

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6597
PETITION OF ANDREA PEARSON**

OPINION OF THE BOARD
(Hearing Held: January 23, 2019)
(Effective Date of Opinion: February 6, 2019)

Case No. A-6597 is an application by Andrea Pearson (the "Petitioner") for two variances. The Petitioner is seeking to enclose an existing covered porch and stairs, and to extend an existing shed dormer.

The proposed construction to enclose an existing porch and stairs requires a variance of 4.50 feet as it is within 3.50 feet of the side lot line. The required setback is eight (8) feet, in accordance with Section 59-4.4.10.B.2 of the Zoning Ordinance. In addition, the proposed extension of a shed dormer requires a variance of seven (7) feet as it is within eighteen (18) feet of the front lot line. The required setback from that lot line is twenty-five (25) feet, in accordance with Section 59-4.4.10.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, January 23, 2019. The Petitioner appeared at the hearing in support of the requested variances with her architect, Richard J. Vitullo, AIA. Lehua Fisher also appeared in support of the requested variances.

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

EVIDENCE PRESENTED

1. The subject property is Lot P11, Block 14, Pinecrest Subdivision, located at 6618 Westmoreland Avenue, Takoma Park, MD, 20912, in the R-40 Zone. The property is a shallow, rectangular corner lot, approximately 42 feet in width by 75 feet in length, with a total area of 3,150 square feet. The minimum lot size in the R-40 Zone is 6,000 square feet. See Exhibits 3 and 4.

2. The Justification Statement ("Statement") notes that the Petitioner purchased the subject property in 2008. It indicates that the existing house was constructed in 1923,

and has a footprint of 1,050 square feet. The Statement notes that the buildable area on this property is only 330 square feet after the application of the setbacks, and that the existing house occupies and exceeds the entirety of that area. It explains that although this house is addressed on Westmoreland Avenue, the architectural front of the house is along 1st Avenue, and thus that the rear lot line of this property for zoning purposes is on what a lay person might consider the side of the house, and the side lot line for zoning purposes is located along what would normally be considered the rear of the house. See Exhibit 3.

3. The Statement at Exhibit 3 explains the reason the Petitioner is seeking the requested variances, and the hardship that would occur if the variances were not granted, as follows:

Owners would like to extend the width of an existing 2nd floor shed dormer containing a bathroom, from 7'-0" wide to 14'-3" wide, along the side street (1st Ave.) frontage at the above referenced property. There would be no increase in footprint. **There is currently no available buildable area on this lot that would allow an increase in footprint for an addition (see Factual Background above).**

Owners would like to enclose an existing (6'-0" x 5'-6") rear covered porch area for a new mudroom at the rear of the above referenced property. **There is currently no available buildable area on this lot that would allow an increase in footprint for an addition (see Factual Background above).**

* * *

Without the variances, the Petitioner could not make these minimum improvements to the use of this house, and the requested locations are the best for the current house layout. There are no current buildable areas available to improve the uses of this house; the only way to improve the uses of the house also requires a variance.

* * *

While the Setback requirements within the R-40 zone would allow house addition/improvements to occur in "ordinary" properties with normal front, side and rear yards, the "extraordinary" property at 6618 Westmoreland Ave. currently allows no reasonable addition/improvement of ANY kind without a variance.

4. The Statement at Exhibit 3 notes that the requested variances can be granted without substantial impairment to the intent or integrity of the general or applicable master plan. It further notes that the granting of the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties, as follows:

The increased width of the existing dormer along 1st Ave. would have no impact on neighbors' use or enjoyment as there is no impact on views at all.

The infilled area at the rear is not only behind an approved 6'-0" high fence, therefore, invisible to the adjacent neighbor, but it is currently under an existing roof. The infill would occur under this existing roof with little or no impact on views or uses by the neighbors.

5. At the hearing, Mr. Vitullo testified that at 3,150 square feet, the subject property is about 52% of the 6,000 square foot minimum lot size for the R-40 Zone. He testified that the property is a corner lot, and thus is subject to two 25-foot setbacks. He testified that the application of these and the other required setbacks to this very small property results in a buildable area that is smaller than the footprint of the existing house, and leaves no way to expand this home without variance relief. Mr. Vitullo testified that the proposed construction would not increase the footprint of the existing home, and consisted of infilling under the roof of the existing back porch, and expanding a dormer. He explained that the house faces on 1st Avenue but is addressed on Westmoreland Avenue, and accordingly that the property's "side lot line" for zoning purposes is to the left of the structure when viewed from Westmoreland Avenue. The setback relief sought for enclosure of the back porch and stairs is from this side lot line.

6. Ms. Pearson testified at the hearing that she has lived in the property for 10 years, and that usable space in the home is tight.

FINDINGS OF THE BOARD

Based on the binding testimony of the Petitioner and her architect, and based on the 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 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;

Based on the Statement, site plan, and testimony of record, the Board finds that at only 3,150 square feet in area, the subject property is markedly substandard for the R-40 Zone, which has a 6,000 square foot minimum lot size. See Exhibits 3 and 4. The Board finds that the application of the required setbacks to this exceptionally small lot results in an unusually constrained buildable area, and that taken together these conditions constitute an extraordinary situation or condition that is peculiar to this property, in satisfaction of Section 59-7.3.2.E.2.a.i of the Zoning Ordinance.

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 has been on this property since 1923, and that the Petitioner has only owned this property since 2008. Thus the Board finds that there is no evidence to suggest that the Petitioner took any actions to create the special circumstances or conditions peculiar to this 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 Mr. Vitullo and on the Justification Statement in the record at Exhibit 3, that the requested variances are the minimum necessary to allow the proposed construction—which will not increase the footprint of the existing house—to proceed. The Board finds that with a buildable envelope of only 330 square feet—an envelope which the existing home fully occupies and exceeds—there can be no reasonable addition to or improvement of this home without variance relief. Thus the Board concludes that the grant of the requested variances is the minimum necessary to allow the proposed improvements to the existing home on this extraordinarily small and constrained property, and therefore 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 Takoma Park Master Plan, which recommends preserving the existing residential character, encouraging neighborhood reinvestment, and enhancing the quality of life throughout Takoma Park.

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, per the Justification Statement, that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties. In support of this finding, the Board notes that the Statement indicates that the dormer extension will not impact neighbors' views, and that the enclosure of the existing, roofed back porch is behind a 6'-0" fence and therefore will also have little or no impact on neighboring views. See Exhibit 3.

Accordingly, the requested variances necessary for the construction of the dormer extension and porch enclosure are **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Stanley B. Boyd, Vice Chair, with Bruce Goldensohn in agreement, and with Katherine Freeman necessarily absent, 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.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 6th day of February, 2019.



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.