

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6691
PETITION OF OYVIND AND CHUN DAHLE**

OPINION OF THE BOARD

(Opinion Adopted April 21, 2021)
(Effective Date of Opinion: April 28, 2021)

Case No. A-6691 is an application for a variance needed to allow construction of an addition. The proposed construction requires a variance of eight (8) feet as it is within seventeen (17) 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 Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on April 21, 2021. All participation was done through Microsoft Teams. Petitioners Oyvind and Chun Dahle participated in support of the requested variance, along with their architect, Craig Moloney, AIA, of CEM Design.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is, Lot 6, Block E, Highland Stone Subdivision, located at 8511 Victory Lane, Potomac, Maryland, 20854, in the R-90 Zone. It has an area of 8,203 square feet. The subject property is a four-sided lot, generally rectangular in shape, located on the north side of Victory Lane. It was recorded in 1964. The Petitioners indicate that their property's shallowness, narrowness, and slope cause them a practical difficulty and necessitate the need for variance relief. They highlight the difference in the depth of their lot and the lots to their rear. See Exhibits 1, 3, 4, and 7(a).

2. The Board of Appeals granted a variance for the construction of the Petitioners' existing screened porch to previous owners of the property in Case No. A-3537, effective May 15, 1992. The Justification Statement ("Statement") submitted by the Petitioners describes the existing porch as "decaying." The Petitioners' existing porch is 16 feet wide, 10 feet deep, and extends to within 17 feet of the rear property line. They are proposing to replace it with an addition that will also be 16 feet wide and 10 feet deep, and that will also extend to within 17 feet of their rear property line. See Exhibit 3.

3. In addition to stating that their property is shallow, narrow, and impacted by topography, the Petitioners assert in their Statement that many houses in the neighborhood have additions, and that their proposed addition, which they state would fit architecturally with their existing house, would also be consistent with the development pattern of their street and neighborhood. See Exhibit 3.

4. The Statement indicates that the Petitioners have spoken with their abutting and confronting neighbors, and that those neighbors do not object to the proposed construction. The Statement also states that the proposed construction will not extend any further to the rear of the property than the existing screened porch, and thus "will not cause any further intrusion on abutting or confronting properties." See Exhibit 3.

5. At the hearing, Petitioner Oyvind Dahle testified that the existing screened porch was built pursuant to the grant of a variance, and that it is falling apart. He asserted that the existing porch is a nonconforming structure. Mr. Dahle testified that he and his wife are allowed to replace the existing porch in kind, but are seeking instead to replace with an addition. He testified that without the grant of a variance, there is no practical way to fix this situation. Mr. Dahle testified that they need to have something in this location at the rear of their house because of the sloping nature of the back yard, and the French doors leading out of their house to the back yard in that location. Mr. Dahle testified that in addition to being sloped, the subject property is also narrow, and that there is no other practical use of the portion of the property currently occupied by the porch.

6. Petitioner Chun Dahle testified that their screened porch is decaying, and has been that way for 10 years. She testified that she spoke with the neighbors on both sides of her home, and with the two neighbors whose properties abut the subject property to the rear, and that they all said that they did not have a problem with the proposed addition. In response to a Board question asking if the proposed addition included a full foundation in addition to a first and second floor, Ms. Dahle answered in the affirmative.

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 at 8,203 square feet, the subject property is substandard in size for the R-90 Zone, which has a 9,000 square foot minimum. In addition, the Board finds that because of the shallow nature of this property, the application of the 25-foot rear lot line setback to the property leaves the Petitioners only two (2) feet to expand their house to the rear, effectively precluding any expansion in that direction, and that the Petitioners have testified that the property in this area is sloped. The Board notes that a

variance was previously granted in 1992 by this Board, to a previous owner, to allow construction of the existing 10 foot by 16 foot screened porch, presumably because of the afore-mentioned constraints. The Board finds that these circumstances constitute an extraordinary condition that is peculiar to this property. 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 evidence indicates that the subject property was recorded in 1964. See Exhibit 1. Accordingly, the Board finds that the Petitioners are not responsible for the small size and shallow nature of this lot, for its sloped rear yard, or for the constrained buildable area to its rear that results from the application of the required setbacks to this property.

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 eight (8) 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 required setbacks to this property, on account of its shallow nature and substandard size. The Board notes that the proposed encroachment for which the variance is requested does not extend beyond the encroachment of the existing screen porch, for which this Board granted a variance in 1992.

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 granting of this variance will continue the residential use of the home, and thus can be granted without substantial impairment to the intent and integrity of the applicable Potomac Subregion 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 grant of this variance will not increase the incursion of the existing home into the rear setback beyond the incursion currently posed by the porch. The Board notes, per the Statement and the testimony of Ms. Dahle, that the Petitioners have discussed their proposed construction with their abutting to either side and to the rear, and that none oppose the proposed construction. See Exhibit 3. Thus the Board finds that granting this variance, to allow the Petitioners to replace their existing screened porch with an addition of similar width and depth, will not be adverse to the use and enjoyment of abutting or confronting properties.

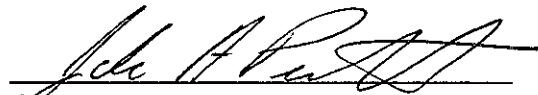
Accordingly, the requested variance of eight (8) feet from the rear lot line setback is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and

2. Construction shall be in accordance with Exhibits 4 and 5(a)-(f).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, 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 28th 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.