

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6648
PETITION OF HEATHER AND TARYN ROSNER**

OPINION OF THE BOARD
(Hearing Held: April 22, 2020)
(Effective Date of Opinion: May 8, 2020)

Case No. A-6648 is an application by Heather and Taryn Rosner (the "Petitioners") for a rear lot line variance needed for the proposed construction of a rear addition (screen porch). The proposed construction requires a variance of 7.30 feet as it is within 12.90 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.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, April 22, 2020. All participation was done via Microsoft Teams. The Petitioners appeared at the hearing in support of the requested variance with their architect, Richard J. Vitullo, AIA.

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

EVIDENCE PRESENTED

1. The subject property is Lot 64, Block 24, B.F. Gilbert Subdivision, located at 301 Ethan Allen Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone. The property is a rectangular corner lot with main frontage along Ethan Allen Avenue (MD 410/East West Highway) on the northern side, and with side street frontage along Woodland Avenue to the west. The property has a radius corner and is 5,792 square feet in size. The minimum lot size in the R-60 Zone is 6,000 square feet. See Exhibits 3 and 4(a)-(c).

2. The Justification Statement ("Statement") describes the subject property relative to surrounding properties as follows:

The house is located on a corner lot and this lot, among the 45 nearest lots in the immediate neighborhood, is the 6th smallest lot in area (5792 sq. ft.), is the only

one of two of the 6 to front along busy MD 410/Ethan Allen Ave., and is the only one on a corner lot (therefore having two 25'-0" setbacks).

See Exhibit 3. The Statement goes on to describe the existing house on the subject property and the available buildable area:

The house itself, a very small 2-story Cape Cod, is 16'-6" x 25'-0" (412.5 sq. ft.), with small 1-story additions on the rear (36 sq. ft.) and the side street side (122 sq. ft.). The buildable area in the side yard is 10'-0" x 28'-0" or 280 sq. ft.. The buildable area in the rear yard is 6'-9" x 48'-0" or 324 sq. ft.. The other buildable areas are along the main street frontage (4'-0" deep) and side street frontage (3'-0" deep).

The Statement indicates that the buildable side yard area on the east side of the home is "1) too narrow for a practically-sized porch (10'-0" wide) and 2) too noisy a location as it fronts on Ethan Allen Ave./Md 410/East West Highway thus creating an unusual hardship." It further states that "[i]n order to create a Screen Porch size that is usable for the very small house as an outdoor living space, a size of 14'-0" x 25'-0" (or the full width of the house) was determined to be the practical size and shape," later noting that the 14-foot depth was critical to create a space large enough "to establish a usable area for outdoor seating with adequate circulation around and to provide some much-needed storage space near the Kitchen...." The Statement indicates that locating the porch as proposed, in the buildable rear yard area, would create a 7'-3" encroachment into the required rear yard setback. See Exhibit 3.

3. The Statement notes that the proposed construction substantially conforms with the established historic or traditional development pattern of the neighborhood, stating that "[e]ven with this addition, the shared side/rear yard open area would be similar to or greater than between most of the other nearby houses in this neighborhood." The Statement states that with the proposed construction, "[t]he proposed distance (open area) at the rear of 301 Ethan Allen Ave. ... would be 27'-0"," and that "the average distance (open space) between houses is 25'-4"," noting that "[f]or the record, 18 of 24 shared open space areas between houses within the 150'-0" radius are **LESS or equal to 27'-0"**." See Exhibits 3 and 8(b).

4. The Statement further notes that because the proposed screen porch does not reduce the open space between properties to less than the typical open space, and given that the proposed structure is "transparent open mesh screening with a completely open area underneath," that the grant of the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties. See Exhibit 3. The record contains letters of support from several of the Petitioners' immediate neighbors, including their abutting neighbor along Woodland Avenue (who would arguably be most affected), their abutting neighbor along Ethan Allen Avenue, and their confronting neighbors on Woodland Avenue. See Exhibits 7(a)-(d).

5. At the hearing, Mr. Vitullo testified that the subject property is very small, recounting for the Board all of the reasons set forth in the Statement and described above. He further testified that the 280 square foot area on the east side of the property is so narrow that it cannot accommodate a screened porch. He testified that the 325 square foot area to the rear of the house (south side of the property) is also small, with a depth of approximately seven (7) feet and a width of 48 feet. Mr. Vitullo testified that the area to the rear is the only practical area for any kind of addition, and that the grant of the variance would afford the Petitioners a substantial area in which to build while still maintaining the average distance between houses, thereby preserving the streetscape. Mr. Vitullo noted that the Petitioners' neighbors have submitted letters of support.

In response to a Board question asking if there was any way to reduce the extent of the variance requested, Mr. Vitullo testified that the Petitioners' house is very small, and that it is hoped that the proposed porch will provide the Petitioners an area for outdoor eating and living. He testified that the Petitioners are seeking an average-sized porch. He testified that the proposed 14-foot depth of the porch is necessary to provide space for a table and chairs, and to allow minimum circulation around them. Finally, Mr. Vitullo testified that if the depth of the proposed porch was reduced, the space would be cramped, and the project would not be worth doing.

FINDINGS OF THE BOARD

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

Based on the Statement, the site plan, and the testimony of Mr. Vitullo, the Board finds that the subject property is not only substandard for the R-60 Zone, but is also smaller than 39 of the 45 properties in the immediate vicinity, smaller than all but one other property on Ethan Allen Avenue (MD 410/East West Highway), and the smallest corner lot in the area. The Board further finds that the application of the required setbacks to this very small property results in an unusually constrained buildable area, and that taken together, these conditions constitute an extraordinary situation or condition that is peculiar to this property, in satisfaction of this Section of the Zoning Ordinance.

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;

Based on the Statement and the testimony of Mr. Vitullo, the Board finds that the proposed construction will maintain the existing pattern in this neighborhood of open

space between houses by maintaining a separation that approximates or exceeds the average separation of the nearby homes. Thus the Board finds that the proposed construction follows the traditional development pattern of this neighborhood, in satisfaction of this Section.

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 Petitioners purchased the subject property in 2012, and that there is no evidence that they are responsible for the unusually small size and constrained buildable area of their property, or for the development pattern in their neighborhood. 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, in satisfaction of this Section.

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 7.30 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 buildable envelope that results from the application of the setbacks to this property due to its substandard and unusually small size. The Board notes that there is inadequate room to expand this house in any meaningful way to the front (north) or west side. The Board further finds that, per the Statement and the testimony of Mr. Vitullo, a 14-foot depth is the minimum needed if the proposed porch is to allow for seating and circulation, and that this cannot be accommodated without variance relief on either the east side or the rear (south). Thus the Board concludes that the grant of the requested variance is the minimum necessary to allow the proposed addition to the existing home on this unusually 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 that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties. In support of this finding, the Board notes, per the Statement, that granting the requested variance will allow construction of a screen

porch that will be located so as to maintain the average open space separation in the neighborhood and that will be made of "transparent open mesh screening." In addition, the Board notes that while not determinative, the record contains letters of support from neighboring property owners, including the owner of the property that shares the lot line from which variance relief is being requested, and no letters of opposition. See Exhibits 3 and 7(a)-(d).

Accordingly, the requested variance necessary for the construction of a rear addition (screen porch) is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction of 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 Katherine Freeman, with Bruce Goldensohn, Vice Chair, and Mary Gonzales 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 May, 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.