

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
<http://www.montgomerycountymd.gov/boa/>

(240) 777-6600

Case No. A-6866

PETITION OF PHILIP AND MICHELE GIBBS

OPINION OF THE BOARD
(Hearing Held: June 5, 2024)
(Effective Date of Opinion: June 18, 2024)

Case No. A-6866 is an application by Philip and Michele Gibbs (the "Petitioners") for a variance needed to permit an alteration to the roof on the left side of an existing non-conforming structure. The proposed construction requires a variance of 3.30 feet as it is within 3.70 feet of the left (west) 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 Wednesday, June 5, 2024. Petitioner Michele Gibbs appeared at the hearing in support of the request.

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

EVIDENCE PRESENTED

1. The subject property is Lot 2, Block 3, Indian Spring Club Estates Subdivision, located at 305 Normandy Drive in Silver Spring, Maryland, 20901, in the R-60 Zone. It is a rectangular lot located on the north side of Normandy Drive. The property's north (rear) and south (front) lot lines measure 55 feet each, and its east and west side lot lines measure 100 feet each, giving the property a total area of 5,500 square feet, which is substandard for the R-60 Zone. See Exhibit 4(a). The minimum size in the R-60 Zone is 6,000 square feet.

2. The Petitioners' Statement of Justification ("Statement") states that the property contains a house that was built in 1940. See Exhibit 3. The existing house has a "bump out" on its left side which extends to within 3.70 feet of the left side lot line. See Exhibits 1 and 4(a). The Statement states that the existing structure was built prior to enactment

of the currently applicable seven (7) foot side setbacks, which were established by the 1954 Zoning Ordinance, and as such, is nonconforming and grandfathered. For this reason, the Statement states that the proposed construction “uses an existing legal nonconforming property or structure,” in satisfaction of Section 59.7.3.2.E.2.a.ii of the Zoning Ordinance. See Exhibit 3. The nonconforming nature of the existing house is confirmed on the Building Permit Denial. See Exhibit 6.

3. The Statement states that the property was last purchased in 1977, and that at that time, it was “purchased as-is with the nonconforming conditions.” Thus the Statement asserts that the Petitioners are not responsible for construction of the existing nonconforming structure. See Exhibit 3.

4. The Petitioners are seeking a variance to allow for “the partial roof demolition of an existing side structure,” and to permit replacement of that roof with “a new higher ceiling roof” that will “raise the interior ceiling height.” The Statement notes that “[t]he proposed roof modification is to be the same dimensions as the existing structure where the roof will be partially removed to raise the ceiling height in the space.” See Exhibit 3.

5. The Statement states that “[r]elocating the existing structure to the rear of the house” would also require changing the layout of the existing kitchen and existing rear yard access, making the renovation “difficult” and “non-efficient.” The Statement states that granting the requested variance “would allow the homeowner to keep the current layout of the kitchen without needing to construct the addition at the rear of the house.” See Exhibit 3. In addition, the Petitioners’ variance Application states that placing the proposed addition on the rear of the Petitioners’ house instead of in the location of the existing side bump out would be difficult on account of the property’s topography. See Exhibit 1. The Statement thus concludes that granting the request variance is the minimum needed to overcome the practical difficulty posed by full compliance with the Zoning Ordinance. See Exhibit 3.

6. The Statement states that granted the requested variance will not be adverse to the use and enjoyment of neighboring properties, noting that “[t]he new structure will not affect abutting or confronting properties ... [s]ince the existing structure already impedes the required setback,” and that “[t]he new roof modification would not change in size or height, therefore it will not change light, air, privacy, nor the enjoyment available to the abutting and confronting properties.” See Exhibit 3.

7. The record contains numerous letters from the Petitioners’ neighbors, including their neighbors to the left (west), stating that they have no objection to the proposed construction. See Exhibits 7(a)-(k).

8. At the hearing, Petitioner Michele Gibbs testified that her husband purchased the subject property in the late 1970s. Ms. Gibbs testified that the proposed changes involve straightening the wall on the existing “bump out” to eliminate an indentation that she believes was originally designed to hold an exhaust fan. She testified that the proposed

construction would not affect sight lines or air circulation, and that there would be no change to the footprint of the structure.

Ms. Gibbs testified that she had gone door-to-door in her neighborhood, showing her neighbors the architectural drawings for the proposed construction so that they would know what was going on, and would hopefully lend their support.

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.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds, based on the Statement and Site Plan, that the proposed development uses an existing structure that extends approximately 3.30 feet into the left (west) side setback, and that was built in 1940, before the enactment of the currently applicable seven (7) foot side setback imposed by the 1954 Zoning Ordinance. See Exhibits 3 and 4(a). In light of the foregoing, the Board finds that the Petitioners' existing home does not comply with the required side setback, and is nonconforming. Accordingly, the Board finds that the application satisfies 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, based on the Statement, that the house on the subject property was built in its current location in 1940, which predates the most recent purchase of the property in 1977 "with the nonconforming conditions." See Exhibit 3. Thus 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, based on the Statement, Site Plan, and the testimony of Ms. Gibbs, that the Petitioners are not seeking to change the footprint of the existing bump out on the left side of their house, or to increase its encroachment into the left side setback, but rather are simply seeking to modify this feature to increase the interior ceiling height of that space. See Exhibits 3 and 4(a). The Board further finds, based on the Elevations, that even with the requested changes, the "bump out" will only be one story

in height. See Exhibit 5(a). In light of the foregoing, the Board finds that both the requested change, and the variance needed to effect that change, are minimal. In addition, the Board finds that without the grant of the requested variance, the Petitioners will be unable to undertake this small modification to their home, causing them a practical difficulty, and further finds that the requested variance is the minimum needed to overcome that practical difficulty. Accordingly, the Board finds that compliance with the required left side setback, which is violated by the Petitioner's existing house, would pose a practical difficulty for the Petitioners, and that the grant of the requested 3.30 foot variance is the minimum necessary to allow the proposed minor changes to the existing nonconforming structure, and therefore to overcome the practical difficulty imposed by full compliance with 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; and*

The Board finds that the proposed construction will continue the residential use of the home. Accordingly, the Board finds that the variance needed for this construction can be granted without substantial impairment to the intent and integrity of the Four Corners Master Plan (1996), which seeks to "preserve and maintain the character and integrity of the existing, well-established Four Corners residential neighborhoods" by ensuring that new development is "compatible with the existing residential character" of the community, 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 that the proposed construction will not increase the encroachment of the existing structure towards neighboring properties, and in light of this, per the Statement and the testimony of Ms. Gibbs, will not "affect abutting or confronting properties," or "change light, air, privacy, nor the enjoyment available to the abutting and confronting properties." See Exhibit 3. The Board further finds that the record contains eleven (11) letters of support from the Petitioners' neighbors for the proposed construction. See Exhibits 7(a)-(k). Finally, the Board notes that the variance proceedings were properly noticed, that the record contains no opposition to the grant of the requested variance, and that no one appeared at the hearing in opposition to the variance. In light of the foregoing, the Board finds that granting the 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 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(a) and 5(a)-(d).

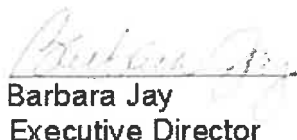
Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Alan Sternstein, and Amit Sharma in agreement, the Board adopted the following Resolution:

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 18th day of June, 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.