

**BOARD OF APPEALS**  
for  
**MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
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Rockville, Maryland 20850  
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**Case No. A-6730**  
**PETITION OF GREGORY SWALUK AND SHARON LAMBERT**

OPINION OF THE BOARD

(Hearing Date: February 9, 2022)  
(Effective Date of Opinion: February 23, 2022)

Case No. A-6730 is an application by Gregory Swaluk and Sharon Lambert (the "Petitioners") for a variance needed for the construction of a second floor addition to an existing home. The proposed construction requires a variance of two (2) feet as it is within five (5) feet of the right lot line. The required setback is seven (7) feet, in accordance with Section 59.4.4.10.B of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on February 9, 2022. All participation was done via Microsoft Teams. Petitioner Gregory Swaluk participated in the proceedings in support of the requested variance, assisted by his architect, Richard Vitullo.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 10, Block 18, Pine Crest Subdivision, located at 6805 Westmoreland Avenue in Takoma Park, Maryland, 20912, in the R-40 Zone. The property is an interior lot, rectangular in shape, with a width of 42 feet and a depth of 150 feet. See Exhibits 3 and 4(a)-(b).
2. The subject property contains an existing house that was built in 1933 and is located eight (8) feet from the property's right side lot line. In 2002, a first level addition was added to the rear of the original house; the addition is located five (5) feet from the right side lot line. The Petitioners' Justification Statement ("Statement") indicates that there is no record of a variance having been granted for the construction of the 2002 addition. See Exhibit 3.
3. The Statement indicates that the Petitioners, who purchased the subject property in 2006 and who have taken no actions to expand their home, are now proposing to add

a second floor addition "entirely atop the 1<sup>st</sup> level structure," using the existing right side (bearing) wall of the 2002 addition to support that side of the proposed second level addition. See Exhibit 3.

4. The subject property is located in the Takoma Park Historic District. The existing house on the subject property, which was built in 1933, is a considered a "Contributing Resource" Craftsman House in that District. See Exhibit 3. On April 28, 2021, the Historic Preservation Commission issued a Historic Area Work Permit (Permit #947547) for construction of the proposed second level addition. See Exhibit 3.

5. The Statement states that the property's narrow width (42 feet), coupled with its seven (7) foot side setbacks, constitutes an unusual condition peculiar to this property, in satisfaction of Section 59.7.3.2.E.2.a.i of the Zoning Ordinance. See Exhibit 3. The Statement further asserts that the proposed construction uses an existing legal nonconforming structure, presumably in satisfaction of Section 59.7.3.2.E.2.a.ii, since the rear addition, which encroaches into the side setback, was built with proper permits but without a variance. Finally, the Statement states that the proposed construction comports with the established historic or traditional development pattern of the street or neighborhood, in satisfaction of Section 59.7.3.2.E.2.a.v, as follows:

Only measuring on-site, and without benefit of individual house location surveys for all houses in this neighborhood survey, the average dimension between houses, side to side, in this block was measured at 14'-11", with the shortest distance being 7'-0" and the longest distance being 20'-0". And measuring from each house side wall to fences between houses, an "unofficial" dimension for sure, there are 5 house locations that are shorter than the dimension of #6805 to its side property line of 5'-0"; the rest of the dimensions from house to fence are longer than #6805 to its side property line. The distance between the addition proposed in this variance application and the adjacent neighbor at 6803 is currently 14'-10", and this addition would not encroach any further into this space. (See "Neighborhood Plan" submitted with this application.)

See Exhibit 3. As referenced in the quoted language above, the Petitioners have submitted a "Neighborhood Plan" showing the distances between the houses on their side of the block. See Exhibit 8(b).

6. The Statement at Exhibit 3 states that the requested variance is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would entail, as follows:

To conform to the required 7'-0" side setback, this 2<sup>nd</sup> level bedroom addition would need to be built 2' or more inward from the existing bearing wall on the 1<sup>st</sup> level, causing a undue structural, financial and architectural hardship, and making the bedroom too small for use as a master bedroom for the owners.

