

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6896

PETITION OF JEFFREY HOPKINS AND REBECCA SMITH

OPINION OF THE BOARD

(Hearing Held: December 4, 2024)

(Effective Date of Opinion: December 11, 2024)

Case No. A-6896 is an application by Jeffrey Hopkins and Rebecca Smith (the “Petitioners”) for two variances needed in connection with proposed improvements to their house (an addition and a screened porch stoop). The proposed construction of an addition requires a variance of 9.80 feet as it is within 9.20 feet of the front lot line along Eastern Avenue. The required setback is nineteen (19) feet, in accordance with Section 59.7.7.1.D.3 of the Zoning Ordinance. In addition, the proposed construction of a screened porch stoop requires a variance of three (3) feet as it is within four (4) feet of the property’s side lot line. The required setback is seven (7) feet, in accordance with Section 59.7.7.1.D.3 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, November 4, 2024. Petitioner Jeffrey Hopkins appeared at the hearing in support of the variances. He was represented by Soo Lee-Cho, Esquire. Architect Brian McCarthy, a Principal with Bennett Frank McCarthy Architects, Inc., also appeared in support of the requested variances.

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

EVIDENCE PRESENTED

1. The subject property is Lot 17, Block 17, Pine Crest Subdivision, located at 51 Walnut Avenue in Takoma Park, Maryland, 20912, in the R-40 Zone. It is a four-sided

corner lot, bounded on the southwest side by Eastern Avenue and on the northwest side by Walnut Avenue. Other than the property's angled front lot line along Walnut Avenue, the property is generally rectangular in shape. It has a width of 50 feet and, due to its angled frontage on Walnut Avenue, a depth that ranges from 154.3 feet along its side (northeast) lot line to 168.6 feet along its Eastern Avenue frontage. The subject property has a total area of 8,075 square feet. See Exhibits 4 and 8(a).

2. The Petitioners' variance Application states that the subdivision in which their property is located was recorded in 1912. See Exhibit 1(a). The Petitioners' Statement of Justification ("Statement") states that the property contains a house that was built in 1923, before the enactment of the County's first Zoning Ordinance. The Statement states that the existing house is a legal nonconforming structure. The Statement includes a copy of an insurance map obtained from the Montgomery County Planning Department's historic preservation division. The Statement states that this map "confirms the current/existing house footprint (inclusive of the side extension/sunroom) and its siting on the lot as original construction." See Exhibit 3. The Site Plan shows that the existing house encroaches on the setback from Eastern Avenue and on the setback from the property's side lot line. See Exhibit 4. Per SDAT, the Petitioners have owned the subject property since 2004. See SDAT Printout.

3. The Statement states that the Petitioners are proposing to "create more functional living space by expanding the second floor with a dormer addition." Because their existing house extends into the setback from Eastern Avenue, the proposed second floor dormer addition—which does not extend any farther towards Eastern Avenue than the existing house—requires a variance. In addition, the Petitioners are seeking to construct a "screened stoop" on the rear of their home in connection with their screened porch. The porch meets the setbacks and does not require a variance, but the screened stoop, which the Statement indicates would be allowed by right if it were not screened and which the Site Plan shows does not extend as far into the required side setback as the home's "existing side extension" to which it is attached, requires a variance. The proposed first floor plan submitted in connection with this variance request shows that the footprint of the "screened stoop" would be approximately 3'-6 ³/₄" x 3'-4 ³/₄", or just over twelve (12) square feet. The Statement states that the requested variances "are necessary to achieve this Project and cannot be avoided due to the existing legal nonconformity of the existing house." See Exhibits 3, 4, and 5(e).

4. The Statement states that the Petitioners' variance request satisfies Section 59.7.3.2.E.2.a.ii of the Zoning Ordinance because "the proposed development seeks to utilize/enhance an existing legal nonconforming structure." The Statement states that the request satisfies Section 59.7.3.2.E.2.b because "[t]he special circumstances are not the result of any action by the Petitioners," and the "existing legal nonconformity of the house was established in 1923 and pre-dates the advent of zoning regulations in the County." See Exhibit 3.

5. The Statement states that the requested variances are minimum necessary to allow the proposed construction to proceed, and thus to overcome the practical difficulties

posed by strict compliance with the Zoning Ordinance due to the nonconformity of the existing house, in satisfaction of Section 59.7.3.2.E.2.c of the Zoning Ordinance. See Exhibit 3.

6. The Statement states that granting the requested variances will not impair the intent and integrity of the Takoma Park Master Plan (2000). In support of this, the Statement states that “[t]he construction of the proposed second-story expansion and rear screened porch/stoop will not impair the intent and integrity of the Plan but will vastly improve the functionality of this residential property thereby enhancing and strengthening the mainly residential nature of this area of the County.” See Exhibit 3.

7. Finally, the Statement states that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties because the construction that necessitates the variances “mainly builds on top of the existing footprint of the property and will remain consistent with the overall character, massing/scale and design of the neighborhood.” See Exhibit 3. The record contains a letter of support from the Petitioners’ abutting neighbors to the left (northeast). See Exhibit 7.

8. At the hearing, Ms. Lee-Cho stated that the subject property was platted in 1912, and contains a house that was built in 1923. As such, she stated that construction on the property is governed by the development standards set forth in the 1928 Zoning Ordinance. Ms. Lee-Cho stated that the Petitioners are seeking to build a second floor dormer addition that would extend into the required setback along the property’s Eastern Avenue frontage, thus requiring a variance. In addition, she stated that the Petitioners are seeking to enclose the stoop that provides access from their house to their porch with screening. While the porch and stoop both comply with the setbacks required by the Zoning Ordinance, Ms. Lee-Cho indicated that the proposed screening of the stoop converts it to enclosed space and requires a variance.

