

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
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Case No. A-6850

PETITION OF DENISE AND PAUL SKOUTELAS

**OPINION OF THE BOARD
(Opinion Adopted September 18, 2024)
(Effective Date of Opinion: September 25, 2024)**

Case No. A-6850 is an application for a variance needed for the proposed construction of a room addition (screened porch). The proposed construction requires a variance of 14.83 feet as it is within 15.17 feet of the rear lot line. The required setback is thirty (30) feet, in accordance with Section 59.4.9.18.B.2.c and Section 59.4.4.7.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on September 18, 2024. Petitioner Paul Skoutelas participated in the hearing in support of the requested variance, assisted by his architect, Robert Black.¹ The Petitioners' abutting neighbor to the east (left side), Paul Schweitzer, also appeared in support of his neighbors' request.

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

EVIDENCE PRESENTED

1. The subject property is Lot 145, Block F, Avenel Subdivision, located at 9900 Avenel Farm Drive in Potomac, Maryland, 20854, in the RE-2C Zone. The property is a five-sided corner lot located on the east side of Avenel Farm Drive and the south side of Watts Mine Lane. It is generally rectangular in shape, but has a truncated corner that

¹ This hearing was originally scheduled for March 6, 2024, but was continued indefinitely at the request of the Petitioners so that potential design changes could be considered. These design changes have been conceptually approved by the Avenel Community Association. See Exhibit 12. They did not change the extent of the variance originally requested.

faces the intersection and forms its fifth side. The property has an area of 12,806 square feet. See Exhibits 1, 4, and 8.

2. The property contains a house that was built in 1989. The Petitioners purchased the subject property in 2022. See SDAT Printout. The Petitioners' variance Application cites their property's narrowness, shallowness, and shape as extraordinary conditions that make their property unique. See Exhibit 1.

3. The Petitioners are seeking a variance to allow construction of a room addition (screened porch) on the south side of their existing house. The Petitioner's Updated Statement of Justification ("Statement") indicates that they are proposing to remove their existing deck and to "replac[e] it with a one-story covered porch addition that is the same footprint as the existing deck." The Statement states that "[t]he location of the porch was selected because it is the most practical location and works best with the architecture and Avenel architectural guidelines," and that "[e]xisting landscape screening will remain." The Statement notes that the proposed porch would only increase the footprint of the existing house by 352 square feet. The Statement states that even with the proposed porch, the Petitioners' lot coverage would only be 24%, which is less than the permitted 25% lot coverage. See Exhibit 13.

4. The Statement states that the siting of the existing house on the subject property "does not allow for the expansion of the existing footprint without a variance." The Statement further states that "[s]ince the house is sited so tight to the side yard setback and is nonconforming regarding the front and side street setbacks there is no other feasible location that would work and be acceptable to the architectural guidelines of the community." The Statement later reiterates and summarizes these points, stating that "[t]he siting of the existing structure is nonconforming under the current zoning ordinance and based on current setbacks, no buildable area has been provided." See Exhibit 13.

5. The Site Plan shows that the existing house encroaches into the front and side street setbacks. The Site Plan also shows that the existing house is built out to the side (east) and rear (south) setback lines, leaving no room for expansion on those sides without variance relief. See Exhibit 14(a).

6. The Statement states that the proposed addition "uses an existing legal and nonconforming structure" because it "is in place of the existing deck and is connected to a nonconforming structure." See Exhibit 13.

7. In asserting that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would cause the Petitioners due to the unusual or extraordinary situations or conditions of their property, the Statement states that "[s]ince there is no allowable building area because of the existing building footprint and orientation on the site, any improvements would not be allowed without a variance," and that "[t]he location of the porch is the most practical location because of the rear yard dimension." See Exhibit 13.

8. The Statement states that granting the variance needed to allow construction of the proposed porch addition will not be adverse to the use and enjoyment of abutting or confronting properties because it will replace an existing deck, and because “[e]xisting landscape screening will remain and be added.” The Statement further states, in support of this, that the “scale of the porch addition is appropriate to the main structure,” that the “use of window screening creates an open and airy appearance vs. a structure with solid walls and minimal glazing,” that the “roof design is flat to maintain egress from the second floor windows and to reduce the scale of the addition,” and that the “proposed additions aesthetic complements the original neighborhood and architecture.” See Exhibit 13.

9. The record contains a letter of support for the approvals necessary to allow the construction of the proposed porch addition from the Schweitzers, whose property abuts the Petitioners’ property to the east (i.e. to the left). The Schweitzers’ letter states that the proposed construction would “improve the aesthetics of the area adjacent to our two houses.” See Exhibit 7.

10. The record contains a letter from the Avenel Community Association expressing conceptual approval for the proposed porch and landing. See Exhibit 12. The letter contains the following comments:

The Committee has concerns that the multiple directionalities of the various design/finish may be excessive and requests that more consistent and limited patterns on the trim features.

Please note that this is a conceptual approval, and a final submission will be required to include details, to include, but not limited to a detailed landscape plan and material/color selections.

The Association reserves the right to require additional landscape screening or replacement of trees or other landscape in the future if determined to be necessary.

11. At the hearing, Mr. Skoutelas testified that he and his wife purchased the subject property in 2022. He testified that at that time, the deck was in poor condition and unsightly. Mr. Skoutelas testified that they engaged the services of an architect, and are seeking to construct a one-story screened porch that uses the footprint of the existing deck.²

12. Mr. Black testified that the configuration of the subject property and the application of the setbacks results in minimal buildable area being available without

² Mr. Black later testified that the footprint of the proposed porch would actually be smaller than that of the existing deck, explaining that while the proposed porch would occupy the same footprint as the main area of the existing deck, the existing deck actually includes a long walkway from its main area to the kitchen that will be removed.

variance relief. He testified that he worked with the Avenel Community Association on a revised plan for the porch, and that the Association has conceptually approved the proposed porch with retractable screens. Mr. Black testified that he believed the Association thought that retractable screens would make the structure appear more open, and that it was their goal that the porch would be open air most of the time.

