

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6668

PETITION OF PETER HIRSCH

OPINION OF THE BOARD
(Opinion Adopted September 30, 2020)
(Effective Date of Opinion: October 9, 2020)

Case No. A-6668 is an application for a variance of 4.67 feet, needed for the proposed construction of a porch and steps that are within 11.33 feet of the front lot line. The required setback is sixteen (16) 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 September 30, 2020. All participation was done via Microsoft Teams. Petitioner Peter Hirsch and his wife, Aerang Kim, participated in support of the requested variance, assisted by their architect, Richard J. Vitullo, AIA.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot P9, Block 96, Hodges Heights Subdivision, located at 7506 Holly Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone. It is a rectangular lot, 4,775 square feet in size, located on the west side of Holly Avenue, across from the Takoma Park Elementary School. See Exhibit 3.
2. The variance application and survey plat indicate that the subdivision containing the subject property was recorded in 1924, before enactment of the County's first Zoning Ordinance. The original survey plat shows a 20-foot building restriction line along Holly Avenue. A comparison of the original survey plat with the current Zoning Vicinity Map shows that subsequent to 1924, the depth of the subject property was significantly reduced to allow for the creation of the lot that abuts the subject property to the rear, which faces on Hodges Lane. See Exhibits 1, 8(a), and 8(c).

3. The Justification Statement ("Statement") states that the Petitioner purchased the subject property in 2012. The Statement further states that the subject property is improved with a single family house that has a footprint of 936.4 square feet. The Statement indicates that the "main house structure" is located 26 feet from the front lot line, and that there is a concrete porch with a finished basement storage room underneath that extends 5 feet, 8 inches from the front of the house towards Holly Avenue, and is therefore located 20 feet, 4 inches from the front lot line. The Statement states that this complies with the house's original zoning (presumably referring to the 20-foot building restriction line shown on the survey plat), and therefore asserts that the front storage room should be considered nonconforming given the currently applicable 25-foot setback. See Exhibits 3 and 8(c).
4. The Petitioner is seeking to construct a vestibule, covered porch, and stairs that will extend 4.67 feet into the front setback. The Statement describes the need for the proposed vestibule as follows:

Proposed Front Yard Location for Vestibule Extension: Due to the small pre-war house layout, the front public rooms (living and dining rooms) are very small and have no foyer or vestibule, or coat closet, and no extra space to allow for a vestibule/foyer to be inserted within their spaces without unduly infringing on and hampering the usage of these spaces. The only preferred location for a vestibule extension is over the existing storage room under the front porch.

The Statement goes on to explain that the requested variance is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would entail, stating that "[i]n order to create a usable vestibule that contains a foyer area, a bench/mudroom function, and a coat closet, this space needed to have a minimum interior depth of 5'-2" or a 5'-8" outside depth." See Exhibit 3.

5. The Statement at Exhibit 3 asserts that the proposed construction will comport with the established development pattern along this block of Holly Avenue, as follows:

In the block of Holly Avenue along which this property is located, there are 5 properties that have either frontage on Holly Avenue (3 properties: 7502, 7504 and 7506 Holly Avenue) or have a side yard along Holly Avenue (2 corner properties: 301 Philadelphia Avenue and 215 Hodges Lane). Three of those properties have houses that maintain the 25'-0" setback to enclosed spaces of the house and all three have covered porches that encroach properly into the setbacks according to the zoning regulations allowing a 9'-0" encroachment. 7506 Holly Avenue (the subject property) has a non-conforming addition that encroaches 4'-8" into the front setback. Also, the house on the corner lot on Hodges Lane (215 Hodges Lane) has a side addition that is set at 20'-0" from the property line along Holly Avenue,

probably following the guidelines under the original zoning for this neighborhood.

Therefore, the proposed small enclosed addition on the front porch of 7506 Holly Avenue would encroach 4'-8" into the current 25'-0" front setback but would NOT encroach any further than the current non-conforming addition at 215 Hodges Lane and thus would not independently or distinctively disrupt the current streetscape along Holly Avenue.

