

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
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**Case No. A-6813
PETITION OF DUSTIN MAGHAMFAR AND LAURA BELAZIS**

OPINION OF THE BOARD
(Opinion Adopted May 31, 2023)
(Effective Date of Opinion: June 9, 2023)

Case No. A-6813 is an application for a variance needed for the proposed construction of a room addition (screened porch). The proposed construction requires a variance of six (6) feet to be located within five (5) feet of the right side lot line. The required setback is eleven (11) feet, in accordance with the 1928 Zoning Ordinance, which is made applicable to this property by Section 59.7.7.1.D.3.a of the current Zoning Ordinance.

The Board of Appeals held a hearing on the application on May 31, 2023. Petitioner Dustin Maghamfar participated in the hearing in support of the requested variance, assisted by architect Brian McCarthy.

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

EVIDENCE PRESENTED

1. The subject property is Block 16, Lot 11, Pine Crest Subdivision, located at 6718 Cockerille Avenue in Takoma Park, Maryland, 20912, in the R-60 Zone. It is a narrow four-sided lot, generally rectangular in shape, with 42 feet of frontage along Cockerille Avenue and 153.8 feet of frontage along 1st Avenue, although as noted in the Petitioners' Statement, on the Site Plan, and on the SP-2, most of that street along the Petitioners' property has been abandoned/is unimproved. The property has an area of 6,491 square feet. See Exhibits 1, 3, and 4(a).

2. Per SDAT, the subject property was purchased by the Petitioners in 2019. It contains an existing house that was built in 1931. See SDAT Printout. Per the Petitioners' building permit denial, the existing house is nonconforming. See Exhibit 6. The Petitioners are seeking a variance to build a one-story screened porch on the rear of their house. See Exhibit 3.

3. The Petitioners' Statement of Justification ("Statement") states that "several" factors make the subject property unique for the purposes of meeting Section 59.7.3.2.E.2.a.i of the Zoning Ordinance, as follows:

- The lot is quite narrow, even by Takoma Park standards. As shown in exhibit SP-2, the lot width is a mere 42 ft. Well under the 50 to 60 ft norm for the area but not quite small enough to qualify for 5 ft side setbacks.
- The corner location significantly reduces the buildable area on the lot by imposing an 11' "front" setback along the 1st Avenue side of the lot. As shown in exhibit SP-1, 3 dozen houses on the block and fronting the block have been selected for comparison. The allowable lot coverage averages 42% of total lot area across the group. The buildable area on the subject corner lot is 40.5% of total lot area.
- The slope of the lot is another limitation. As the topography lines on SP-2 demonstrate, the property slopes steeply upward from its frontage on Cockerille Avenue to the rear property line; an elevation change of 26 feet. Consequently, the original home was bermed into the hillside. The steep slope behind the house is managed by a series of retaining walls and terraces that start a slim 7 ft off the deepest point of the house, the kitchen. Building strictly between the side and 1st Avenue setbacks essentially dictates placing a good deal of the proposed porch behind kitchen; an area that is already aggressively terraced. And preservation of the modest swale directly between the kitchen and the closest terrace wall is critically important for collecting and diverting run-off that surges down the hillside.
- 1st Avenue is not a through street and there is no through traffic. As shown most clearly on exhibit SP-3, 1st Avenue consists of two sections of street width asphalt separated by an untended green space and connected by a footpath. It is our understanding that the City of Takoma Park has no intention of ever connecting the two street sections. The steep topography is undoubtedly the concern.

See Exhibit 3. As noted above, the Petitioners include Exhibits which graphically illustrate these factors. See Exhibits 4(a), 5(c), and 5(d).

4. The Statement states that the proposed screened porch cannot be placed behind the kitchen due to the property's steep slope, and to the existing retaining walls and swale in that area of the property. Accordingly, the Statement concludes that the porch can only be placed in the "modest level space between the kitchen and 1st Avenue." The Statement proceeds to state that adherence to the required 11-foot setback along 1st Avenue would "limit the width of a rear addition to a mere 12.7 ft.," and that the requested variance would instead permit the proposed screened porch "to be flush with the 1st Avenue side of the house." The Statement notes that if the proposed porch were unscreened, it would be permitted to project nine (9) feet into the setback. See Exhibit 3.

5. The Statement states that the requested variance would “increase the buildable area of the subject property by 77 square feet; an increase of 1.2%,” which would “raise the building area to roughly the neighborhood average.” See Exhibits 3 and 5(c).

6. The Statement states that the proposed screened porch “has been designed to be sensitive to the massing, materials and architectural character of the neighborhood, and does not increase the height of the existing house.” See Exhibit 3. The Statement goes on to indicate that granting the requested variance to allow construction of the proposed porch will not be adverse to the use and enjoyment of neighboring properties, as follows:

The proposed one-story screen porch addition is configured to have no impact on neighboring properties. The only adjacent neighbor at 6716 Cockerille Avenue is on the east side of the two-story kitchen extension and the one-story porch is on the west side. As exhibit SP-3 hopefully makes clear, the frontage along 1st Avenue has no other properties other than two distant neighbors fronting on Allegheny Avenue at the crest of the hill. The steep topography and intervening accessory structures (garages) effectively screens the porch from all other adjacent properties. Consequently, the proposed addition will not impact light or view access of adjoining lots.

