

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/boa/>

**Case No. A-6889
PETITION OF KATHARINE REDFORD**

OPINION OF THE BOARD
(Opinion Adopted November 6, 2024)
(Effective Date of Opinion: November 15, 2024)

Case No. A-6889 is an application for a variance necessary for the proposed construction of front steps. The proposed construction, front steps, requires a 4.75 foot variance as it is within 11.25 feet of the front lot line. The required setback is sixteen (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.a.i of the Zoning Ordinance, which allows the proposed steps to extend nine (9) feet into the required 25-foot setback.

The Board of Appeals held a hearing on the application on November 6, 2024. Petitioner Katharine Redford appeared at the hearing in support of the application, assisted by her architect, Richard Vitullo, AIA.

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

EVIDENCE PRESENTED

1. The subject property is Parcel N694, Pt Section 7 S.S. Carroll S Addition to Takoma Park Subdivision, located at 21 Sherman Avenue in Takoma Park, Maryland, 20912, in the R-60 Zone. It is a four-sided corner lot, bordered by Sherman Avenue to the southwest and Hancock Avenue to the northwest. The two streets intersect at an obtuse angle, causing the property's side and rear lot lines, which intersect its front lot lines at right angles, to meet at an acute angle. The property has 51 feet of frontage on Sherman Avenue and 110 feet of frontage along Hancock Avenue. The property's right side lot line is 125 long, and its rear lot line, which is angled between the right side lot line and the Hancock Avenue front lot line, is 80 feet long. The elevation of the property drops approximately 16 feet from its front lot line along Sherman Avenue to its rear lot line. The

property contains a house that was built in 1928. See Exhibits 1, 3, 4(a), and 9, and SDAT Printout.

2. The Petitioner's Statement of Justification ("Statement") states that the setback for houses on corner lots in the R-60 Zone is 25 feet from the property's front lot lines. Because of this, the Statement states that the Petitioner's house, which was constructed 1928 at a distance of 20'-3" from the front property line along Sherman Avenue and 13'-0" from the front property line along Hancock Avenue, is a legal nonconforming structure. In addition, the Statement states that the home's "foyer addition," which was constructed at an unknown time, "is set at 14'-1" from the front PL¹ with stairs leading up to it set at 10'-1" from the front PL." The Statement concludes that "[t]his creates a situation where 396 SF of interior space and 20 SF of exterior stairs are a non-conforming part of the property." See Exhibit 3.

3. The Statement states that the setback of the Petitioner's house and entrance stairs from Sherman Avenue is similar to other houses on the block, as follows:

In this block of Sherman Avenue along which this property is located, there are 4 total properties (19, 17 and 13 Sherman Avenue, including the subject property at 21 Sherman Avenue), that were built at the same time and are nearly identical in shape, massing and material. They were also built at the same distance from Sherman Avenue at 20'-3". Two of the properties (19 and 17 Sherman Avenue) also have a mostly non-conforming concrete stair, with landing, in front of the main entry to the house, that encroaches 6'-2" towards the front PL. Another property, at 13 Sherman Avenue, is also set at 20'-3" from the front PL but it has a main house entry accessed via a side stair and porch/stoop.

See Exhibit 3. The Statement proceeds to state that "[t]he proposed roofed and unenclosed porch/stoop and stair at the front of 21 Sherman Avenue would encroach only 3'-9" into the current 16'-0" front setback for such functions; this is **3" less than the existing 4'-0" encroachment for the current concrete stair.**" (emphasis in original)

4. The Statement states that the Petitioner purchased the subject property in 2000, and notes that "[t]he current house shape and size, lot shape, location and configuration existed" at the time of her purchase. The Statement thus further states that since that time, the Petitioner has taken no action to increase the size of her house, and is thus not responsible for the property's existing nonconformities. See Exhibit 3.

5. The Statement states that the requested variance is the minimum necessary to "create a wider (6'-2"), more functional, and safer main entryway that contains a code compliant stair and covered porch/stoop without adding to the existing encroachment and actually reducing the encroachment...." The Statement states that if the new porch/stoop and steps were built to comply with the Zoning Ordinance, "the new porch/stoop would be only 4'-2" wide, barely wide enough to accommodate access to a standard 3'-0" wide entry door." See Exhibit 3.

¹ The Statement indicates that "PL" stands for "property line." See Exhibit 3.

6. The Statement states that the proposed porch/stoop and steps “fit well into the neighborhood” and are consistent with the residential streetscape. Thus the Statement states that the requested variance can be granted without substantial impairment to the applicable Master Plan. See Exhibit 3.

