

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6804

PETITION OF LINDA TIPTON AND SEAN TIPTON

OPINION OF THE BOARD
(Opinion Adopted April 19, 2023)
(Effective Date of Opinion: April 26, 2023)

Case No. A-6804 is an application for a variance needed for the proposed construction of a room addition (screened porch). The proposed construction requires a variance of three (3) feet as it is within four (4) feet of the side lot line. The required setback is seven (7) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on April 19, 2023. Petitioner Linda Tipton participated in the hearing in support of the requested variance, assisted by her builder, David Ryner. Lawrence Silberman, who owns the abutting property to the east, appeared in opposition.

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

EVIDENCE PRESENTED

1. The subject property is Lot 37, Block 50, Gilberts Addition to Takoma Park Subdivision, located at 34 Freemont Avenue in Takoma Park, Maryland, 20912, in the R-60 Zone. It is a narrow, four-sided through lot, bordered on the south by Freemont Avenue and on the north by Jefferson Avenue. The property's front lot line along Freemont Avenue and side lot lines are set perpendicular to one another. The property's front lot line along Jefferson Avenue is angled, the result being that the left (western) side of the property is deeper than the right (eastern) side. The property has an area of 7,740 square feet, and was recorded in 1918. Per SDAT, the Petitioners purchased the subject property in 1999. See Exhibits 1, 3, 4, and 7(a), and SDAT Printout.

2. The subject property contains an existing house that was built in 1918. The Petitioner's Statement of Justification ("Statement") states that "[d]ue to the very narrow width of the existing lot, the existing house actually sits only 4' to the side property line, as does the existing deck." The Statement further states that the "exceptional narrowness" of the subject property is an extraordinary condition that makes it unique, and further states that the location of the existing house "is most likely due to the age of the subdivision and house (circa 1918)." See Exhibit 3.

3. A variance of four (4) feet from the seven (7) foot side lot line setback was granted in 1990 to allow the construction of a one-story addition to the existing house. See Exhibit 9 (BOA Case No. A-2875).

4. The Petitioners are planning to construct a "15' x 16' screened porch with a landing and steps to grade" on the right side of their existing house, in the location of the existing deck. Like the deck it would replace, the proposed screened porch would align with the right side of the Petitioners' house, and would maintain a four (4) foot setback from the right side lot line. See Exhibit 3. The Petitioners have included a photograph showing their existing deck with their submission, and a Site Plan showing that the proposed porch would be located where the deck currently sits. See Exhibits 4 and 5(b). The Statement indicates that porches like the one proposed "exist now in the area and this lot would be keeping in line with normal improvements." See Exhibit 3.

5. As noted above, the Statement indicates that the property is unusually narrow, and suggests that this may have influenced the location of the existing house. The Statement states that the narrow lot and odd positioning of the house make the property unique. See Exhibit 3. The Statement further states that the Petitioners are seeking to construct a "very modest (240 square feet) porch" in the location of an existing deck, and further states that "if this porch was not screened, the zoning regulations would consider this an open porch and by code, open porches are allowed to encroach exactly 3 feet into the side setback, thus the variance would not even be required." The Statement suggests that the Zoning Ordinance's treatment of a screened porch like an enclosed addition, rather than like an open porch, was an oversight, and notes that like an open porch, a screened porch "lets light and air pass through." Finally, the Statement states that the property is also unique because it is a through lot, with frontage on both Fremont and Jefferson Avenues, and that further states that because the Petitioners' driveway is off of Jefferson Avenue, "moving the porch anywhere else on the property is impractical." See Exhibit 3.

6. The Statement states that "this lot along with the positioning of the house was clearly designed poorly by the developer many years ago or the lot is the victim of zoning regulations that changed sometime after initial construction," noting that "[t]here is no room for any improvement remaining in line with the existing house without requesting a variance," and that "this circumstance is not the result of the applicant in any way as they were not the developer." The Statement states that "[t]his situation is unique to the applicants due to the narrow shape of the lot and positioning of the dwelling." See Exhibit 3.

7. The Statement states that 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. It states that the proposed screened porch is "very modest in size," and that "[a]t only 15' in width and staying in line with the existing house, there is no smaller size that would render the proposed screened porch as practical to even build." See Exhibit 3.

8. The Statement states that "[g]ranteeing the variance will not be adverse to the use and enjoyment of abutting or confronting properties." It notes that "[t]his porch is proposed to be in line with the existing side facade of the house and therefore will have no more impact to that property than this existing house has," and that "[i]f the house was conforming and had 7' to the side, this porch as it remains in line with the house would meet setbacks without a variance." Finally, the Statement states that "as a small screened porch amenity, it will not loom or impact other properties in any way." See Exhibit 3.