13. Mr. Schweitzer testified that he is the original owner of the property that abuts the subject property to the east, and that he still lives on that property. He testified that the Petitioners' house, when it was built, was pushed back as far as possible into the corner of the subject property, later stating that builder has pushed the Petitioners' house "too far back" on the property in a way that he believed was "inappropriate" because it left no back yard or side yard. Mr. Schweitzer testified that the Petitioners cannot do anything on the front of their house. He testified that his house has a screened porch, and that he did not need a variance for his porch. Finally, Mr. Schweitzer testified that he and the Petitioners' abutting neighbor to the south (rear) both support the grant of the requested variance.

14. In response to a Board question asking if the screened porch would have the same footprint as the existing deck, Mr. Black testified that it would, presumably referring to the main area of the existing deck. Mr. Schweitzer then testified that the area occupied by the proposed porch would actually be less than the area occupied by the existing deck because a 25- to 30-foot long, four (4) foot wide stretch of decking that currently extends between the main area of the deck and the kitchen is being removed.

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, based on a review of the variance Application, Site Plan, and Zoning Vicinity Map, that while the subject property is similar in size to the properties to its east (and north, in the case of the confronting property across Watts Mine Lane) that have frontage on Watts Mine Lane and Watts Mine Terrace, it is notably smaller than the properties to its north and south along the east side of Avenel Farm Drive, which appear to be nearly twice the size of the subject property, and even smaller still than the properties to its west that front on Avenel Farm Drive, which appear to be about six times as large as the subject property. The Board further finds, based on the Zoning Vicinity Map, that all of the afore-mentioned properties are located in the RE-2C Zone,

and thus are presumably subject to the same setbacks. See Exhibits 1, 4, and 8. In addition, the Board finds, based on the Site Plan and the testimony of Mr. Black and Mr. Schweitzer, that when the Petitioners' house was constructed, it was pushed as far back as possible on the subject property from Avenel Farm Drive and Watts Mine Lane, ostensibly to limit the extent of the encroachment of the home's existing (nonconforming) garage into the setback from Watts Mine Lane.³ The Board finds that the builder's original placement of the Petitioners' house against the property's side and rear setback lines leaves no room for further development on the property. Thus the Board finds that the relatively small size and unusual five-sided shape of the subject property, combined with the builder's placement of the original house on the property, constitutes an extraordinary condition that causes the subject property to have a very constrained buildable envelope, 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 subject property was developed and built in 1989. See Exhibit 1 and SDAT Printout. Thus the Board finds that the Petitioners, who purchased this property in 2022, took no actions to create the size and shape of their property, or to influence the placement of their existing house on the 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, per the Statement, Site Plan, and the testimony of Mr. Black and Mr. Schweitzer, that due to the property's small size and unusual shape, the original siting of the Petitioners' house, and the constraints these factors create on the property's buildable envelope, full compliance with the setbacks imposed by Zoning Ordinance would cause the Petitioners a practical difficulty because adherence to the setbacks essentially eliminates the possibility of expanding the Petitioners' existing home in any direction without variance relief. See Exhibits 13 and 14(a). The Board further finds, based on the Statement and testimony of record, that the proposed "one-story screened porch addition" will maintain the footprint of the main area of the deck that it is replacing, but will actually have a smaller footprint than the entirety of the deck because the walkway portion of the deck is being removed. Accordingly, the Board finds that the requested variance is the minimum needed to overcome the practical difficulty posed by full compliance with the Zoning Ordinance on account of the property's small size and shape, and on account of the unusual placement of the house on this property, 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*

³ The Board notes, per the Site Plan, that the Petitioners' existing house extends into the required setbacks from both Avenel Farm Drive and Watts Mine Lane. See Exhibits 4 and 14(a).

The Board finds that the Petitioners' proposed porch addition will continue the residential use of their home. Thus the Board finds that the requested variance, which is needed to allow the Petitioners to proceed with the proposed construction, can be granted without substantial impairment to the intent and integrity of the Potomac Subregion Master Plan (2002), 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, based on the Statement and Site Plan, that the proposed construction will not be adverse to the use and enjoyment of abutting or confronting properties because the proposed porch will replace an existing deck, will be screened by existing and possibly supplemental landscaping, will be of a scale that is "appropriate to the main structure," will use screening to "create[] an open and airy appearance," will have a flat roof to "reduce" its scale, and will have an aesthetic that "complements the original neighborhood and architecture." See Exhibits 13 and 14(a). The Board further finds, per the letter of support and the testimony of Mr. Schweitzer, that the Petitioners' abutting neighbors on Watts Mine Lane and Avenel Farm Drive support the grant of the requested variance. See Exhibit 7. In addition, the Board finds that the Avenel Community Association has approved the proposed construction in concept, but reserves the right to change decorative details and required landscaping. See Exhibit 12. Finally, the Board notes that despite being properly Noticed and posted, the record contains no opposition to the grant of the requested variance, and no one appeared at the hearing in opposition. Accordingly, the Board finds that granting this variance, to allow construction of the proposed porch addition, 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 14.83 feet from the rear lot line is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be generally in accordance with Exhibits 5(a)-(c) and 14(a), but may be modified as needed to accommodate additional requests from the Avenel Community Association.

Therefore, based upon the foregoing, on a motion by Alan Sternstein, seconded by John H. Pentecost, Chair, with Richard Melnick, Vice Chair, Caryn Hines, and Amit Sharma 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 25th day of September, 2024.



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.

