

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600  
<http://www.montgomerycountymd.gov/boal>**

**Case No. A-6869**

**PETITION OF STEVEN DUTKY AND MARTHA SUE HOEGBERG**

**OPINION OF THE BOARD**  
(Opinion Adopted June 26, 2024)  
(Effective Date of Opinion: July 10, 2024)

Case No. A-6869 is an application for a variance necessary for the proposed construction of a front porch/steps. The proposed construction requires a variance of ten (10) feet as it is within six (6) feet of the front lot line. The required setback is 16 feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance. The proposed construction requires a variance from the Exemption from Controls set forth in Section 59.4.1.7.B.5 of the Zoning Ordinance, which allows such projections to extend up to nine (9) feet into the front setback. The subject property was previously in the R-60 Zone.

The Board of Appeals held a hearing on the application on May 29, 2024. Petitioners Steven Dutky and Martha Sue Hoegberg appeared at the hearing in support of the application, assisted by their architect, William P. Mallari, FAIA.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 10, Block B, LT 10A Browning Sec 1 9001/127 Subdivision, located at 400 Domer Avenue, Takoma Park, Maryland, 20912, in the R-10 Zone. It is a corner lot, located on the north side of Domer Avenue and bordered to the west by Greenwood Avenue. The subject property is roughly rectangular in shape, with approximately 50 feet of frontage along Domer Avenue and 115 feet of frontage along Greenwood Avenue. It has an area of 5,788 square feet, and was originally platted in 1927. See Exhibits 3(b), 4(a), and 8(a)-(b).

2. The Petitioners' Statement of Justification ("Statement") states that the subject property is improved with a single family house that was built in 1928. The Statement states that the house is "likely one of the oldest residential structures in the neighborhood." In 1999, the property and house were purchased by the Petitioners, who currently reside in the house, and intend to keep living there. See Exhibit 3(b).

3. The Petitioners are seeking a variance so that they can reconstruct portions of their home's existing front porch and entrance stairs, which are used to access the front entrance to their house. The Statement indicates that "[t]he existing covered Front Porch design and materials are period to and part of the 1928 house," and that "[m]any of the existing wood elements proposed to be reconstructed are old (age undetermined), decayed and/or unsafe." The Statement states that the Petitioners are seeking to "reconstruct portions of the existing front porch and entrance stairs, maintaining the original design, but updating the materials and bringing applicable elements up to current building codes." See Exhibit 3(b).

4. The Petitioners' Attachment E, Exhibit 1 (BOA Exhibit No. 5(a)) states that "[p]er the property Boundary Survey significant elements of the house, the covered Front Porch, Wood Stairs and the Concrete and Stairs are located within the zoning Right of Way and the Front Yard Building Restriction Line under the current Montgomery County Zoning regulations." See Exhibit 5(a). The Site Plan confirms this. See Exhibit 4(a).

5. Petitioners' Attachment E, Exhibit 1 also describes the proposed construction in greater detail. It states that the Petitioners are seeking variance relief to permit them to "file a building permit application to maintain the functional and design integrity of the house; to selectively demolish and reconstruct the Wood Entry Stairs and Handrails; Front Porch Deck and Guards; the underlying support structure of the Porch Deck (with no changes in the footprint) and Entry Stairs." See Exhibit 5(a). This Attachment further states that:

- The existing Rusticated Masonry Piers, Wood Columns and Roof Structure along with the existing concrete stairs leading down to Domer Avenue shall remain unchanged.
- The Porch Structure & Deck will be reconstructed; sq.ft. area will remain unchanged.
- The reconstructed Wood Stair width will be reduced, and the pitch of the Stairs will be increased, both for safety considerations.
- Guards and Handrails will be replaced with new manufactured, pre-fabricated metal assemblies to bring into compliance with current building codes and standards.

