

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6712
PETITION OF BOBBY GONZALEZ AND JOSE GONZALEZ**

OPINION OF THE BOARD
(Hearing Held: September 15, 2021)
(Effective Date of Opinion: October 1, 2021)

Case No. A-6712 is an application by Bobby Gonzalez and Jose Gonzalez (the "Petitioners") for eight (8) variances necessary for the proposed renovation of an existing home, including the addition of a second story, wraparound open porch, and window wells. The proposed construction requires the following variances:

The proposed construction requires a variance of 19.70 feet as it is within 5.30 feet of the front lot line. The required setback is 25.00 feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The proposed construction, an open porch, requires a variance of sixteen (16) feet as it is within zero (0) feet of the front lot line. The required setback is sixteen (16) feet, in accordance with Sections 59-4.4.9.B.2 and 59.4.1.7.B.5.a.i of the Zoning Ordinance.

The proposed construction, an open porch, requires a variance of two (2) feet as it is within three (3) feet of the right side lot line. The required setback is five (5) feet, in accordance with Sections 59-4.4.9.B.2 and 59.4.1.7.B.5.a.i of the Zoning Ordinance.

The proposed construction, an open porch roof, requires a variance of 0.21 feet as it is within 6.79 feet of the left side lot line. The required setback is seven (7) feet, in accordance with Sections 59-4.4.9.B.2 and 59.4.1.7.B.5.a.i of the Zoning Ordinance.

The proposed construction, a one-story addition, requires a variance of 19.7 feet as it is within 5.3 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.

The proposed construction, a second floor addition, requires a variance of 0.2 feet as it is within 7.8 feet of the right side lot line. The required setback is eight (8) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The proposed construction, a roof in the front of the home, requires a variance of 18.27 feet as it is within 4.23 feet of the front lot line. The required setback is a minimum

of 22.5 feet. The encroachment permitted is only up to 2.5 feet into the required front setback in accordance with Sections 59-4.4.9.B.2 and 59.4.1.7.B.5.a.vii of the Zoning Ordinance.

The proposed construction, window wells, requires a variance of 13.44 feet as it is within 2.56 feet of the front lot line. The required setback is sixteen (16) feet, in accordance with Sections 59-4.4.9.B.2 and 59.4.1.7.B.5.a.i of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on September 15, 2021. All participation was done through Microsoft Teams. Petitioner Bobby Gonzalez appeared in support of the requested variances, assisted by his architect, Heber Munoz, AIA, NCARB.

Decision of the Board: Variances GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 82, Block 19, American University Park Subdivision, located 4960 Western Avenue in Bethesda, Maryland, 20816, in the R-60 Zone. It is an interior lot, generally rectangular in shape, located on the northwest side of Western Avenue. The subject property has a width of 50 feet and a depth of 125 feet, for a total area of 6,250 square feet. It was recorded in 1899, and contains an existing one and a half story house that was built in 1958. See Exhibits 1, 3, 4(a)-(b), and 8.
2. The Petitioners' Application states that "[t]he front portion of the house is within the front setback requirement of the current zoning regulations although the house is situated 40 ft from the street." The application notes that it is unclear if the property's front yard is in Maryland or the District of Columbia, and states that if the zoning restrictions were strictly enforced, "the living and kitchen areas would need to be demolished," causing the Petitioners a practical difficulty. See Exhibit 1.
3. The Petitioners' Justification Statement ("Statement") states that the house on the subject property was "designed some 60 years ago in a manner that does not conform to the existing use of the zoning laws," referring to the house as an "existing nonconforming structure." It notes that "[t]he front wall of house was built +/- 5.3' from the front property line," and reiterates that the house "is located approximately forty feet from the curb on Western Ave." See Exhibit 3.
4. The Statement asserts that the renovated property will comport with the surrounding neighborhood, stating that much of the neighborhood has "reduced front yard setbacks," and that "[t]here are several properties in the neighborhood that have front porches that are built to either the property line or exceed it." See Exhibit 3. The Petitioners include an attachment with their submission showing some of these properties and their proximity to the subject property. See Exhibit 5(k). The Statement further states that "[m]any of the houses were not placed in an optimal position on the site based on current zoning laws," and "[s]ubsequently over the years there have been many instances of homes that either had existing conditions or were renovated in a manner that

do not conform to the current R-60 setbacks." Finally, the Statement states that "[t]his is the only 1 1/2 story split level along this stretch of Western Avenue. The surrounding dwellings located on the Maryland side and District of Columbia side are either single family attached 2 story condominiums or 2 stories single family detached dwellings." See Exhibit 3.

