hancock Avenue. The Board notes that the widening of this second porch causes only a minimal additional intrusion into the front lot line setback, less than six square feet per Exhibit 4(b), and no intrusion into the side street lot line setback along Hancock Avenue. See Exhibits 4(b), 5(b) (existing porch) and 5(c) (proposed porch). Thus the Board finds that the requested variance is the minimum needed to allow construction on this property commensurate with its past, and to overcome the practical difficulties that would otherwise be imposed by compliance with the setback restrictions of the Zoning Ordinance.

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;*

The Board finds that the construction of a covered porch and stairs continues the residential use of the home, and is consistent with the Takoma Park Master Plan, which seeks, among other things, "to support stable residential neighborhoods."

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.*

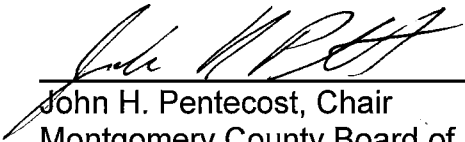
The Board finds that allowing the construction of the proposed covered porch and stairs on this home, which has historically had a roofed porch and stairs, will not infringe on the use and enjoyment of abutting or confronting properties. See Exhibits 3, 4(b), 5(b) and 5(c).

Accordingly, the requested variance to allow the construction of a covered porch and stairs is **granted**, subject to the following condition:

1. The Petitioner shall be bound by all of her testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting this variance.

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 6th day of June, 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.