6. The Statement states that the neighborhood "has gently rolling and sloping topography" in both a north-south and an east-west direction, ultimately sloping downwards towards local waterways. The Statement states that as a result, the

property is terraced, and the first floor of the Petitioners' house sits about twenty (20) feet above Domer Avenue. The Statement states that there are original concrete steps that extend about thirteen feet up from the street, and that there are wooden steps extending the rest of the way up to the front porch and house. See Exhibit 3(b). The Petitioners include a photograph showing the existing steps and the elevation of the house above the street with their submission. See Exhibit 5(a).

7. The Statement states that "with the neighborhood platted in 1927 and the subject residential structure built in 1928, the subject property can be assumed to be one of the original developed residential properties remaining, representative of the original use, scale, character and traditional development pattern of the neighborhood." See Exhibit 3(b).

8. The Statement states that since purchasing the property, the Petitioners have "maintained and improved the physical property," but that they have not "modified the original front corner topography at Greenwood Avenue nor front yard topography, concrete steps, nor wood stairs and covered front Porch of the residential structure facing Domer Avenue." Thus the Statement states that the special circumstances pertaining to this property are not their fault. See Exhibit 3(b).

9. The Statement states that the requested variance relief is the minimum necessary to overcome the practical difficulties that full compliance with the requirements of the Zoning Ordinance would impose on the Petitioners due to the unusual situation or condition of their property. The Statement states that the requested variance is the minimum needed to "reconstruct portions of the existing Covered Front Porch and Wood Entrance Stairs while maintaining the original front yard and design character of the residential structure." See Exhibit 3(b). The Statement further states that the proposed construction will:

- (1) maintain[] the existing topography of the front yard and original concrete steps and landing;
- (2) maintain[] the structural columns, porch roof structure and footprint of the porch deck;
- (3) improv[e] the safety of the wood stairs by reducing the wood stair width and increasing the run, making a more gentile rise within the parameters of the existing concrete landing; and
- (4) update[e] the structural materials and bring[] applicable elements up to current building codes.

10. The Statement states that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties. The Statement states that "[t]he Petitioners have shared the proposed project improvements with all abutting and confronting property owners and current tenants, solicited input and support, with documented responses to date that are supportive of the variance request for the

proposed project improvements by the Petitioners.” See Exhibit 3(b). The Petitioners’ Attachment F details the neighbors the Petitioners had contacted and their responses, and includes numerous letters and emails of support. One of these letters refers to the subject property as the “cornerstone of [this] Takoma Park neighborhood,” and states that “the rebuilt front porch will not only enhance the curb appeal of the property but also contribute positively to the overall aesthetic and character of the neighborhood.” See Exhibit 7(a)-(g).

11. At the hearing, Ms. Hoegberg testified that the subject property was platted in 1927 and that the existing house was built in 1928, adding that it is one of the oldest houses in the neighborhood. She testified that the front porch is original to the structure, as shown on a 1935 map, and that the only access to the home’s front door is via the porch. Ms. Hoegberg testified that while some elements of the porch (e.g. its decking) have been replaced over the years due to rot, the framing of the porch is original. She testified that wooden stairs leading up to the porch were there when they moved into the house, and estimated that these stairs are at least 40 or 50 years old.

Ms. Hoegberg testified that they are seeking to rebuild their front porch. She testified that they intend to use black locust instead of fir because of its durability. Ms. Hoegberg testified that their architect had recommended that they reduce the width of the porch stairs and make the stairs less steep in order to make them safer and easier to use, particularly for older guests, and to make them code compliant.

Finally, Ms. Hoegberg testified that she has contacted all of her neighbors, and that none object to the proposed construction.

12. Mr. Mallari testified that the existing stairs are too wide to easily grab the handrails, and that this is dangerous. He testified that he will connect the proposed replacement stairs to the existing concrete landing, and that the remaining landing area will be at least three (3) feet deep. Mr. Mallari testified that the new stairs will project between 1.25 and 1.5 feet farther towards the street than the existing stairs. He testified that the proposed construction will not change the footprint of the existing porch deck, and that it will bring the guardrails and handrails up to code. Mr. Mallari testified that the house is slightly skewed on the lot, and that its front door is on the building restriction line. He testified that he is trying to maintain the existing construction with minimal changes as needed to make the porch code compliant.

