

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
<http://www.montgomerycountymd.gov/boa/>**

(240) 777-6600

CASE NO. A-6651

PETITION OF BELINDA O'BERRY

**OPINION OF THE BOARD
(Opinion Adopted April 15, 2020)
(Effective Date of Opinion: May 1, 2020)**

Case No. A-6651 is an application for a variance needed for the construction of a screened porch over an existing deck. The proposed construction requires a variance of eight (8) feet as it is within twelve (12) 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 Montgomery County Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on April 15, 2020. Petitioner Belinda O'Berry participated via Microsoft Teams in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Lot 21, Neelsville Estates Subdivision, located at 11312 Church Bend Court, Germantown, MD, 20876, in the R-60 Zone. The property is 9,212 square feet in area, and is an irregularly shaped, four-sided lot, located on a cul-de-sac. See Exhibits 3 and 4.
2. The Petitioner's Justification Statement ("Statement") indicates that the Petitioner and her husband purchased this property in 2018. See Exhibit 3. The Petitioner's variance application states that the property was recorded in 1997, and the SDAT information indicates that the existing home was constructed in 1999. See Exhibit 1 and SDAT information.

3. In addressing the elements of the variance test set forth in Section 59-7.3.2.E.2 of the Zoning Ordinance, the Statement refers to the subject property as "small," "narrow," and "an odd-shaped lot." See Exhibit 3. The Statement states that as shown on the Zoning Vicinity Map, the subject property is "one of two shallow lots in the neighborhood," which contains 11 properties. See Exhibits 3 and 7. The Statement notes that the subject property's "rear lot in particular is quite narrow and oddly shaped, made worse by the orientation of the home on the property." See Exhibits 3 and 4. The Statement indicates that the house on the subject property is the same basic model as the house next door except that the houses are flipped, and that for unknown reasons, the house next door is set closer to the street than the Petitioner's house. It states that it would have been preferable for the developer to locate and orient the two houses similarly to the street, and indicates that the deeper setback of the Petitioner's house limits the area available for construction to the rear of her property. See Exhibit 3.

4. The Statement states that the variance requested is the minimum needed to allow the construction of a screened porch in place of an existing deck. See Exhibit 3. With respect to the effect of this variance and the resultant porch on neighboring property owners, the Statement states the following:

Our Homeowner's association, including neighbors to our left and right, have approved this addition. The screened in porch would not be able to be seen from the street. There are two neighbors who adjoin us at the rear property line; one of which abuts our property for only a few feet in the southernmost corner, away from the proposed porch. We can see the roof of this home but not the home from our property. The second property abuts us for almost our entire rear property line. The home on this property is situated on the far end of their property (away from us) on a relatively large piece of land. There is a small outbuilding nearer to our rear line, but the home is quite a distance. The home is not within our sight (and our home not within theirs). The lot for this property is quite wooded, with many trees that would preclude any issues about viewing our new porch. Please see Montgomery County Zoning map.

For these reasons, the Petitioner concludes that the proposed construction will not have an adverse impact on her neighbors. See Exhibit 3.

5. At the hearing, the Petitioner testified that she and her husband purchased the subject property two years ago. She described the rear yard of the subject property as "thin" and oddly-shaped, and testified that it faces woods and no houses. She stated that there are two larger properties behind hers, and that she can see the shed on one of the properties when the leaves are off the trees. The Petitioner stated that she and her husband had looked into putting the proposed porch on the side of their home, but that it would be visible from the road and was not practical for a variety of other reasons. She testified that the footprint of the proposed porch will be the same as that of the existing deck, with new pillars for support and stability.

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 an unusual shape, as described herein and in the Statement, and as shown on Exhibits 4 and 7, and that this shape uniquely constrains the area available for construction under the Zoning Ordinance, 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 Petitioner purchased this property two years ago, long after it was built, and thus is not responsible for the shape of the property or its available buildable area, 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 observes that the proposed construction will not extend the footprint of the existing deck, and that it is the enclosure of this area that triggers the need for variance relief. The Board finds the requested variance, to allow the proposed construction to encroach on the rear lot line setback to the same extent as the existing deck, is the minimum needed to overcome the constraints otherwise imposed on this property's buildable area by the Zoning Ordinance because of the property's unique shape. Accordingly, the Board finds that the requested variance is the minimum needed to allow the proposed construction and to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose, in satisfaction of this Section.

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 allowing the Petitioner to proceed with the proposed construction will continue the residential use of this home, and thus can be granted without substantial impairment to the intent and integrity of the applicable Germantown 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 proposed construction will not be adverse to the use and enjoyment of abutting or confronting properties because it will not expand the footprint of

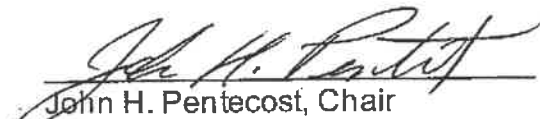
the existing deck and will not be visible from the street. To further support this finding, the Board notes that per the Statement, the Petitioner has discussed the proposed construction with her homeowners' association and with her neighbors to the immediate right and left, and all are supportive. See Exhibit 3. Finally, the Board notes that based on the Statement and the testimony of the Petitioner, the houses behind the subject property are barely visible, if at all, and thus the Board finds that the proposed screened porch addition would not be readily visible to these neighbors or adverse to their enjoyment of their properties.

Accordingly, the requested variance of eight (8) feet from the rear lot line is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction 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 1st 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.