9. Mr. Hopkins testified that he has lived on the subject property for 20 years. He testified that the proposed dormer addition would provide space for an additional bedroom and bathroom that are needed to accommodate his family.

Mr. Hopkins testified that his house is a “contributing resource” in the Takoma Park Historic District. He testified that in researching the history of his house and street in connection with the 100th anniversary of his home’s construction, he had reached out to the County’s Historic Preservation Commission and had received copies of the Sanborn fire insurance maps. Mr. Hopkins explained that the “base” of this map shows the footprints of houses in his neighborhood as they existed in 1927, and that corrections were “pasted on” to the map through 1963. He testified that the map shows that the footprint of his house is the same today as it was in 1927, and that because the house encroaches on the required setbacks, the house is an existing legal nonconforming structure.

Mr. Hopkins testified that he had spoken with all of his neighbors, had shared the construction plans with them, and had explained why variances were needed. He testified

that no one that he spoke with had any objection to the proposed construction, and that his neighbor at 53 Walnut Avenue had written a letter of support. See Exhibit 7.

10. Mr. McCarthy testified that the proposed shed dormer extension would not extend beyond the footprint of the existing house, and in fact would be approximately one (1) foot farther from Eastern Avenue than the existing house. He testified that the screened porch on the rear of the Petitioners' house has already been built and meets the required setbacks. Mr. McCarthy testified that the stoop is also built, but that it is not yet screened. He explained that the Petitioners want to screen the stoop so that they can exit their house and enter their screened porch via a single door instead having to exit their house onto an unscreened stoop, and then enter the screened porch through a second door.

Mr. McCarthy distributed a "Neighborhood Survey" highlighting 14 other homes within a block of the subject property that are similar to the Petitioners' home and that have shed dormers. See Exhibit 10. The Neighborhood Survey includes a map showing where these homes are located relative to the subject property, as well as photographs of most of the homes and their dormers. Mr. McCarthy testified that the Survey shows that a shed dormer is contextual with the fabric of this community, and that the proposed dormer is consistent with the development pattern in the neighborhood.

FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the requested variances can be granted. The requested variances comply 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 construction of an expanded second story and a screened porch stoop uses the Petitioners' existing house, which was built in 1923 and which extends into the front and side setbacks imposed by the County's original (1928) Zoning Ordinance. The Board further finds, based on the Sanborn insurance map included in the Statement and the testimony of Mr. Hopkins, that the footprint of the Petitioners' home has not changed since its original construction, and thus that the existing encroachments predate enactment of the County's first Zoning Ordinance. Accordingly, because the Petitioners' existing home was built before the enactment of the County's first Zoning Ordinance and does not comply with the setbacks mandated by that Ordinance, the Board finds that it is a legal nonconforming structure. Because the proposed improvements use this nonconforming structure, the Board finds that this element of the variance test is satisfied.

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 Neighborhood Survey and the testimony of Mr. McCarthy, that there are 14 similar houses within a block of the Petitioners' home that have shed dormers, and that the Petitioners' proposed dormer is consistent with this pattern. See Exhibit 10. Thus the Board finds that the proposed shed dormer would substantially conform with the established traditional pattern in the Petitioners' 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 house on the subject property was built in its current nonconforming location in 1923, and further finds, per SDAT and the testimony of Mr. Hopkins, that it was purchased by the Petitioners in 2004. See Exhibit 3 and SDAT Printout. In addition, the Board finds that the footprint of the house has not changed since at least 1927. See Exhibit 8(c). Finally, the Board finds that there is nothing in the record to suggest that the Petitioners are responsible for the pattern of shed dormers on other homes in their neighborhood. 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, based on the Statement, Site Plan, and the testimony of Mr. McCarthy, that the Petitioners are not seeking to increase the extent of existing encroachments into the required setbacks from their front and side lot lines. See Exhibits 3 and 4. Rather, the Board finds that the Petitioners are seeking to construct a second floor dormer addition on their existing house that will not increase the extent of the existing encroachment into the setback from the front lot line along Eastern Avenue, and are seeking to add a small (roughly twelve (12) square foot) "screened porch stoop" to the rear of their house that would not extend as far into the side setback as the existing side extension that it is connected to, which the Board notes is an original feature of the house. See Exhibits 3 and 8(c). In light of the foregoing, the Board finds that both the requested changes, and the variances needed to effect those changes, are minimal. In addition, the Board finds compliance with the required front and side setbacks, which are violated by the Petitioners' existing house, would pose a practical difficulty for the Petitioners, and that the grant of the requested variances is the minimum necessary to allow the proposed improvements to this existing nonconforming structure, and therefore to overcome the practical difficulty imposed by full compliance with the Zoning Ordinance. Thus the Board finds that this element of the variance test is satisfied.

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 variances 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 that the proposed construction will not increase the encroachment of the existing structure towards Eastern Avenue or towards the Petitioners' abutting neighbor to the left, who the Board notes submitted a letter of support for the grant of the requested variances. See Exhibits 3, 4, and 7. The Board further finds that Mr. Hopkins has testified that he has shared plans for the proposed construction with his neighbors, and that no one with whom he has spoken has voiced any objections. Finally, the Board notes that the variance proceedings were properly noticed and the variance sign was properly posted, that the record contains no opposition to the grant of the requested variances, and that no one appeared at the hearing in opposition to the variances. In light of the foregoing, the Board finds that granting the variances 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 variances are **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction of the proposed dormer addition and enclosed/screened stoop shall be in accordance with Exhibits 4 and 5(a)-(b) and (e)-(g) (interior layouts excluded).

Therefore, based upon the foregoing, on a motion by Caryn L. Hines, Chair, seconded by Alan Sternstein, with Richard Melnick, Vice Chair, 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 11th day of December, 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.