7. At the hearing, Mr. McCarthy used Exhibit 5(d) [Petitioners’ exhibit SP-3] to orient the Board to the property. He testified that while the property is a corner lot, 1st Avenue is not a through street, and the City of Takoma Park has indicated that they have no intention of making it a through street. Mr. McCarthy testified that the subject property is severely sloped, rising 26 feet from its front along Cockerille Avenue to its rear. He testified that as a result, the Petitioners’ back yard is heavily terraced. Mr. McCarthy testified that because of this slope and terracing, the proposed porch cannot be built behind the home’s existing two-story rear addition. Finally, Mr. McCarthy testified that the subject property is only 42 feet wide, and that the narrowness of the property, coupled with its slope and terracing, poses a hardship for the Petitioners.

Mr. McCarthy testified that the proposed porch would be allowed by right if it were open rather than screened because it projects less than nine (9) feet into the setback. Referring to Exhibit 5(c), he testified that the portion of the proposed porch that is shown in blue is permitted by right, and that the area shown in red is the portion that requires variance relief. Mr. McCarthy testified that the 1st Avenue side of the porch would extend six (6) feet into the required eleven (11) foot setback from 1st Avenue, and would align with the façade of the existing house along that street.

Mr. McCarthy testified that the proposed construction would have no impact on neighboring property owners. He testified that the Petitioners have only one abutting neighbor, and that the view of the proposed porch from that neighbor’s house would be blocked by the existing two-story rear addition. In addition, Mr. McCarty testified that the neighbors on Allegheny Avenue are at the top of the hill and will have limited sight lines.

8. Mr. Maghamfar testified that he purchased the subject property in 2019. He testified that there is an existing deck where the screened porch is proposed. In response to a Board question asking if he had spoken with his neighbors, Mr. Maghamfar testified that his next door neighbors fully support the proposed construction.

FINDINGS OF THE BOARD

Based on the binding testimony and 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 of the Zoning Ordinance, 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, based on the Statement and supporting Exhibits, and on the testimony of Mr. McCarthy, that the subject property is unusually narrow and steeply sloped, rising 26 feet from its front along Cockerille Avenue to its rear. The Board further finds that this slope is managed through a series of terraces and retaining walls that begin just seven (7) feet from the deepest point of the Petitioners' house. The Board finds that these circumstances, taken together, constitute an extraordinary condition that is peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 3 and 4(a).

Section 59.7.3.2.E.2.a.ii. - the proposed development uses an existing legal nonconforming property or structure;

The Board finds, based on the building permit denial and SDAT Printout, that the existing house was built in 1931, and is nonconforming. The Board notes, in support of this finding, that as shown on the Site Plan, the right side of the existing house is located only five (5) feet from the 1st Avenue property line, where an eleven (11) foot setback is required. The Board further finds that the proposed construction is an addition to the existing, nonconforming house. See Exhibits 4(a) and 6. Thus the Board 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 existing house was built on this property in 1931, and that the Petitioners purchased the property in 2019. Accordingly, the Board finds that the Petitioners took no actions to create the special circumstances or conditions peculiar to this 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 constraints imposed by the application of the setbacks to this narrow property, coupled with the constraints imposed on the available buildable area by the property's steep slope, limit the area available for construction of the proposed porch addition on the rear of the existing house, causing the Petitioners a practical difficulty. The Board further finds that the requested variance is the minimum needed to allow the construction of a screened porch of reasonable width in a location that is flush with the right side of the existing, nonconforming house, and that is not rendered unusable by the property's slope. The Board notes that the requested variance would not allow the proposed porch to extend any further into the setback than the existing house already does, and would not allow the porch to extend as far into the setback as a roofed but unenclosed porch could extend by right. On the basis of the foregoing, the Board finds that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the setbacks would impose, on account of the property's narrowness and slope, and on account of the nonconforming location of the existing house, 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; and*

The Board finds that the proposed construction will continue the residential use of the property, and that the grant of the requested variance will not impair the intent, purpose, or integrity of the Takoma Park Master Plan (2000) which seeks, among other things, "to support stable residential neighborhoods," in satisfaction of this element of the variance test.

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 Statement, Site Plan, and the testimony of Mr. McCarthy, that the proposed porch will be flush with the right side of the existing house, and thus will not encroach any closer to the property's right side lot line than the existing house. See Exhibits 3 and 4(a). The Board further finds, per the Statement and the testimony of Mr. McCarthy, that the view of the proposed screened porch from the abutting property to the left will be screened by the existing two-story rear addition, and that "the frontage along 1st Avenue has no other properties other than two distant neighbors fronting on Allegheny Avenue at the crest of the hill." See Exhibits 3 and 5(d). In addition, the Board finds that "[t]he steep topography and intervening accessory structures (garages) effectively screens the porch from all other adjacent properties." Finally, the Board notes, in accordance with the testimony of Mr. Maghamfar, that the Petitioners' abutting neighbors support the proposed construction. On the basis of the foregoing, the Board finds that the grant of 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 from the right side lot line, needed to allow the proposed construction of a screened porch, 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)-(b).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Richard Melnick, Vice Chair, Laura Seminario-Thornton, and Alan Sternstein 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 9th day of June, 2023.



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.