

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
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(240) 777-6600

**Case No. A-6638**

**PETITION OF LAURIE RUSSELL AND FRANK SOLOMON**

OPINION OF THE BOARD

(Opinion Adopted December 11, 2019)  
(Effective Date of Opinion: December 20, 2019)

Case No. A-6638 is an application for two variances necessary for the enclosure and restoration of an existing, non-conforming screened porch. The proposed construction requires a variance of 5.79 feet as it is within 11.21 feet of the side lot line. The required setback is seventeen (17) feet, in accordance with Section 59-4.4.6.B of the Zoning Ordinance. In addition, the proposed construction also reduces the sum of both side yard setbacks to 29.21 feet, necessitating a variance of 5.79 feet. The required sum of both sides is 35 feet, in accordance with Section 59-4.4.6.B of the Zoning Ordinance.

The subject property is Lot 12, Block D, Springbrook Forest Subdivision, located at 500 Rockford Road, Silver Spring, MD, 20902, in the R-60 Zone.

As authorized by Section 59-7.3.2.A, the Board of Appeals held a hearing on the application on December 11, 2019. Petitioners Laurie Russell and Frank Solomon appeared *pro se* in support of the application.

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

**EVIDENCE PRESENTED**

1. The subject property is located at the southwest corner of Rockford Road and Brookhaven Drive, in the RE-1 Zone. It has a total area of 40,177 square feet, and is roughly square in shape. See Exhibits 3 and 7(b).
2. The Justification Statement ("Statement") states that "[t]he topography of the subject property (the petitioner's lot) is severely sloped, so the home was situated on a

small portion of the upper portion of the slope, very close to the west property line," later noting that when the existing house was built, the developers "were likely avoiding building on the significant slope" and that the "top of the property has been leveled slightly to accommodate the house." The Statement notes that the previous owner, who also owned and still owns the property behind the subject property, had subdivided the subject property to allocate 2,000 square feet to the property behind in order to build a large residence on that property, and asserts that "[t]his subdivision of the subject lot (petitioner's) resulted in creating the smallest property (Lot 12, Block D) in the Springbrook Forest subdivision." See Exhibit 3.

3. The existing house was built in 1955, and the Petitioners purchased the home in 2013. The Statement indicates that the screened porch which the Petitioners are proposing to improve existed at the time of their purchase, and at the time of the previous owner's purchase. It notes that "[n]one of the neighbors that we contacted could recall when the structure was built because the porch was likely built more than half a century ago," and that "[i]t is inferred that the covered porch was built by the original homeowner in the 1950s." See Exhibit 3. The building permit denial indicates that the structure is an "existing, non-conforming screened porch." See Exhibit 6.

The Statement describes the existing screened porch as "poorly constructed with a flat tar-paper roof," and states that "[a]t the time of purchase, the porch was already in disrepair, with a leaking roof and below-grade floor that floods. Since the purchase, the roof has partially collapsed and the structure is not usable by the homeowner. It is also unsightly." See Exhibit 3.

The Petitioners are seeking to replace the existing screened porch with a new enclosed porch. The Statement states that the replacement porch will sit "within the same footprint as the existing porch," that "[t]he same foundation will be reinforced and augmented to be above grade," and that "[t]he existing foundation of the new structure will not increase the footprint of the current porch." The Statement notes that "[b]ecause there is an existing structure in place for likely 40-plus to as many as 50 years since the house was built, and because no complaints have been lodged from either the former or current adjacent neighbors and/or the Neighborhood Civic Association, it is inferred that an acceptable distance already exists between the porch and the neighbor's home." It states that "approximately 75 feet of slope exists between the adjacent neighbor's home and the petitioner's existing porch already in place," and that "[t]his [75-foot distance] maintains the typical spacing seen throughout the Springbrook Forest homes." See Exhibit 3.

4. The Statement indicates that the requested variances are the minimum needed to allow the proposed enclosure of this existing porch, noting that this allows for a single-story structure located on grade whereas construction elsewhere "would require a multistory structure in order to remain on the main living floor due to the slope of the property." In addition, the Statement states that "[t]he existing non-conforming structure has been in place for an undetermined length of time, as far back as all the neighbors can

recall. Without a variance, the non-conforming porch would need to be demolished, therefore presenting a practical hardship to the homeowner." See Exhibit 3.

