

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6576

PETITION OF SHEREEN ARENT AND BRIAN WOLFMAN

OPINION OF THE BOARD

(Opinion Adopted September 5, 2018)
(Effective Date of Opinion: September 14, 2018)

Case No. A-6576 is an application for two variances necessary for the proposed construction of a screened porch. The proposed construction requires a variance of eleven (11) feet as it is within fourteen (14) feet of the front lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of two (2) feet, as it is within six (6) feet of the side lot line. The required setback is eight (8) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on September 5, 2018. Petitioner Shereen Arent appeared at the hearing in support of the application, along with architect Richard Vitullo, AIA.

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

EVIDENCE PRESENTED

1. The subject property is Lot 26, Block 3, Hill Crest (25) Subdivision, located at 100 Grant Avenue, Takoma Park, MD, 20912, in the R-60 Zone. It is a five-sided corner lot located on the west 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.
2. The Justification Statement describes the subject property as an "odd-shaped corner lot," as follows:

Odd-shaped Corner Lot: None of the 5 property lines for this property are parallel to any other one. The setbacks for corner lots with both streets

having house frontages are 25'-0" from the property lines. However, at the outside corner of the lot along the street a section of the property is cut off at approximately 45-degrees along a property line length of 35.67'. This creates an even smaller buildable area than would a standard rectangular corner lot. Also, since the lot narrows as it moves from back to front, the buildable area at the front is reduced greatly. There is no space to the side of the house, adjacent to 102 Grant Ave. that has any usable buildable area because the house is approx. 9'-0" from the property line with an 8'-0" setback.

See Exhibit 3.

3. The Justification Statement states that the primary structure on the subject property was built in 1991, and that the Petitioners purchased the property in 2001. It goes on to state that the Petitioners "have taken no action to this date to increase the size of their house that could have exacerbated the conditions requiring this variance to be pursued." It indicates that the existing house occupies most of the buildable area on the property:

House currently occupies most of Buildable Area of property: The footprint of the house (excluding the front and side porch) is currently 1060 s.f. of the total buildable area of 1265 s.f., or 84% of the total buildable area. As one can see on the site plan, the "buildable area" outside of the setback area is mostly a useless and narrow strip of land that surrounds the outside of the house. The only large amount of "buildable area" that is actually somewhat "buildable" is also the best practical location for any addition for the current house layout. The only other alternative area to build a screen porch where there is some sufficient "buildable area" would be along Hancock Ave., however it is currently occupied by a covered porch. While this location could conceivably be a location for this addition as it is also near the family room, it also has many other problems, such as the egress windows on the 2nd floor are too low to allow any kind of attractive or practical roof to occur there. ... So, ... constructing a porch on the true front (on Hancock Ave.) would require significant reformulation of the front of the house.

See Exhibits 3 and 4.

4. The Justification Statement notes that the proposed construction substantially conforms with the established historic or traditional development pattern of the neighborhood, as shown on Exhibit 7(b) ("Neighborhood Plan"), explaining that:

As seen in the "Neighborhood Plan" submitted with this application, the proposed screen porch addition actually aligns further from the Grant Ave. Front Property Line of the immediate adjacent houses at 102 Grant Ave. and across Hancock Ave. at 18 and 22 Grant Ave..

The two houses to the west along the same side of the street on Grant Ave. (#18 and #22) have front facades that are about 4'-6' +/- closer to the front property lines along Grant Ave. than the proposed screen porch addition. The house to the east along the same side of Grant Ave. (#102) is about 1'-0" +/- closer to the front property lines along Grant Ave. than the proposed screen porch addition; see "Neighborhood Plan" attachment. Therefore, this screen porch addition would actually be set further back from the Established Building Lines of these 3 adjacent houses by a minimum of 1'-0" and a maximum of 4'-6".

The ridge of this new one-story structure would sit 3" below the level of the existing ridge of the one-story family room structure and its scale is similar to other porches at the front of other houses on Grant Ave..

The proposed screen porch would not alter the street frontage pattern established by the three most adjacent houses; a fourth house, at 104 Grant Ave. also has a covered porch that aligns with the 15'-0" setback, or less, of the other three properties described above.

See Exhibit 3.

