

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
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(240) 777-6600

**Case No. A-6516  
PETITION OF ORNA ELDOR GERLING**

OPINION OF THE BOARD  
(Hearing Held: April 5, 2017)  
(Effective Date of Opinion: April 13, 2017)

Case No. A-6516 is an application by Orna Eldor Gerling (the "Petitioner") for a variance necessary for the proposed construction of a second floor addition over an existing first floor located 5.90 feet from the left (southwest) side lot line, both the existing and the proposed structures requiring a variance of 1.10 feet. The required setback is seven (7) feet, in accordance with Section 59-7.7.1.D.2.c of the Montgomery County Zoning Ordinance (2014).

The Board of Appeals held a hearing on the application on Wednesday, April 5, 2017. Ms. Orna Eldor Gerling appeared pro se at the hearing, along with Ms. Sharon Eldor Gerling.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 15, Block 1, Tarrytown Subdivision located at 4215 Leland Street, Chevy Chase, Maryland, 20815, in the R-60 Zone. Per SDAT, the house on the subject property was built in 1947.
2. The Justification Statement submitted by the Petitioner indicates that the rear of the property is encumbered by a "steep slope" which is currently held by a retaining wall. The Petitioner's Statement indicates that this slope makes it "infeasible to construct a rear addition," going on to state that such construction would "requir[e] the construction of additional retaining walls and structural modifications to the house." See Exhibit 3. At the hearing, the Petitioner testified that the grade of her property, beginning at the road, slopes in an upward direction from the front lot line to the rear, such that her house is higher than the road, and her rear yard is, of necessity, held back by a retaining wall greater than five (5) feet in height which is located in very close proximity to the rear of

her house. See Exhibit 5(q). She testified that because of the topographical conditions of the property, she was not sure that she could even get machinery to the rear yard for construction purposes, adding that not only would such construction require completely reengineering the topography and retaining wall in the rear of the property, but it would also result in the first floor essentially becoming a basement due to the prevailing grade.

3. The Petitioner is proposing to add a second story over an existing sunroom, which the Petitioner represents "is part of the original building footprint." That sunroom is currently located 1.10 feet in the side lot line setback; the Petitioner asserts in the Justification Statement that it was "most likely legal at the time it was constructed" but that it "does not meet current requirements." The Petitioner goes on to explain that "[t]he idea is to keep the existing building footprint, and build on top of the existing sunroom," noting that "[t]he building footprint would not be expanded." See Exhibit 3.

4. The Petitioner purchased this property in August of 2016. She testified that the property is narrow and on a hill; Ms. Sharon Eldor Gerling testified that the problem is the hill.

5. The Petitioner has been granted a variance for the proposed construction by the Town of Chevy Chase, which found as a matter of fact that "[t]he existing house is non-conforming to ... the required side setback on the southwest side," that "[t]he subject property slopes steeply upward from the street to the rear property line," and that "[t]he topography and non-conforming location of the existing house create an unusually limited area for additional construction." See Exhibit 7.

6. In response to a Board question, the Petitioner testified that there had been opposition, from the abutting neighbor to the left, to the grant of the variance requested from the Town of Chevy Chase. She testified that that neighbor had raised concerns about the proposed addition being a fire hazard, but that the Town of Chevy Chase had concluded that it would not be a fire hazard. Ms. Sharon Eldor Gerling then testified that their contractor would work to ensure that this was not an issue.

## FINDINGS OF THE BOARD

Based on the Petitioner's 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 that the subject property is encumbered by exceptional topographical conditions in that it "slopes steeply upward from the street to the rear

property line," such that the rear yard is already held by a significant retaining wall. See Exhibits 3 and 7.

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 that the existing house was built in 1947, and that Petitioner purchased the property in 2016. Thus the Board finds that the Petitioner took no actions to create the unusual characteristics of this home or the severe topography of the property.

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 testimony of the Petitioner and the Justification Statement in the record at Exhibit 3, that the requested variance is the minimum necessary to allow the proposed construction to proceed, as the rear yard is unavailable for construction due to its slope. The Board finds that the requested variance is minimal in that it allows the construction of a second story addition over an existing sunroom, and would not extend any further into the side setback than the existing house already encroaches. Thus the Board concludes that compliance with the required side setback would pose a practical difficulty for the Petitioners, and that the grant of this variance is the minimum necessary to overcome the difficulties that full compliance with the Zoning Ordinance would impose.

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 this property, consistent with the recommendations of the Bethesda Chevy Chase Master Plan, which seeks to "[p]rotect the high quality residential communities throughout the Planning Area" and to "[r]econfirm the zoning for the extensive single-family detached residential areas."

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 grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties since it will maintain the existing separation between properties, and will not increase the footprint of the existing house.

Accordingly, the requested variances necessary to allow the proposed construction of a second floor addition over an existing first floor, both of which are or would be located 5.90 feet from the left (southwest) side lot line, are **granted**, subject to the following conditions:

1. Petitioner shall be bound by her testimony and that of Ms. Sharon Eldor Gerling, and by the exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion.

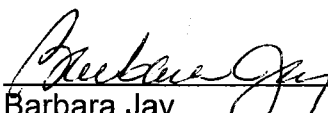
2. Construction shall be according to Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice Chair, seconded by Edwin S. Rosado, with Carolyn J. Shawaker, Chair, Stanley B. Boyd, and Bruce Goldensohn 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.

  
Carolyn J. Shawaker, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 13th day of April, 2017.

  
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.