7. The Statement states that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties, noting that “[t]he proposed front porch/stoop/stair actually extends less into the front setback than the existing condition,” and that as a result, “this proposed front porch/stoop/stair will have less impact than the existing condition for any of the adjacent/abutting neighbors’ properties at 22, 19, 17, 15, and 13 Sherman Avenue or the properties at 7500 and 7505 Hancock.” In addition, the Statement states that the roof over the proposed porch/stoop will “not extend further into the setback than the existing roof over the foyer.” See Exhibit 3.

8. The record contains letters of support for the grant of the requested variance from the Petitioner’s neighbors at 19 Sherman Avenue, 22 Sherman Avenue, and 7500 Hancock Avenue. See Exhibits 7(a)-(c).

9. At the hearing, Mr. Vitullo testified that the Petitioner’s home was built in 1928 and that large portions of it are nonconforming, stating that the existing home encroaches into the setbacks from both Sherman Avenue and Hancock Avenue. He testified that the Petitioner is seeking to construct a covered stoop with stairs to grade on the “front” (i.e. Sherman Avenue) side of her house, and a wood deck on the rear of her house.² Mr. Vitullo testified that there are currently steps to the house from the street, but that there is no landing at the top of the stairs. See Exhibit 5(l). Mr. Vitullo testified that because the home’s front door opens “out,” persons entering the house currently need to step back down the stairs to make room for the door to open. He testified that the proposed covered stoop would rectify this situation and provide safer entrance to the house. Mr. Vitullo testified that the requested steps to the new stoop would not encroach as far into the front setback as the existing steps encroach.

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:*

² Mr. Vitullo stated that the rear deck would encroach 2.5 feet into the setback from Hancock Avenue, and his written submission and Site Plan reflect this and seem to indicate that he believes a variance is needed for the deck. See Exhibits 3 and 4(a)-(b). The Department of Permitting Services (“DPS”) did not indicate that a variance was needed for the proposed deck on their building permit denial, presumably because they determined a variance was not needed. Accordingly, the Board did not include a variance for the proposed rear deck on its hearing Notice, and the Board’s decision does not address the encroachment (if any) of the proposed rear deck. See Exhibits 6 and 10(b).

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, and the testimony of Mr. Vitullo, that the existing house was constructed in 1928, and that it encroaches into the required setbacks from both Sherman Avenue and Hancock Avenue. The Board finds that the existing steps on the front of the house also do not conform with the setback required by the current Zoning Ordinance. Thus the Board finds that the existing house and steps are nonconforming structures. 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 and 4(a)-(b).

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, that the Petitioner purchased the subject property in 2000, and that the home has not been expanded since the time of her purchase. See Exhibit 3. Therefore, the Board finds that the Petitioner is not responsible for the nonconforming location of her house. Accordingly, the Board finds that the special circumstance or condition applicable to this property is 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, based on the Statement, that the nonconforming location and existing encroachment of the Petitioner's existing house and steps into the required front setback from Sherman Avenue causes the Petitioner a practical difficulty in that it causes strict compliance with the Zoning Ordinance to preclude construction of a new covered front porch/stoop of reasonable depth with new front steps to grade. The Board further finds, based on the Statement and the testimony of Mr. Vitullo, that the proposed new steps will not encroach into the front setback as far as the existing steps encroach, and that the proposed porch roof will extend no further than the existing entrance foyer roof. See Exhibit 3. Accordingly, the Board finds that the requested variance is the minimum necessary to allow construction of new front steps from grade to the proposed covered porch/stoop, and thus is the minimum to overcome the practical difficulties 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 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.*

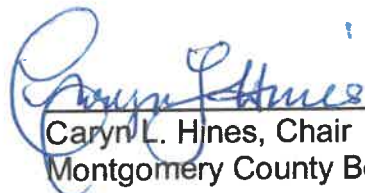
The Board finds, based on the Statement, that granting a variance to allow the construction of the proposed front porch/stoop and associated steps will not infringe on the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test. In support of this, the Board finds, based on the Statement and the testimony of Mr. Vitullo, that the proposed steps will not encroach into the front setback as far as the existing steps, and are consistent with the residential streetscape. In addition, the Board finds that the record contains letters of support for the grant of the variance from three of the Petitioner's neighbors. See Exhibits 7(a)-(c). 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 from the front lot line is **granted**, subject to the following conditions:

1. The Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4(b) and 5(a), (b), and (g) (interior layout excluded).

Therefore, based upon the foregoing, on a motion by Caryn L. Hines, Chair, seconded by Richard Melnick, Vice Chair, with Alan Sternstein, Amit Sharma, and Donald Silverstein 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.


Caryn L. Hines, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 15th day of November, 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.