## **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.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds, based on the Statement, that the topography of the subject property was terraced when the property was originally developed in the 1920s to address significant slopes that ran both north-south and east-west, resulting in the original house being placed on a terrace, and being constructed approximately twenty (20) feet above street level. See Exhibit 3(b). The Board further finds, as a practical matter, that the terracing of the property significantly limits the area available for construction on account of the property's resultant slope, particularly the steep, unbuildable slope in the front of the property. The Board finds that these circumstances, taken together, create a unique situation peculiar to this property, in satisfaction of this element of the variance test.

*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, Site Plan, Attachment E, and the testimony of Ms. Hoegberg and Mr. Mallari, that the existing house was constructed in 1928, with its front door on the building restriction line, and does not conform to the front setback (including the required porch/projection setback) required by the current Zoning Ordinance. Thus the Board finds that the existing house is a nonconforming structure. Because the proposed construction uses the existing house, the Board finds that the requested variance satisfies this element of the variance test. See Exhibits 3(b), 4(a), and 5.

*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 and the testimony of Mr. Mallari, that the proposed improvements are intended to maintain the original design of the Petitioners' house, which dates to 1928, while improving its safety and bringing it into compliance with current code requirements. The Board further finds that the original concrete steps and landing leading up to the porch and house, the original structural columns, the porch roof structure, and the footprint of the porch deck are not changing, thus helping to maintain the established historic or traditional look of this house, which has been in place for nearly 100 years, and which one of the Petitioners' neighbors referred to as the "cornerstone" of the neighborhood. See Exhibits 3(b), 5(a), and 7(c). Accordingly, the Board finds that the proposed construction substantially conforms with the established historic or traditional development pattern of the Petitioners' 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, based on the Statement, that the subject property contains a nonconforming house that was constructed in 1928 on a lot that had been steeply terraced, and that the Petitioners purchased the subject property in 1999. See Exhibit 3(b). Therefore, the Board finds that the Petitioners are not responsible for the terracing of their property, for the nonconforming placement of their house, or for its historic character, which they are seeking to preserve. Accordingly, the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioner, 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 terracing of the property, and the non-conforming location of the Petitioners' existing house and porch in the front setback, cause the Petitioners a practical difficulty in rebuilding their existing front porch, steps, and railings in accordance with current building codes, since there is not adequate room to replace them without encroaching into the front setback. The Board further finds that the requested variance is the minimum needed to allow for the replacement of these features. In support of this, the Board finds that the footprint of the existing porch deck is not changing, and that the changes to the stairs accessing that deck, and to the handrails and guardrails, are needed to improve their safety. In light of the foregoing, the Board finds that the requested variance is the minimum needed to allow construction on this property that maintains its historical feel while improving safety and meeting current code requirements, and to overcome the practical difficulties that would otherwise be imposed by strict 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;*

The Board finds that allowing the Petitioners to proceed with the proposed construction will continue the residential use of this home and maintain its current character, consistent with the Long Branch Sector Plan (2013), which recognizes the need to "protect[] [Long Branch's] existing community character and the quality of life that both residents and visitors enjoy today." Thus 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, based on the Statement, that allowing the re-construction of the Petitioners' front porch and steps will not infringe on the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test. The Board further finds, in support of this, that the footprint, roof, and support columns of the

existing porch are not changing, and that the new porch steps will tie in with the original concrete steps and landing. In addition, the Board finds, based on the Statement, the letters of support, and the testimony of Ms. Hoegberg, that the Petitioners have reach out to their neighbors, and that their neighbors support the variance request and the proposed construction. See Exhibit 3(b) and 7(a)-(g). Finally, the Board notes that the variance was properly noticed, that the record contains no letters of opposition to the proposed construction, and that no one appeared at the hearing to object to the grant of this variance.

Accordingly, the requested variance relief, needed to allow the proposed front porch/steps, is **granted**, subject to the following conditions:

1. The Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 5(b), (c), (o), (q) and (r).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Richard Melnick, Vice Chair, 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.



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John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 10th day of July, 2024.



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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.