

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
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(240) 777-6600

CASE NO. A-6690

PETITION OF GORDON AND KATHLEEN LI

OPINION OF THE BOARD

(Opinion Adopted April 14, 2021)
(Effective Date of Opinion: April 21, 2021)

Case No. A-6690 is an application for a variance needed for the construction of a screened porch on the rear of this home, in an area of the property that presently contains a deck. The proposed construction requires a variance of 6.5 feet as it is within 18.5 feet of the rear lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.8.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 14, 2021. All participation was done using Microsoft Teams. Petitioners Gordon and Kathleen Li participated in support of the requested variance, assisted by their architect, Kate Adams of CASE Architects & Remodelers.

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

EVIDENCE PRESENTED

1. The subject property is Lot 36, Block C, Pineview Subdivision, located at 5921 Kirby Road in Bethesda, Maryland, 20817, in the R-90 Zone. The property is a corner lot located on the east side of Kirby Road and the south side of Landon Lane, at the intersection of those two streets. It is 9,012 square feet in area, and is described by the Petitioners' application as "wedge-shaped" and "atypically small for the neighborhood." See Exhibits 1, 3(a) and 8(b).
2. The Petitioner's Statement of Justification ("Statement") describes the subject property as "a shallow, 'pie-wedge' shaped corner lot, totaling 9,012 square feet in area,"

and notes that the subject property "is the smallest lot on the block." See Exhibit 3(a).¹ The Statement further describes the property's small size and shape, and the difficulty these constraints pose for the construction of an addition that meets the required setbacks, as follows:

The "pie-wedge" shaped corner lot of the subject property, and the angled placement of the 1957 house present difficulty in maintaining the required setbacks for any potential addition to this property. The small size of the lot area, at 9,012 SF is the smallest lot on the block, even when compared to other corner lots. It is roughly 75 percent the size of other surrounding lots (12,407 SF average lot size).

The Site Plan shows that the property's lot lines along Kirby Road and Landon Lane would meet at an obtuse angle but for the fact that the property line is curved along the intersection of these two streets, creating the pie-wedge shape described by the Petitioners. See Exhibit 4(c).

3. The Statement indicates that the Petitioners purchased this property in 2004, and have made no changes to its exterior or lot coverage since that time. See Exhibit 3(a). The property contains an existing house, built in 1957. The house faces the intersection of Kirby Road and Landon Lane, and is sited close to the required setback lines, as explained in the Statement:

The house is oriented at an angle on the lot, so that the front faces the corner of Kirby Road and Landon Lane. The required setbacks for an R-90 lot, are 30 feet minimum from the street, 8 feet at the side, and 25 feet at the rear. The existing house, as originally built, has the smaller side setback at the rear of the house, and the larger rear setback at the right side, and just barely meets these minimum setbacks. The left rear corner is located 10.6' +/- from the "side" property line, adjacent to their neighbor at Lot 35 on Landon Lane. The right, rear corner is located 24.9' +/- from the "rear" property line, adjacent to the neighbor at Lot 37 on Kirby Rd. The forward-most corner of the house sits 25.6' from the street.

See Exhibit 3(a). This site plan in the record at Exhibit 4(c) confirms the proximity of the existing house to the setback lines.

4. There is an existing deck, 19'-4½" wide and 19'-2" deep, on the right rear side of the house that was constructed by previous owners of the property. The Statement indicates that there is also an areaway on the rear of the home, consisting of two concrete retaining walls and a concrete stairway with eleven risers. The areaway leads up from the basement door to grade, and provides the only exterior egress from the basement. The Statement states that "[t]he location of the original basement areaway along the rear of the house is another extraordinary condition affecting this property and the placement of any screen porch." The Statement notes that the existing deck extends four feet over this areaway, "providing roof cover to the basement door," and that the left wall of the proposed screened porch "is fixed in its location by the existing basement areaway. It is

¹ The Petitioners make this same point about the shape and size of their property in their Homeowner Statement. See Exhibit 3(b).

located as far over the stairs as possible, without reducing head clearance at the stair treads below the required minimum height.” See Exhibit 3(a).

5. The Statement indicates that the size of the proposed porch is the minimum size needed to accomplish the Petitioners’ desired functionality, and states that if the variance were not granted, the width of the porch would barely meet circulation requirements around a dining table and chairs, and would not allow any additional outdoor living space. The Statement states that the Petitioners considered constructing their proposed porch on the right side of their house, but that this location was ultimately rejected for two reasons: first, the porch would front on Landon Lane and thus would offer no privacy, and second, the imposition of the required setbacks to a porch on the right side of the house would limit the size of the proposed porch in a manner similar to the size limitations posed by compliance with the rear setback from which the Petitioners are seeking variance relief. See Exhibit 3(a).

6. The Statement and Homeowner Statement both state that the Petitioners’ adjacent neighbors have verbally indicated their support for the proposed construction and necessary variance relief. See Exhibits 3(a) and (b). The Statement indicates the proposed porch will complement the architecture of the existing home, and will be only minimally visible from Kirby Road, as follows:

The existing house is a 1½ story, brick, Cape Cod, and is one of the few remaining original houses in the neighborhood. The proposed screen porch is a small, one-story addition off the rear of the house, visible only slightly from Kirby Road. The screen porch has been designed to be minimal in scale and to complement the existing architecture of the house. It consists of decorative columns, to be wrapped in composite trim and painted white, with a low-sloped, shed roof, with standing seam metal roofing.