Also, this design, placing the 2<sup>nd</sup> level directly over the 1<sup>st</sup> level was the preferred design that the Historic Preservation Commission approved, since the design keeps to the neighborhood aesthetic of the Bungalow style, shapes and massing.

7. The Statement at Exhibit 3 states that the variance can be granted without substantial impairment to the intent and integrity of the general or applicable master plan, as follows:

The intent and integrity of the general or applicable master plan, in this case for Residential Zone R-40, is to preserve a streetscape consistent with the neighborhood context of residential uses of a similar nature. Given the hardship presented by this particular narrow lot, the proposed small addition fits well into the neighborhood of other R-40 properties without harm to the general intent of the master plan's directive to create uniformity and to direct development within a particular zone.

The whole point of the variance is to prove "special circumstances" that do no harm to the intent and integrity of the master plan. The rationale behind zoning is that it promotes the good of the entire community in accordance with a comprehensive plan. This requested variance relief feature will not impair that plan.

8. The record contains letters of support for the grant of the requested variance from the owners of the abutting properties on both side of the subject property (6803 and 6807 Westmoreland Avenue). See Exhibits 7(a)-(b). The Statement states, with respect to the impact of the proposed construction on the Petitioners' right side neighbors, that "[t]he next-door neighbors at 6803 Westmoreland Avenue are 14'-10" from this addition and it should not cause any unique and undue visual barrier since the proposed addition is no closer than the existing large (2002) addition." See Exhibit 3.

9. At the hearing, Mr. Vitullo testified that the subject property is a narrow, 42 foot wide lot, located in the R-40 Zone, in the portion of Takoma Park that was originally located in Prince George's County. He testified that the property contains an original house, which he described as a rectangular bungalow, and that the house has a rear addition, built about 20 years ago, that is located approximately five (5) feet from the property's side lot line. Mr. Vitullo stated that the required side setback is seven (7) feet. He testified that he had talked with the Department of Permitting Services about this, and that they agreed the addition had been approved without a variance.

Mr. Vitullo testified that the Petitioners are seeking to construct a second floor additional over this existing one-story addition. He testified that the proposed design is the minimum necessary to give the Petitioners a bedroom of proper size, and that if they moved the addition in by two (2) feet to comply with the setback, in addition to being difficult from a structural and architectural standpoint, the addition would have an awkward appearance. Mr. Vitullo testified that the County's Historic Preservation Commission had approved the proposed addition as being compatible with the neighborhood. He testified that the neighborhood survey he had done on this side of the

block shows that the distance between houses after construction of the proposed addition would be consistent with the neighborhood pattern. See Exhibit 8(b).

10. Mr. Swaluk testified that the records in Prince George's County show that the subject property was recorded in 1909. In response to a Board question, Mr. Swaluk testified that he had discussed the proposed construction with his neighbors to the right and the left, and that both sent in letters of support. See Exhibits 7(a)-(b).

## **FINDINGS OF THE BOARD**

Based on the binding testimony and the evidence of record, the Board finds that the variance from the right side lot line complies with the applicable standards and requirements set forth in Section 59.7.3.2.E.2, and can be granted, 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, the site plan, and the testimony of Mr. Vitullo, the Board finds that the subject property is exceptionally narrow, with a width of only 42 feet. See Exhibits 3 and 4(a). The Board further finds that because of its narrowness, the application of the required side setbacks to this property results in an unusually constrained buildable area, and that taken together, these conditions constitute an extraordinary situation or condition, in satisfaction of this element of the variance test.

*Section 59.7.3.2.E.2.a.iv. the proposed development contains a historically significant property or structure;*

Based on the Statement, the Board finds that the Petitioners' property is designated as a Contributing Resource in the Takoma Park Historic District, and that as a result, the Petitioners had to seek, and have received, permission from the County's Historic Preservation Commission to undertake the proposed construction. See Exhibit 3. Thus the Board finds that the proposed development contains a historically significant property or structure, in satisfaction of this element of the variance test.

