

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6646
PETITION OF DANIEL GUBITS**

OPINION OF THE BOARD
(Hearing Held: February 5, 2020)
(Effective Date of Opinion: February 21, 2020)

Case No. A-6646 is an application by Daniel Gubits (the "Petitioner") for two variances. The Petitioner is seeking to convert an existing screened porch to conditioned space, and to construct steps. The proposed conversion of the existing porch requires a variance of thirteen (13) feet as it is within seven (7) 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. In addition, the proposed construction of steps requires a variance of eight (8) feet as it is within three (3) feet of the rear lot line. The required setback is eleven (11) 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 Wednesday, February 5, 2020. The Petitioner appeared at the hearing in support of the requested variances with his architect, Paul Treseder.

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

EVIDENCE PRESENTED

1. The subject property is Lot 16, Block 4, Hillcrest Subdivision, located at 241 Park Avenue, Takoma Park, MD, 20912, in the R-60 Zone. The property is an unusually shaped, four-sided lot, with an area of 5,710 square feet. The minimum lot size in the R-60 Zone is 6,000 square feet. See Exhibits 3 and 4(b).

2. The Justification Statement ("Statement") indicates that the existing house was constructed in 1923, and that the size and odd shape of the subject property have existed since that time. The Statement states that the subject property is "smaller than the typical lot on Park Avenue," and notes that the property's substandard size and unusual shape "result in a much smaller possible allowable coverage than almost all other lots on Park Avenue." See Exhibit 3.

3. The Statement states that of the 34 houses on Park Avenue, 27 of them are rectangular properties, 24 of which have an area of 6,500 square feet and 3 of which have an area of 6,000 square feet. The Statement indicates that "[t]he remaining 7 lots have non-rectangular shapes." The graph included with the Statement shows that only 4 of the 34 properties have less than the required 6,000 square feet of area; the Statement states that the subject property is the third smallest property on the street. See Exhibit 3.

With respect to the buildable area of properties along Park Avenue, the Statement states that while the "[t]ypical rectangular 6,500 Sq. Ft. lot on Park Ave[nue]" has a buildable area of 2,275 square feet, and the subject property, at 5,710 square feet, would hypothetically have a buildable area of 1,999 square feet if the property were rectangular, the subject property actually has a buildable area of only 985 square feet. See Exhibit 3. The site plan shows that the buildable area on the subject property is triangular in shape, and that the existing house exceeds it on two sides. See Exhibit 4(b).

4. The Statement indicates that the existing house is situated 16 feet from the front lot line as opposed to the 25 feet required by the Zoning Ordinance, and is therefore nonconforming. See Exhibit 3. The building permit denial confirms that the existing house is nonconforming. See Exhibit 6.

5. The Statement states that "[m]y proposed project would not increase the footprint of the house beyond the existing screened-in porch," explaining that "the additional room would cover the same square feet" as the existing porch, "would not be built any closer to the property line," and, like the existing screened porch, would "have a door and steps to the yard." See Exhibit 3. The proposed site plan indicates that the "existing porch foundation and slab" are to be reused. See Exhibit 4(b).

6. The Statement asserts that the proposed construction will not be adverse to the use and enjoyment of abutting or confronting properties, and states that the Petitioner "ha[s] talked with some of [his] neighbors about the project and they have all been supportive of the project." See Exhibit 3. At the hearing, the Petitioner testified that he has now spoken with all of his abutting neighbors, and that none oppose his proposed improvements.

7. At the hearing, the Petitioner testified that his property is approximately 5,700 square feet in area, substandard for the R-60 Zone. He testified that at 100 feet, his lot is twice the width of an average property on the street, and that this results in the property being very shallow. The Petitioner testified that application of the required setbacks to his unusual property leaves him with less than half of the buildable area of a typical rectangular lot on the street, and that the front and rear of the existing house are both outside of the buildable area.

8. Paul Treseder, the Petitioner's architect, testified that the house on the subject property is a Sears bungalow. He testified that it has been on the subject property since 1923, and that it was "placed" before the County enacted its first Zoning Ordinance. Mr.

Treseder testified that he has received approval from the County's Historic Preservation Commission for the proposed construction.

In response to a Board question asking if there would be a deck on top of the new conditioned space, Mr. Treseder testified that the railing shown on the plans was added because such a railing was a feature included on some Sears bungalows. He further testified that as a technical matter, a person could walk out onto the roof over the new conditioned space. In response to a Board question regarding the changes made to the steps that lead from the proposed conditioned space to the yard, Mr. Treseder testified that he had added a landing to make the new steps code compliant and safe.

FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the requested 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;

Based on the Statement, site plan, and testimony of record, the Board finds that at only 5,710 square feet in area, the subject property is substandard for the R-60 Zone, and as recounted in the Statement, is the third smallest property on Park Avenue. See Exhibit 3. The Board further finds, based on the Statement, site plan, and Zoning Vicinity Map, that unlike the rectangular shape exhibited by the vast majority of properties on this street, the subject property is uniquely shaped, with two parallel by side lot lines that are set at an angle to the front lot line and vastly different in length (21.4' and 92.8'), and with converging front and rear lot lines, also of differing lengths (122.88' and 100.0'). See Exhibits 3, 4(a) and (b), and 7. Finally, the Board finds, as set forth in the Statement, that when the required setbacks are applied to this small and unusually shaped lot, the subject property has an extremely small buildable area that is triangular in shape. The Board finds that these conditions constitute an extraordinary situation or condition that is peculiar to this property, in satisfaction of Section 59-7.3.2.E.2.a.i of the Zoning Ordinance.

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 existing house on this property was built in 1923 (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 on to this existing structure by converting an existing porch to conditioned space. See Exhibit 3. Thus the Board finds that the proposed development uses an existing legal nonconforming structure, and satisfies this element of the variance test.

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 existing nonconforming house has been on this property since 1923, and that the size and shape of the property have not changed since that time. Thus the Board finds that there is no evidence to suggest that the Petitioner took any actions to create the special circumstances or conditions peculiar to this property, and further finds that this element of the variance test is met.

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 Statement and the testimony of the Petitioner, that the requested variances are the minimum necessary to allow the proposed construction, which will not increase the footprint of the existing house, to proceed. The Board finds that with a triangular-shaped buildable area of only 985 square feet—an area which the existing home fully occupies and exceeds, and which is less than half of the building area available on a standard lot along this street—there can be no reasonable addition to or improvement of this home without variance relief. See Exhibits 3 and 4(b). In addition, the Board finds, per the testimony of Mr. Treseder, that the proposed changes to the steps are necessary to make them code compliant and safe. Thus the Board concludes that the grant of the requested variances is the minimum necessary to allow the proposed improvements to the existing home on this unusually-shaped small and constrained property, and therefore 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 continue the residential use of this property, consistent with the recommendations of the Takoma Park Master Plan, which recommends preserving the existing residential character, encouraging neighborhood reinvestment, and enhancing the quality of life throughout Takoma Park.

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, per the Statement, that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties. In support of this finding, the Board notes that the Petitioner has spoken with his abutting neighbors, and none object to the proposed construction. The Board further notes that the footprint of the existing house is not being increased, and that the new conditioned space will replace an existing screened porch. See Exhibit 3.

Accordingly, the requested variances necessary for the replacement of an existing screened porch with conditioned space, and the construction of steps, are **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction of the proposed conditioned space and associated steps shall be in accordance with Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Mary Gonzales, with Bruce Goldensohn, Vice Chair, 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 21st day of February, 2020.



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.