9. At the hearing, Petitioner Linda Tipton testified that she purchased the subject property in 1999. She testified that a variance was granted in 1990 for the existing family room addition, and that she presumes that the deck was also built at that time. Ms. Tipton testified that the proposed screened porch would replace the existing deck, which is rotting. She testified that they could have a covered (roofed) deck in this location by right; she testified that because they are proposing to enclose the structure with screens, they need a variance. Ms. Tipton testified that because of the narrowness of the property and the location of the 1918 house, there is no other place on the property to locate the porch.

Ms. Tipton testified that Mr. Silberman, who owns the property next to hers, does not live on that property, and she estimated that his property has been vacant for 20 years. Ms. Tipton testified that her other neighbors support the proposed construction.

In response to the testimony of Mr. Silberman (recounted in paragraph 10, below), Ms. Tipton testified that they could not put the proposed porch on the left side of their house because the only access to such a porch would be from the outside. She testified that all the runoff from their house goes down their driveway to the street. Ms. Tipton testified that with the construction of the porch, the existing gutter along that side of the house would be moved about 15 feet farther away from the house on Mr. Silberman's property. See Exhibit 5(b).

10. Mr. Silberman testified that he is opposed to the grant of the requested variance. He expressed concern about homeowners in Takoma Park who do not comply with zoning and permitting requirements, and testified that he did not want to see compliance with these requirements further eroded. Mr. Silberman testified that he does not believe that the Petitioners' request satisfies the requirements for the grant of a variance. He testified that he is concerned that the roof of the proposed porch will increase runoff towards his property, and that his property is lower than the subject property. Mr.

Silberman testified that the Petitioners could put a porch behind the left side of their house, in conformance with the setbacks, or that they could have a gazebo.

In response to a Board question asking if there were any adverse impacts to his property other than runoff that he expected would result from the grant of the requested variance, Mr. Silberman testified that he did not believe so.

11. Mr. Ryner testified that the roofline of the proposed porch will continue the roofline of the existing kitchen. He testified that the porch will have gutters and downspouts to control water from the roof and to send it away and out.

FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the requested variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59.7.3.2.E of the Zoning Ordinance, 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, consistent with Case No. A-2875, and based on the Statement, the Zoning Vicinity Map, and the testimony of Ms. Tipton, that the subject property is unusually narrow, and that the application of the required setbacks to this narrow through lot results in the property having a very limited buildable envelope that prevents the Petitioners from being able to construct a screened porch that is flush with the existing house, in the location of the existing deck. The Board finds that these circumstances constitute an extraordinary condition that is peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 3, 7(a), and 9.

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 existing house was built on this property in 1918, that a variance for construction on the property was granted in 1990, and that the Petitioners purchased the property in 1999. See Exhibit 3 and SDAT printout. Accordingly, the Board finds that the Petitioners took no actions to create the special circumstances or conditions peculiar to this property, 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 narrowness of the subject property constrains the ability of the Petitioners to construct a screened porch addition that follows the lines of their existing house and deck, causing them a practical difficulty. The Board further finds that granting a variance from the required right side lot line setback is the minimum necessary to allow the proposed construction to proceed at the same distance from that lot line as the existing house and deck. The Board finds that the requested variance is minimal in that it would not allow the porch to extend any further into the side lot line setback than the existing house and deck, or any further than a roofed but unenclosed porch would be allowed to extend by right. Thus the Board concludes that the grant of the requested variance is the minimum necessary to allow the proposed construction and therefore 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; and*

The Board finds that the proposed construction will continue the residential use of the property, and that the grant of the requested 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," in satisfaction of this element of the variance test.

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, per the Statement and the Site Plan, that the proposed construction will replace an existing deck, and will not encroach any closer to the property's right side lot line than the existing house does or than would be allowed if the structure were not screened. See Exhibits 3 and 4. The Board further finds while Mr. Silberman does not support the grant of the requested variance, his primary concern is runoff from the porch roof, which the Board finds, based on the testimony of Mr. Ryner, will be controlled with gutters and downspouts. Finally, the Board notes, in accordance with the testimony of Ms. Tipton, that her other neighbors support the proposed construction. On the basis of the foregoing, the Board finds that the grant of the requested variance 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 from the right side lot line, needed to allow the proposed construction of a screened porch, 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).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Laura Seminario-Thornton, and Alan Sternstein 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 26th day of April, 2023.



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.