

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6678

PETITION OF JO ANNE MURRAY LEVENSON AND MARC LEVENSON

**OPINION OF THE BOARD
(Opinion Adopted January 20, 2021)
(Effective Date of Opinion: February 3, 2021)**

Case No. A-6678 is an application for three variances needed to allow renovations to an existing house. The proposed construction of an unenclosed porch requires a variance of 4.20 feet as it is within 10.85 feet of the front lot line. The required setback is sixteen (16) feet, in accordance with Section 59-4.1.7.B.5.a of the Zoning Ordinance. In addition, the proposed construction of a dormer requires a variance of 1.75 feet as it is within 23.25 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. Finally, the proposed construction of a bay window requires a variance of 9.25 feet as it is within 12.75 feet of the front lot line. The required setback is twenty-two (22) feet, in accordance with Section 59-4.1.7.B.5.a.viii of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on January 20, 2021. All participation was done via Microsoft Teams. Petitioner Jo Anne Murray Levenson participated in the proceedings, in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Lot 6, Block 10, PT LT 7 National Chautauqua Glen Echo Subdivision, located at 6004 Princeton Avenue, Glen Echo, Maryland, 20812 in the R-60 Zone. The subject property has four sides, and is 5,224 square feet in size. It contains a house built in 1905, with a rear addition constructed in 1981. The Petitioners purchased this property in 1989. See Exhibits 1, 3, and 4.
2. The Petitioners' Statement of Justification ("Statement") states that the existing house is located between 16.25 and 16.85 feet from the front lot line, and was constructed before enactment of the County's first Zoning Ordinance. The Statement states that the

placement of the original house close to the street is consistent with the historic placement of the original houses in this neighborhood. See Exhibit 3.

3. The Statement states that the Petitioners are seeking to construct a covered, unenclosed porch that would extend five feet from the front facade of the house in place of the existing front steps, which have no landing and extend four feet from the front facade of the house. The Statement states that the front yard of the subject property drops approximately six feet from the front door, which is located on the southeast corner of the home's front (south) face, downward to the west, towards the parkway below. The Statement further states that the elevation of the front door is approximately level with the elevation of the driveway, which is located on the opposite (east) side of the house. It states that the proposed porch will provide level access from the driveway to the front door. See Exhibit 3.

4. The Statement states that the original portion of the house contains a ten-foot wide bay window that projects 15 inches from the face of the house and has a sill ledge 34 inches above the first floor. It indicates that the Petitioners are seeking to replace that bay window with a new bay window that projects three feet from the face of the house and that is level with the first floor. The Statement notes that bay windows are allowed to project three feet into any setback, and that the need for variance relief for the proposed window arises from the location of the original house so close to the front lot line. See Exhibit 3.

5. The Statement states that the Petitioners are seeking to replace an existing skylight with a new dormer that will create a "walk-in dormer alcove" for the bedroom behind it. It notes that the skylight was installed during the 1981 renovation, and that when it was installed, it replaced a small triangular dormer. The Statement indicates that a variance is needed for the proposed dormer because the front of the house does not meet the required setback. See Exhibit 3.

6. The Statement indicates that the subject property is at the end of the dead-end road, with woods on two sides. The Statement states that only three properties will have a view of the proposed construction, and that those neighbors have no objections. See Exhibit 3. The Petitioners include signed sheets from their abutting and confronting neighbors with their application, indicating that those neighbors have had a reasonable opportunity to review the Petitioners' proposed plans. See Exhibits 7(a)-(c).

7. At the hearing, Petitioner Jo Anne Murray Levenson testified that she has lived in Glen Echo for 31 years, having purchased the subject property in 1989. She testified that the original house was built in 1905, and was a 30 foot by 30 foot square set closer to the street than the Zoning Ordinance, which was not in effect at that time, now allows.

The Petitioner testified that her property is located at the end of a quiet, dead-end street, with the George Washington Memorial Parkway and Clara Barton Parkway below on one side, an abutting neighbor "up" the street, and two confronting neighbors across the street, one of whom is the Mayor of Glen Echo. She testified that these neighbors approve of the proposed construction.

The Petitioner described the proposed improvements that need variances to the Board. Of note, with respect to the bay window, she testified that the replacement window will be a "walk in" that extends down to floor level, but that the three existing windows that are on the front face of the house, below the existing bay window, will remain. With respect to the proposed porch, she testified that because the property slopes down towards the river and canal, while the existing steps will be removed and not replaced, the proposed porch will provide a level access from the driveway to the house. Finally, with respect to the proposed dormer, the Petitioner testified that it will replace an original dormer that was removed during the 1981 addition.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested side lot line 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.ii the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the existing house on this property was originally built in 1905 (before the enactment of the County's first Zoning Ordinance) and does not conform to the required front lot line setback, making it a legal nonconforming structure. The Board further finds that the construction the Petitioners are proposing uses the original, existing structure, and would make improvements to the front of that structure. Thus, the Board finds that the proposed development uses an existing legal nonconforming structure, and satisfies this element of the variance test. See Exhibits 3 and 4.

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

The Petitioners did not construct or have control over the placement of the original house, which was built in 1905. 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 Petitioners.

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 proposed construction that necessitates the requested variance relief would be allowed by right if the original house complied with the required front lot line setback. The Board further finds that while the proposed construction would change certain aspects of the house, it would not change the location of the house's front wall relative to the front lot line. Thus the Board finds that the inability of the Petitioners to make their proposed changes without variance relief arises from the placement of the

original house, and constitutes a practical difficulty. In addition, the Board finds that the requested variances are the minimum necessary to allow the proposed improvements to this existing legal nonconforming house, which has been in place for over 115 years, and thus are the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would otherwise 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;*

The Board finds that the proposed construction continues the residential use of the home, and therefore can be granted without substantial impairment to the intent and integrity of the applicable 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.*

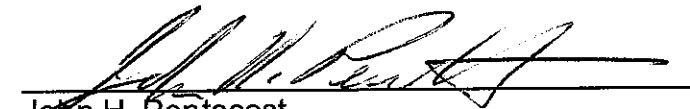
The Board finds, based on the Statement, testimony, and written confirmation, that the Petitioners have discussed their plans with their abutting and confronting neighbors, and that none object to the proposed construction. The Board further finds that the subject property is at the end of the dead-end street, and is bordered on two sides by woods. See Exhibits 3 and 7(a)-(c). In light of this, the Board finds that granting the requested variances will not adversely affect the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variances are **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5(a)-(f).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Bruce Goldensohn, Vice Chair, Mary Gonzales, and Richard Melnick 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 3rd day of February, 2021.


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.