

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
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**Case No. A-6676
PETITION OF CHABAD OF SILVER SPRING**

OPINION OF THE BOARD
(Opinion Adopted December 9, 2020)
(Effective Date of Opinion: December 18, 2020)

Case No. A-6676 is an application for a variance necessary for the proposed construction of an extension to an entryway porch. The proposed construction requires a variance of 15.59 feet as it is within 14.41 feet of the front lot line. The required setback is thirty (30) feet, in accordance with Section 59-4.4.8.B of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, December 9, 2020. All participation was done via Microsoft Teams. Rabbi Dovber Wolvovsky participated on behalf of Petitioner Chabad of Silver Spring, in support of the requested variance.

Decision of the Board: Requested variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 1, Block 39, Kemp Mill Estates Subdivision, located at 519 Lamberton Drive, Silver Spring, Maryland, 20902, in the R-90 Zone. The subject property is a four-sided corner lot located on the northeast corner of Lamberton Drive and Lovejoy Street. It contains an existing synagogue and preschool building. See Exhibits 3 and 4.
2. Per the Statement of Justification ("Statement"), the subject property is "steeply sloped with the highest area at the front of the building and lowest in the back. As a result, the entryway will become a porch-like structure as the ground slopes beneath it." The Statement notes that the topography of the subject property has always been sloped, and that the property's existing synagogue and preschool building, which was completed in 2015, was built with considerations for the slope. The Statement states that the sloping nature of the property was not the result of actions by the Petitioner. See Exhibit 3.

3. The Statement states that the entrance to the synagogue has a "small entryway structure where congregants and attendees can easily be in close proximity to each other while entering and exiting the building." The Statement notes that "[t]here are often bottlenecks of foot traffic during school dismissal, and at the beginning and end of services," and that "the capacity of the building exceeds the number of people who can enter or exit without a bottleneck." The Statement states that the proposed extension of the entryway porch is needed to provide safe ingress to and egress from the building in the event of an emergency, and would also enhance safety by allowing people to observe social distancing in this time of COVID. See Exhibit 3.

4. The Statement states that the proposed extension of the entryway porch could be built "without changing the appearance o[r] nature of the building," noting that the "front of the building will appear similar to its current look as the entry structure will have a profile of the same height at the front." See Exhibit 3. The Petitioner includes elevations for the proposed entryway porch extension with the variance application. See Exhibit 5(a)-(d).

5. With respect to the impact of the requested variance on neighboring property owners, the Statement states that the proposed extension to the entryway porch will "reduce conversational noise and crowding," and that this will ensure that the grant of the variance will not be adverse to the use and enjoyment of neighboring properties. See Exhibit 3.

6. At the hearing, Rabbi Dovber Wolvovsky testified that the subject property contains a building that houses a synagogue and a preschool. He testified that while worship services are currently being held outdoors, the preschool is operating indoors. He stated that when the double doors to the building are open, the existing landing becomes full, creating an unsafe bottleneck of people. He noted that the landing needs a railing because of the property's slope. Rabbi Wolvovsky testified that the synagogue and preschool need an area near the door that can accommodate this flow of people, and that that is what they are seeking to construct.

Rabbi Wolvovsky testified that the plans show an overhang over a portion of the proposed expanded entryway, but that at present they are not planning to build that. He noted that the overhang could be constructed without a variance if it were to be constructed, and clarified that the work they are talking about now is concrete work needed to increase the size of the landing. See Exhibits 4 and 5(a).

Rabbi Wolvovsky testified that while the proposed construction is really a landing in front of the building's door, the County's Department of Permitting Services ("DPS") considers it a porch because of the sloping topography underneath it. He testified that the property has a huge slope, and stated that it falls approximately 3'-4" from the front of the property to the front of the building. See Exhibit 5(a). Rabbi Wolvovsky testified that if the property were not sloped, the proposed construction would have been considered a patio and the building permit would have issued without the need for a variance.

Finally, Rabbi Wolvovsky testified that he had shown the plans for the proposed construction to his neighbors, and that he believes his neighbors were comforted when they understood what was being proposed.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested 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;

Based on the testimony of Rabbi Wolvovsky and Exhibits 3, 4, and 5(a), the Board finds that the topography of the subject property slopes downward from its frontage along Lamberton Street to its rear (south to north), and in particular that the area between Lamberton Street and the existing building slopes downward, such that construction which might otherwise be allowed as a patio is considered by DPS to be a porch. The Board finds that the topography of the subject property constitutes an exceptional condition peculiar to this property, and accordingly finds that this element of the variance test is satisfied.

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 Petitioner is not responsible for the topography of the subject 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 that the sloping topography of the subject property, which again, per Rabbi Wolvovsky, renders the proposed entryway extension a porch as opposed to a patio, constitutes a practical difficulty for the Petitioner in that variance relief is needed if the proposed construction is to proceed. While the Board questions whether Section 59-4.1.7.B.5.a.i of the Zoning Ordinance,¹ which allows porches to extend nine (9) feet

¹ Section 59-4.1.7.B.5.a.i of the Zoning Ordinance reads as follows: "Any unenclosed porch, deck, terrace, steps, or stoop may project a maximum of 3 feet into any side setback, or any side street setback of less than 25 feet and may project a maximum of 9 feet into any front setback, rear setback, or any side street setback where the side street setback is a minimum of 25 feet. This encroachment includes an unenclosed roofed porch or terrace."

into the front setback and therefore would have reduced the necessary variance from 15.59 feet to 6.59 feet, should have applied in this case, the Board accepts the determination of DPS, evidenced by the building permit denial in the record at Exhibit 6, that a variance of 15.59 feet is needed to allow the proposed construction within 14.41 feet of the front lot line. The Board notes that irrespective of the way in which this variance is described, the size and location of the entryway porch extension will be as shown on Exhibits 4 and 5, and finds that the relief granted is the minimum needed to achieve that end. Accordingly, 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 proposed construction is intended to better accommodate the existing use of this property, and accordingly that the variance can be granted without substantial impairment to the intent and integrity of the applicable master plan. Thus the Board finds that this element of the variance test is satisfied.

5. 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, based on the Statement and elevations, that if the variance were granted and the construction undertaken, the front of the building would appear similar to its current look since the entry structure, if built, would have a profile of the same height at the front. See Exhibits 3 and 5(a)-(d). In addition, the Board finds, per the Statement, that reduced crowding outside the building may reduce noise. See Exhibit 3. The Board further finds, per the testimony of Rabbi Wolvovsky, that he has reviewed the plans for his proposed construction with his immediate neighbors, and that he felt they were reassured regarding the nature of the proposed construction. The Board notes that the record contains no opposition to the grant of the requested variance, and that no opposition was expressed at the hearing. Thus the Board finds that granting the requested variance 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 variance of 15.59 feet from the required thirty (30) foot setback required along the property's Lamberton Drive front lot line is **GRANTED**, subject to the following conditions:

1. The Petitioner shall be bound by the testimony and exhibits of record.
2. Any construction undertaken must be completed in accordance with the plans entered in the record as Exhibit Nos. 4 and 5(a)-(d).

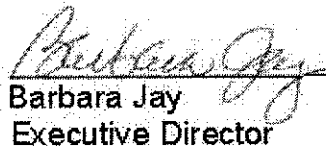
Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, Vice Chair, with Katherine Freeman, Mary Gonzales, and Richard Melnick in agreement, the Board adopted the following Resolution:

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.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 18th day of December, 2020.



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.