

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6026

PETITION OF JOHN N. VERDI

(Hearings held November 10, 2004 and April 6, 2005)

OPINION OF THE BOARD

(Effective date of Opinion, April 22, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-.1.323(a) and 59-B-3.1. The petitioner proposes the construction of a new single-family dwelling that requires a variance of seven (7) feet as it is within eighteen (18) feet of the front lot line and the construction of a screened porch that requires a variance of four (4) feet as it is within twelve (12) feet of the front lot line. The required front lot line setback for the single-family dwelling is twenty-five (25) feet and the required setback for the screened porch is sixteen (16) feet.

The subject property is Lot 16, Block 12, Pinecrest Subdivision, located at 6508 Allegheny Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax Account No. 1303178228).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the demolition of the existing single-family dwelling and a screened porch and the reconstruction of a new single-family dwelling and a new screened porch.
2. The petitioner testified that the property was platted in 1909 and that the house was built in 1933. The petitioner testified that the existing house and the screened porch are non-conforming structures, which are currently located in the front yard setback. The petitioner testified that the structures will be rebuilt using the same footprints and that the proposed construction will not expand the existing footprints.
3. The petitioner testified that the property has a very large, old Beech tree in the rear yard and that he has been advised by the arborist for the City of Takoma Park that new construction in this area of the property would severely damage the root system of the tree. The City

of Takoma Park has a tree ordinance to preserve mature trees within the city limits of Takoma Park.

4. Section 59-B-5.3 of the Montgomery County Zoning Ordinance allows new construction on the subject property. Section 59-B-5.3(a) states “a lot recorded before March 16, 1928, in the original Maryland-Washington Metropolitan District, must meet the development standards in the 1928 Zoning Ordinance.”

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioner's property is a lot that was legally platted in 1909. The existing house was constructed in 1933. The existing house and screened porch are currently located in the front yard setback. The structures have existed for over seventy years. The proposed construction will rebuild the structures at the same location and will not expand the existing footprints. Section 59-B-5.3(a) permits the reconstruction of the existing single-dwelling and the screened porch at their current locations.

The Board finds that these are exceptional circumstances peculiar to the property and that Section 59-B-5.3(a) of the Montgomery County Zoning Ordinance permits the reconstruction of a new single-family dwelling and a screened porch.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the construction of the new single-family dwelling and a screened porch are the minimum reasonably necessary.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds that the proposed construction will continue the residential use of the property and that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the proposed construction will not materially impact the view from the surrounding lots and that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of seven (7) feet from the required twenty-five (25) foot front lot line setback for the construction of a new single-family dwelling and of four (4) feet from the required sixteen (16) foot front lot line setback for the construction of a screened porch are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) and 5(b).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board member Donna L. Barron was necessarily absent and did not participate in this Resolution. On a motion by Wendell M. Holloway, seconded by Angelo M. Caputo, with Louise L. Mayer and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 22nd day of April, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). 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.