5. The Justification Statement further states that without the grant of the requested variances, the Petitioners "could not build a screen porch of practical size for their uses," that the requested location "actually occup[ies] the area with the most amount of compliant buildable area" (emphasis in original), and that "given that most other houses with 'ordinary' property situations and conditions are allowed to construct screen porches to their rear since most buildable area is located there, to deny this house the ability to build any structure important to modern outdoor living creates an adverse use for the Petitioners to enjoy their property." See Exhibit 3.
6. The Justification Statement asserts that the proposed screened porch will not be adverse to the use and enjoyment of neighboring properties in that the screening has a transparent quality, and that the proposed construction will actually bring this house in line with its neighbors, as follows:

The addition of a screen porch at the front location along Grant Ave. is located actually further back from the front property line than its immediate neighbors at 18, 22 and 102 Grant. And it would visually be mitigated by the inherent transparency of the screened structure, reducing any potential negative consequences on neighboring properties and on the neighborhood context. This addition would have no impact to 7300 Hancock Ave., the other adjoining property.

See Exhibit 3.

7. At the hearing, Mr. Vitullo testified that the subject property is unique in terms of its shape, size and orientation, and that these elements combine to pose a hardship for any expansion of this house. He testified that the house occupies approximately 80 percent of the property's buildable area, and that there is no other location to site the porch.

Mr. Vitullo testified that as shown by the Neighborhood Plan, the encroachment of the proposed porch would still leave it farther from the street than many of the surrounding houses such that the addition of a front porch to the subject property would not damage the feel of the neighborhood. With respect to the side lot line encroachment, Mr. Vitullo testified that the distance between the house on the subject property and the house located at 102 Grant Avenue is greater than the distance between approximately 80 percent of adjacent homes in the neighborhood.

FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply 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 in that it is a five-sided corner lot with non-parallel lot lines such that the lot narrows from its rear towards its frontage along Grant Avenue. The Board further finds that the application of the setbacks to the property, because of this shape, results in the property having a very constrained buildable envelope. Accordingly, the Board finds that this property satisfies this element of the variance test. See Exhibits 3 and 4.

Section 59-7.3.2.E.2.a.v: the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the Neighborhood Plan submitted with this application and on the assertions made in the Justification Statement and at the hearing, that if the requested front lot line variance were to be granted, the proposed construction would still be located further back from the front property line along Grant Avenue than the neighboring homes at 18, 22 and 102 Grant. See Exhibits 3 and 7(b). In light of the foregoing, the Board finds that the proposed construction would substantially conform with the traditional development pattern of this street.

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

The Justification Statement indicates that the house on the subject property was constructed in 1991, that the Petitioners purchased the property in 2001, and that the Petitioners have not made any changes to the house to cause or increase the need for the requested variances. 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 constrained buildable area that results from the application of the required setbacks to this property, on account of its unusual shape, constitutes a practical difficulty for the Petitioners in that it severely limits any meaningful expansion of the existing home. Consistent with this finding and per the Justification Statement, the Board further finds that without the grant of the requested variances, the Petitioners could not build a screened porch of practical size, and that the proposed construction will make use of the space that is available within the buildable envelope to the greatest extent possible. In addition, the Board finds that because of the constrained nature of this property's buildable envelope, there is no buildable area to the rear of this home where the Petitioners might otherwise locate a screened porch. Thus the Board concludes that the requested variances are the minimum necessary to overcome the practical difficulties created by the unusual or extraordinary situations or conditions on this property.

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 screened porch 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 screened porch will not bring this house any closer to Grant Avenue than its neighbors at 18, 22, and 102 Grant Avenue, and will not impact the adjoining neighbor at 7300 Hancock Avenue. Thus the Board finds that granting the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties. See Exhibits 3 and 7(b).

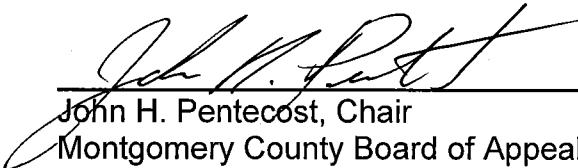
Accordingly, the requested variances necessary to allow the construction of the proposed screened porch are **granted**, subject to the following conditions:

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

2. Construction shall be in accordance with the plans in the record at Exhibits 4 and 5(a)-(c).

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

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