5. With respect to the impact on neighbors, the Statement at Exhibit 3 states the following:

Because the current porch has been in place since the adjacent property owner purchased their property, the new structure will not affect their privacy. The benefit to the neighbor will be an improved appearance of the rooftop that they now overlook. For those neighbors who come to views of the petitioner's property, it will have an enhanced appearance.

6. The record includes numerous letters of support for the proposed construction. See Exhibits 9 -12 (inclusive). Petitioner Frank Russell testified that everyone attending a recent homeowners' association meeting had voiced support for the proposed construction. Petitioner Laurie Russell testified that the association indicated by unanimous vote that they would not stand in the way of the variance request.

7. At the hearing, Ms. Russell testified that she and her husband purchased the property a little over six years ago, and that the porch existed at that time. She used the photographs in the record at Exhibits 5(h)-(j) to show the Board what the existing porch looks like, and to show the Board the slope on the property. She testified that the location of the existing porch is flat, which would enable its replacement to be a single story, whereas other locations would require two-story construction and possibly excavation because of the slope of the property. Ms. Russell testified that the structural engineer they have hired intends to reinforce the existing concrete slab and build a new surround on that slab.

Ms. Russell testified that her home is one of the smallest in the neighborhood. In response to a Board question, Ms. Russell testified that her house is close to the side lot line while most houses in the neighborhood are located centrally on their lots; she testified that the location of her home was due to the slope of her property.

## **FINDINGS OF THE BOARD**

Based on the 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 59-7.3.2.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 upon Exhibit 3 and the testimony of Ms. Russell, the Board finds that the subject property is encumbered with a significant slope which dictated the original

placement of the house near the side lot line, and which precludes construction of a single-story, main level addition without variance relief. Thus the Board finds that this element of the variance test is satisfied.

*Section 59-7.3.2.E.2.a.ii the proposed development uses an existing legal nonconforming property or structure;*

The Board finds that the existing screened porch does not conform to the required side lot line setback or to the sum of both sides setback, and that as indicated on the building permit denial, is nonconforming. The Board finds that the proposed construction will use and augment the foundation of the existing nonconforming porch, and thus satisfies this element of the variance test. See Exhibits 3 and 6.

*3. 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 Petitioners, who purchased the subject property in 2013, are not responsible for the sloping nature of the property, or for the original placement of the house and nonconforming location of the existing screened porch, in satisfaction of this element of the variance test.

*4. 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 that the requested variances are the minimum necessary to allow the Petitioners to enclose the existing porch, and thus to overcome the constraints posed by the sloping nature of the property and the nonconforming location of the existing porch. The Board notes that the grant of these variances will allow the reuse of the existing porch foundation, and that the resultant construction will not exceed the footprint of the existing porch and will be single-story instead of multi-story because it will allow the Petitioners to avoid construction on the slope. Thus the Board finds that this element of the variance test is satisfied.

*5. 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 proposed porch enclosure will continue the residential use of the property and is consistent with the applicable master plan, and thus that this element of the variance test is satisfied.

*6. Section 59-7.3.2.E.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that granting the requested variances would allow enclosure of an existing, nonconforming screened structure, and would minimize the size of the proposed

structure in that it would allow single-story construction on the existing slab as opposed to on a more sloped area of the property, which would necessitate multi-story construction. The Board notes that the proposed construction will not exceed the footprint of the existing porch and will reuse its foundation, and thus will not bring the porch any closer to the closest abutting neighbor than the existing porch. Thus the Board finds that the grant of the requested variances will not be adverse to the use and enjoyment of abutting or confronting property owners. The Board notes, as further support for this finding, that the record contains letters of support for the proposed construction from neighboring property owners, and no letters of opposition, and, per the testimony of the Petitioners, that the local homeowners' association has agreed to support this project. See Exhibits 9-12 (inclusive).

Accordingly, the requested variances described herein are GRANTED, subject to the following conditions:

1. The Petitioners shall be bound by the testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Jon W. Cook, with Bruce Goldensohn, Vice Chair, Katherine Freeman, and Mary Gonzales 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.

  
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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 13th day of December, 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 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.