6. The record contains a letter of support for the grant of the requested variance from the owner of the abutting property at 7504 Holly Avenue, indicating that he has seen the Petitioner's plans, and believes the proposed construction will improve the functionality of the Petitioner's home and the "overall curb appeal of the neighborhood." See Exhibit 7.
7. At the hearing, Mr. Hirsch testified that he thought his house was built sometime around 1945, but that a gentleman who was in his eighties had recently stopped by and had stated that he lived in the Petitioner's house from 1937 on. Mr. Vitullo testified that according to SDAT, the house was built in 1940.
8. Mr. Vitullo testified that when the neighborhood was built, the front setback was 20 feet, and that the house on the subject property and the house next door, at 215 Hodges Lane, had taken advantage of that and were constructed to the 20 foot setback line. In response to a Board observation that Exhibit 4(b) shows the existing front porch extending to the 20 foot building restriction line, Mr. Vitullo said that he had looked at that, and stated that it seems that in the 1940s, this property originally had a 20 foot setback. He then stated that because he was unaware of any 20 foot front setbacks in the R-60 Zone, he had consulted with the Department of Permitting Services, and they had stated that the front setback is 25 feet.

Mr. Vitullo testified that the design of the existing house poses a hardship for the Petitioner and his wife because there is a fireplace on the front of the house, and upon entering, the living room is immediately on the left and the dining room on the right. He testified that the Petitioner is seeking to add a buffer space with a closet over the existing nonconforming basement storage area. Mr. Vitullo testified that there will be a porch in front of the buffer space (i.e. towards the street) and then steps down to the grade. He noted that the house sits on a hill. Discussion ensued regarding whether an additional variance was needed for the proposed vestibule, and it was noted that the building permit denial, in the record at Exhibit 6, was only for the proposed porch and steps. Mr. Vitullo testified that the Site Plan he had given DPS in connection with the permit denial showed the vestibule and the steps.

In response to a Board question asking if other houses in the neighborhood had vestibules and porches similar to the ones proposed, Mr. Vitullo testified that he

did not know of any, and then emphasized the unique nature of the existing house, a sentiment echoed by Mr. Hirsch.

FINDINGS OF THE BOARD

Based on the 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.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

Based on the Statement and existing Site Plan, the Board finds that with an area of 4,775 square feet, the subject property is markedly substandard for the R-60 Zone, which has a 6,000 square foot minimum lot size. See Exhibits 3 and 4(b). The Board further finds, based on a comparison of the survey plat and current Zoning Vicinity Map, that the original depth of this property was significantly reduced to allow for the creation of the lot abutting the subject property to the rear. See Exhibits 8(a) and (c). The Board finds that these conditions combine to constrain the buildable area on the subject property, and constitute an extraordinary condition that is peculiar to this property, 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 plat for the neighborhood in which the subject property is located was recorded in 1924, that the existing house was built in 1940, and that the Petitioner has only owned this property since 2012. Thus the Board finds that the Petitioner took no actions to create the special circumstances or conditions noted above which are 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, based on the Statement and the proposed Site Plan in the record at Exhibit 4(a), that the existing house is located forward on this constrained lot, on a hill, with its front face in very close proximity to the 25-foot front setback line, and with a porch and basement storage room that extend forward of that line to the 20-foot restriction line that the Petitioner's architect suggests applied when the house was originally constructed. The Board finds that in light of these conditions, the requested variance is the minimum needed to allow the construction of the proposed porch and steps down to the grade, 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 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, as recounted above in paragraph 5 under Evidence Presented, that the proposed construction will not disrupt the current streetscape along Holly Avenue, and per the letter of support at Exhibit 7, will improve the overall curb appeal of the neighborhood. Accordingly, the Board finds that the grant of the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this Section.

Accordingly, the requested variance for the proposed construction of a porch and steps is **granted**, subject to the following conditions:

1. The Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Meinicke, with Bruce Goldensohn, Vice Chair, Katherine Freeman, 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 9th day of October, 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.