

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6696
PETITION OF TRACY McCRACKEN**

OPINION OF THE BOARD
(Hearing Held: April 28, 2021)
(Effective Date of Opinion: May 5, 2021)

Case No. A-6696 is an application by Tracy McCracken (the "Petitioner") for a variance necessary for the construction of a proposed second floor addition over an existing first floor. The proposed construction requires a variance of three (3) feet as it is within four (4) feet of the left lot line. The required setback is seven (7) 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 28, 2021. All participation was done through Microsoft Teams. Petitioner Tracy McCracken participated in support of the requested variance.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 19, Block 4, Indian Springs Park Subdivision, located at 9505 Evergreen Street in Silver Spring, Maryland, 20901, in the R-60 Zone. It is a small, narrow, rectangular lot, much deeper than it is wide (44 feet wide by 125 feet deep), with a total area of 5,500 square feet. The property is located on the east side of Evergreen Street. See Exhibits 3, 4(a), and 9.
2. The Petitioner's Justification Statement ("Statement") indicates that the Petitioner purchased the subject property in 2014. It indicates that the home was built in 1939, and that it is a nonconforming structure. See Exhibit 3. The Building Permit Denial, issued by the County's Department of Permitting Services, also indicates that the existing house is a nonconforming structure. See Exhibit 6.
3. The Statement states that there have been "no changes or expansion to the original ~1200 sq/ft two bedroom and one bath footprint and profile" of the home since it

was built in 1939. The Statement indicates that the Petitioner is seeking to construct a second floor addition directly over existing first floor space, that the existing home is located four (4) feet from the property's left side lot line, and that the proposed addition would not increase the existing footprint of the house. See Exhibit 3. The Statement describes the minimal nature and impact of the proposed addition, as follows:

The second-floor addition will follow the existing non-conforming footprint of the first floor and will not change or reduce the setback from property line or existing neighboring structures. The proposed addition will also not increase the height of the current structure as only the rear roof slant will be decreased in-line with the height in-line with front roof line which will remain unchanged. The front of the house will remain unchanged.

4. With respect to the impact of the proposed construction on neighboring properties, the Statement at Exhibit 3 notes the following:

... the planned construction is equivalent to the renovation other Cape Cods in the neighborhood. All abutting properties have an equivalent second story addition. The petitioner has discussed planned renovation with neighbors and has submitted with this application signed letters of support for the granting of this variance from all abutting and confronting property owners.

See Exhibit 3. The Board further notes that the record contains letter of support for the grant of the requested variance from six of the Petitioner's abutting, confronting, and nearby neighbors, most noting that their homes have similar additions, and all stating that the proposed construction will not change the width, height, or appearance of the Petitioner's home from the street. See Exhibits 7(a)-(f).

5. At the hearing, the Petitioner testified that she purchased her home in 2014. She testified that it is a small Cape Cod located four (4) feet from the left side lot line. She testified that her home, like many others in the neighborhood, was built in the 1930s. The Petitioner testified that she is seeking to expand her unfinished attic, and that hers is the only house on the street and one of few in the neighborhood without an attic expansion. She testified that the proposed construction would not change the footprint or height of her home, or its appearance from the street, but that it would change the slant of the roof on the back of her house. The Petitioner testified that her neighbors have similar additions, and support the requested variance.

FINDINGS OF THE BOARD

Based on the Petitioner's 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.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the existing house on this property was built in 1939 and does not conform to the required left side lot line setback. The Board further finds that the Petitioner has asserted, and DPS has determined, that the existing structure is nonconforming. See Exhibits 3 and 6. In addition, the Board finds that the Petitioner is proposing to construct a second floor addition directly over this nonconforming structure, including its left side wall. See Exhibit 5(a)-(e). Thus the Board finds that the proposed development uses an existing legal nonconforming structure, in satisfaction of this element of the variance test.

Section 59.7.3.2.E.2.a.v. - the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, per the Statement, letters of support, and testimony of the Petitioner, that the proposed addition to this Cape Cod home substantially conforms with the existing expansions of most of the Cape Cod homes in the immediate vicinity, and will preserve the appearance of this home from the street, which has been the same since 1939. See Exhibits 3 and 7(a)-(f). Thus the Board finds that the proposed construction would substantially conform with the established historic or traditional development pattern of this street or neighborhood, 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 Petitioner, who purchased the subject property in 2014, did not construct or have control over the placement of the original house, which again was built in 1939. See Exhibit 3. Similarly, the Board finds that the Petitioner is not responsible for the development pattern in this 1930s neighborhood, including the later expansion of similar homes. Accordingly, the Board finds that the special circumstances or conditions applicable to this property are not the result of actions by the Petitioner, 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 finds that without the grant of the requested variance, compliance with the setbacks in the Zoning Ordinance would prevent Petitioner from being able to construct the proposed second floor addition on her existing legal nonconforming house, causing her a practical difficulty. The Board finds that the requested variance is the minimum needed to allow the proposed construction, and notes that the Petitioner's proposed addition will not change the footprint of the existing house, will not change its appearance from the street, and will conform with the established development pattern on this street and in this neighborhood. Thus the Board finds that the requested variance is the minimum necessary to overcome the practical difficulty posed by full compliance

with the setbacks set forth in the Zoning Ordinance, in satisfaction of this element of the variance test.

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 construction of the proposed addition continues the residential use of the home, and is consistent with the Four Corners Master Plan (1996), which reconfirms existing single family residential zoning and is seeks to "[p]reserve and maintain the character and integrity of the existing, well-established Four Corners residential neighborhoods as a foundation of the community by assuring that new development, infill development, and special exception uses are compatible with the existing residential character."

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.*

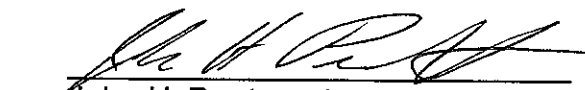
The Board finds that allowing the construction of the proposed second floor addition will not be adverse to the use and enjoyment of abutting or confronting properties since it will not increase the footprint of the existing house, will be consistent with other additions in the neighborhood, and will not be visible from the street. The Board notes that per the Statement, the Petitioner has discussed her proposed construction with her neighbors, and none object. The Board further notes that the record contains letters of support from six of Petitioner's neighbors, and no letters of opposition. See Exhibits 3 and 7(a)-(f).

Accordingly, the requested three (3) foot variance from the left lot line, to allow construction of a second floor addition, 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(a)-(b) and 5(a)-(e).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Mary Gonzales, with Bruce Goldensohn, Vice Chair, Richard Melnick, 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 5th day of May, 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.