*Section 59-7.3.2.E.2.a.v. - the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*

Based on the Statement, the Neighborhood Plan, and the testimony of Mr. Vitullo, the Board finds that the proposed construction will maintain the existing pattern of separation between houses on this street by maintaining the existing separation between this house and the house to the right, a separation that closely approximates the average separation of the nearby homes on the block. See Exhibits 3 and 8(b). Thus the Board finds that the proposed construction follows the traditional development pattern of this street or neighborhood, in satisfaction of this element of the variance test.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

Based on the Statement and the testimony of Mr. Swaluk, the Board finds that the Petitioners purchased the subject property in 2006, and are not responsible for the narrowness of this 1909 property, the 1933 construction of the original bungalow, or the 2002 construction of the existing rear addition. See Exhibit 3. The Board further finds that there is nothing in the record to suggest that the Petitioners are responsible for the designation of their home as a Contributing Resource in the Takoma Park Historic District, or for the development pattern on their street. Thus the Board finds that the special circumstances or conditions are not the result of actions taken by the Petitioners, 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;*

Based on the Statement and the testimony of Mr. Vitullo, the Board finds that compliance with the seven (7) foot setback from the right side lot line poses a practical difficulty for the Petitioners because it would prevent them from being able to add a second level on top of their existing rear addition, maintaining the plane of the existing addition and using its bearing wall as support. The Board further finds, based on the Statement and the testimony of Mr. Vitullo, that having to step the second floor in to meet the required setback would pose a structural and architectural hardship with respect to the construction of the proposed addition, would preclude construction of an addition of adequate size to meet its stated purpose, and would cause the Petitioners a financial hardship. Finally, the Board finds that the proposed addition has been approved by the Historic Preservation Commission with a five (5) foot setback as being the preferred design and compatible with the existing house and neighborhood. See Exhibit 3. In light of the foregoing, the Board finds that the variance requested from the right side lot line is the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose, in satisfaction of this element of the variance test.

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;*

The Board finds that the proposed construction has been approved by the Historic Preservation Commission, and would continue the residential use of the property. The Board thus finds the requested variance from the right side lot line can be granted without substantial impairment to the intent and integrity of the general plan and applicable master plan, including the Takoma Park Master Plan, which recommends preserving the existing residential character, encouraging neighborhood reinvestment, and enhancing the quality of life throughout Takoma Park. Accordingly, the Board finds that this element of the variance test is satisfied.

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.

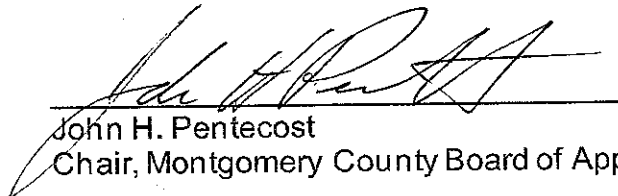
The Board finds that the grant of the requested variance will not be adverse to the use and enjoyment of neighboring properties in that it would allow a second floor addition, the design of which has been approved by the County's Historic Preservation Commission, directly over an existing first floor rear addition. The Board notes that the proposed addition will maintain the setback of the existing addition. See Exhibit 3. The Board further finds, based on the testimony of Mr. Swaluk and the letters of support in the record, that the Petitioners' neighbors support the grant of the requested variance. See Exhibits 7(a)-(b). In light of the foregoing, the Board finds that granting the variance to allow the proposed construction will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested two (2) foot variance from the right side lot line is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4(a)-(b) and 5(a), (c), (e), (g) and (m).

Based upon the foregoing, on a motion by Bruce Goldensohn, Vice Chair, seconded by John H. Pentecost, Chair, with Mary Gonzales, Richard Melnick, and Caryn Hines 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 23rd day of February, 2022.

  
\_\_\_\_\_  
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.