5. The Statement states that the Petitioners purchased the subject property in 2003, and are not responsible for the nonconforming nature of the existing structure. See Exhibit 3. The Statement notes that the Petitioners have obtained letters of the support from some of their neighbors, and that the proposed construction will not have an adverse impact on surrounding properties, as follows:

The attached petition and letters of support from some abutting property owners reflects the neighborhood's general approval for the variance. The Variance is simply asking to build an additional level above a structure that already exists and a front porch; thus it will not have any adverse effects on the abutting and confronting properties.

6. The Statement states, with respect to the proposed construction, that "location of the existing front wall is not changing," but that the following changes are being made:

1) extending the left wall by three feet, 2) adding an attic level to the existing 1 story structure and 3) adding a front porch similar to the neighboring houses along this stretch of Western Avenue.

See Exhibit 3. The Statement describes the proposed porch as "a 4 foot deep wrapped front porch," and states that adding this porch "to the existing nonconforming structure" would increase the lot coverage by 1.1 percent. The Statement goes on to state that "the conditions of the subject property have a negative impact and create a practical difficulty" that can be resolved by granting the requested variances, and that doing so "would be in keeping with the existing neighborhood." Finally, the Statement states that "[w]hat is being proposed is the most efficient and least obtrusive way to bring the house up to the modern standards that most of the houses in the sub-division have been improved to...." See Exhibit 3.

7. At the hearing, Mr. Munoz testified that the front of the existing house does not conform to the required setbacks, and that he had worked with the Department of Permitting Services to identify all of the variances that would be needed to allow the Petitioners to proceed with the proposed construction. He testified that the existing house is set back 40 feet from Western Avenue but that no one is sure where the actual property line is located, later adding that Western Avenue is maintained by the District of Columbia. Mr. Munoz described the proposed improvements to the house. He testified that the front of the house is designed to comport with the surrounding neighborhood, and that the proposed porch would complement this design, would direct water away from the basement, and would fit the neighborhood.

FINDINGS OF THE BOARD

Based on the 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 was built in 1958 at a distance of 5.30 feet from the front lot line, and does not conform to the required setback. The Board further finds, per the Statement, that the existing house is a legal, nonconforming structure, due to this encroachment, and that the Petitioners are proposing to renovate/expand this existing structure. See Exhibits 3, 4(a)-(b), and 5(a)-(d). 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, based on the Statement, that most of the surrounding homes, whether single family or condominium, are two stories, whereas the existing house on the subject property is only one and a half stories, and that the proposed development would add a second story to this existing home. The Board further finds, based on the Statement and photographic evidence submitted by the Petitioners, that many of the homes in the immediate vicinity have reduced front yard setbacks, and that some have open porches. See Exhibits 3 and 5(k). Thus the Board finds that the development the Petitioners propose substantially conforms with the established historic or traditional development pattern of their 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 Petitioners, who purchased the subject property in 2003, did not construct or have control over the placement of the original house, which again was built in 1958, or over the development on neighboring properties. Accordingly, the Board finds that the special circumstances or conditions applicable to this property are not the result of actions by the Petitioners, 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 the nonconforming location of the existing house, set 5.30 feet from the front property line, in the front setback, effectively eliminates the ability of the Petitioners to renovate their home consistent with the established development

pattern on their street without variance relief. The Board further finds that this constitutes a practical difficulty for the Petitioners, and that the requested variance relief is the minimum needed to overcome this practical difficulty and to allow the Petitioners to renovate their house and comport with this established pattern. Accordingly, the Board finds that the requested variances are the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose, 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 proposed construction will continue the residential use of this property, consistent with the recommendations of the Bethesda Chevy Chase Master Plan, which seeks to "[p]rotect the high quality residential communities throughout the Planning Area" and to "[r]econfirm the zoning for the extensive single-family detached residential areas." Accordingly, the Board finds that this element of the variance test is satisfied.

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 the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties since it will allow the renovation and expansion of this existing, nonconforming home in a manner that is consistent with the development pattern on the street and in the immediate neighborhood. The Board notes, in support of this, that the front wall of the existing home will not be any closer to the front lot line than it currently is, and that the proposed porch will be only four feet deep. The Board further notes that despite the proximity of the existing house and proposed construction to the front lot line, the property will remain setback a significant distance from the curb on Western Avenue. Finally, the Board notes that the record contains letters of support for the proposed construction from two neighbors. See Exhibit 7(a)-(b). Thus the Board finds that this element of the variance test is satisfied.

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

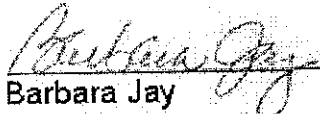
1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5.

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 1st day of October, 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.