The Statement thus concludes that “[t]he proposed 1-story screened porch addition is in keeping with both the scale and architectural character of the original house and will be minimally visible from the road,” noting that “the change to the existing house from both street-frontages would be minimal,” and that due to infill construction, “the house will still be less than half of the average square footage, and half of the average building height when compared to the new infill development on the street.” See Exhibit 3(a). The Petitioners include photographs of their home and neighboring properties with their submission to support this contention. See Exhibits 5(i) – (s).²

7. At the hearing, Petitioner Kathleen Li testified that she has lived in the home on the subject property since 2004, and that she and her husband are seeking to better utilize their outside space. She testified that their house was constructed in 1956 or 1957, and that it is one of the few original homes left in the neighborhood.

Ms. Li described the subject property as an odd, shallow, pie-wedge lot. She testified that the existing house is oriented towards the corner of Kirby Road and Landon

² The Board notes here that Exhibit 5(n) shows new construction on Kirby Road, and that this Exhibit notes that the Petitioners’ home and the home of their adjacent neighbor at 5919 Kirby Road are the only two original houses remaining on their side of this block of Kirby Road.

Lane, and that the back of the house contains an areaway providing access to the home's basement. Ms. Li testified that they had considered other options for the proposed construction, but that none met their needs, and that they are basically trying to cover their existing deck with a screened porch. Ms. Li testified that they had talked with their immediate neighbors, and that had no objection to the proposed construction.

8. Petitioners' architect, Kate Adams, testified that due to the placement of the house on the subject property, there is not a lot of buildable area available to the Petitioners for the location of an addition anywhere on their house. Ms. Adams testified that the areaway on the rear of the house prevents the Petitioners from sliding the proposed porch further to the left along the back of the house, and that she has pushed the proposed porch as far to the left, over the areaway stairs, as she could. Ms. Adams testified that the proposed porch is slightly smaller than the existing deck to minimize the amount of variance needed, and that the size of the proposed porch is intended to allow for adequate clearance and circulation in the space, including around a table and chairs. She testified that the deck existed when the Petitioners purchased the property, and that it meets the required setbacks for a deck, which are different from those applicable to a screened porch. Ms. Adams testified that the right rear corner of the proposed porch encroaches on the required rear setback. Finally, in response to a Board question, she testified that the Petitioners' home is a one and a half story, original house, and that she designed the proposed porch to be as low as possible, out of consideration for the neighboring properties.

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, based on the Statement, Site Plan, and Zoning Vicinity Map, that the subject property is the smallest on the block, and is only 75% as large as surrounding properties (9,012 square feet versus 12,407 square foot average). The Board further finds that the subject property has an unusual wedge shape, as described herein and in the Statement, and as shown on Exhibits 4(c) and 8(b), and that this shape, combined with the relatively small size of the subject property, serves to uniquely constrain the area available for construction on this property under the Zoning Ordinance, in satisfaction of 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 Petitioners purchased this property in 2004, and have made no changes to the property's exterior or lot coverage since that time. See Exhibit 3(a). The Board notes that since the subject property was developed in the 1950s, and

thus finds that the Petitioners are not responsible for the size or shape of their property, or its available buildable area, in satisfaction of this element of the variance test.

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 area of the property to be occupied by the proposed screened porch approximates the area occupied by an existing deck, the construction of which occurred prior to the Petitioners' purchase of the property. The Board finds that the proposed porch cannot be shifted farther left along the back of the house without blocking the areaway and stairway that provide egress from the home's basement. The Board further finds, based on the testimony of Ms. Adams and the Site Plan at Exhibit 4(c), that the applicable setbacks severely limit the ability to expand this home in any direction, and that the requested variance relief is the minimum needed to allow the proposed construction to the rear of this house and thus to overcome the constraints otherwise imposed on this property's buildable area by the Zoning Ordinance, due to the property's size and shape. Accordingly, the Board finds that this element of the variance test is satisfied.

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 home, and thus can be granted without substantial impairment to the intent and integrity of the applicable Bethesda-Chevy Chase Master Plan (1990), which seeks to ensure continuation of existing residential character and patterns in this area.

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.*

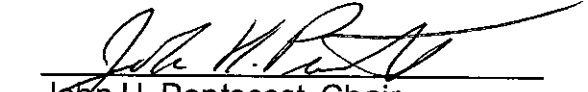
The Board finds, based on the Statement, that the proposed construction will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test. In support of this, the Board finds that the proposed porch is designed to complement the architecture of the existing home, that it is one story in height and occupies existing outdoor living space associated with this home, that it will be only minimally visible from the road, and that other locations would be less private. See Exhibit 3(a). In addition, the Board notes that as represented in the Statement and Homeowner Statement, the Petitioners' neighbors are aware of their proposed construction and have no objections. See Exhibits 3(a) and (b).

Accordingly, the requested variance of 6.5 feet from the rear lot line is **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(b)-(c) and 5(a)-(h).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, with Bruce Goldensohn, Vice Chair, Mary Gonzales, and Caryn Hines 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 April, 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.