

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
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**Case No. A-6704  
PETITION OF AMY SWIFT AND DANIEL GOLDBERG**

OPINION OF THE BOARD  
(Hearing Date: June 9, 2021)  
(Effective Date of Opinion: June 18, 2021)

Case No. A-6704 is an application by Petitioners Amy Swift and Daniel Goldberg for a variance needed for the proposed construction of a second floor porch. The proposed porch requires a variance of three (3) feet as it is within seventeen (17) feet of the rear lot line. The required setback is twenty (20) 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 June 9, 2021. All participation was done via Microsoft Teams. Petitioners Amy Swift and Daniel Goldberg participated in support of the requested variances, assisted by their architect, Eric Saul.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 14, Block 38D, Fletchers Addition Subdivision, located 7218 Garland Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone. It is a four-sided interior lot located on the west side of Garland Avenue. The property has an angled rear lot line, such that the right side of the property is significantly deeper than the left side. It has an area of 5,163 square feet and is thus substandard for the R-60 Zone, which has a minimum lot size of 6,000 square feet. See Exhibits 3 and 4.
2. The Petitioners purchased the subject property in 2017, and are proposing to construct a roofed, second floor open porch above an existing side addition that was built in or around 1999. This side addition replaced a screened porch, and was built pursuant to the 1999 grant of a three (3) foot variance from the setback for the rear lot line. See BOA Case No. A-5296. There is a deck on top of this side addition, and the Petitioners are proposing to construct a roof over that deck, creating an open porch. The proposed porch will use the footprint of the existing addition, and will not extend any further into the rear setback than that addition already does. The Petitioners' Justification Statement

("Statement") notes that per the Zoning Ordinance, open porches can extend up to nine (9) feet into the rear setback by right, and that the only reason a variance is needed for the proposed porch is that the underlying side addition was built pursuant to the grant of a variance and is therefore bound by the terms of that grant. See Exhibit 3.

3. In connection with the grant of the 1999 variance, the Board found that the subject property had angled lot lines, including its rear lot line, and that this limited the property's buildable envelope. See BOA Case No. A-5296. The Petitioners' Justification Statement ("Statement") similarly notes that the property "is irregular in shape causing the rear lot line to not be parallel with the rear of the house, thus creating a rear setback line that clips the south corner of our proposed project by three feet." See Exhibit 3. The Site Plan confirms that this is the case. See Exhibit 4.

4. The Statement notes that it would be impractical to build a "partial porch" and leave a portion of the existing deck uncovered by the proposed roof. The Statement reiterates that the proposed construction, a portion of which encroaches three (3) feet into the rear setback, would be allowed by right if it were not on top of an addition that was built pursuant to the grant of a variance. It notes that the proposed porch preserves the residential character of the neighborhood, and that it "will not negatively impact the adjoining rear yard." The Statement states that the proposed porch "will not negatively impact the character, health, safety, welfare, or security of the neighboring residents," and that it will "remain under the allowable height limit and not be built any closer to a current setback." See Exhibit 3.

5. At the hearing, Mr. Saul showed the Board a photograph of the house with its existing side addition and deck. He testified that the Petitioners are seeking to create an open porch, and that the Zoning Ordinance allows open porches to extend nine (9) feet into the front and rear setbacks, noting that the proposed porch extends only three (3) feet into the rear setback. Mr. Saul testified that the Department of Permitting Services told him that because the structure underneath the proposed porch was built pursuant to the grant of a variance, the Petitioners would need permission from the Board for the proposed construction. In response to a Board question, he confirmed that the proposed porch would not encroach any farther into the setback than the addition allowed by the 1999 variance. Mr. Saul testified that the roof of the proposed porch would be approximately one foot lower than the roof of the main house, and would have a slightly shallower pitch. He testified that the proposed porch would match the character of the existing house.

## **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 5,163 square feet, the subject property is significantly substandard in size for the R-60 Zone, which has a 6,000 square foot minimum. In addition, the Board finds that the subject property has an unusual shape and angled rear lot line, and that these factors, combined with the property's small size, significantly constrain the property's available buildable envelope. The Board finds that these circumstances constitute an extraordinary condition peculiar to the subject property, in satisfaction of 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 Board finds that the Petitioners purchased the subject property in 2017, and are not responsible for the small size or unusual shape of this lot, including its angled rear lot line, 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, the Petitioners cannot construct their proposed open porch—which would otherwise be allowed to extend nine (9) feet into the rear setback—directly on top of their existing side addition. The Board finds that the requested three (3) foot variance for the open porch is needed to allow construction above the area of construction allowed by the 1999 variance granted in Case No. A-5296, and is the minimum necessary to overcome the practical difficulty that full compliance with the setbacks imposed by Zoning Ordinance would cause because of the constraints on the buildable envelope that result from the application of the setbacks to the property, on account of its unusual shape, angled rear lot line, and small size. 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 the property and that the variance will not impair the intent, purpose, or integrity of the Takoma Park Master Plan (2000) which seeks, among other things, "to support stable residential neighborhoods."

*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 footprint of the existing home into the rear setback and, per the Statement, will not negatively impact the abutting neighbor to the rear. The Board notes that the proposed construction will comply with applicable height limitations, and will not encroach any

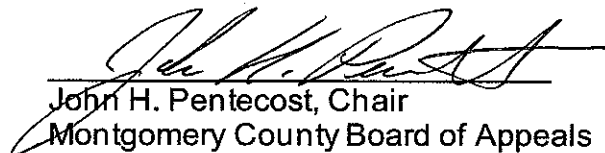
further into the rear setback than the existing house. In addition, the Board notes that the record does not contain any opposition to the grant of the requested variance. Thus the Board finds that granting this variance, to allow a second floor open porch, will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance of three (3) 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)-(c).

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 18th day of June, 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.