

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600  
<http://www.montgomerycountymd.gov/boa/>**

**Case No. A-6832**

**PETITION OF JANE MARUSZEWSKI**

**OPINION OF THE BOARD**

(Hearings held November 1, 2023, and November 15, 2023)  
(Opinion Adopted November 15, 2023)  
(Effective Date of Opinion: November 22, 2023)

Case No. A-6832 is an application for a variance needed to allow the construction of a room addition (screened porch). The proposed construction requires a variance of 10.20 feet as it is within 14.80 feet of the front lot line along Kirkside Drive. The required setback is twenty-five (25) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance.

The Board held hearings on the application on November 1, 2023, and November 15, 2023. Petitioner Jane Maruszewski appeared with Robert Maruszewski at the first hearing in support of the requested variance; all of the testimony and evidence was received at that hearing.

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

**EVIDENCE PRESENTED**

1.     The subject property is Lot P1, Block 63, Chevy Chase Section 2 Subdivision, located at 127 Grafton Street, Chevy Chase, Maryland, 20815, in the R-60 Zone. It is a rectangular corner lot, with 90 feet of frontage along Grafton Street, which borders the subject property to the south, and 55 feet of frontage along Kirkside Drive, which borders the subject property to the east. The property has a total area of 4,950 square feet, which is substandard for the R-60 Zone. Per SDAT, the property contains a house that was built in 1934; it was purchased by the Petitioner in 2009. See Exhibits 3, 4, and 7 and SDAT Printout.

2. The Petitioner's variance Application indicates that the subject property was recorded in 1924, before the County's first Zoning Ordinance. The Application states that the property, with a width of 55 feet, is the "narrowest in the immediate area of along Grafton Street & Kirkside Drive," and that the property's size is "the smallest in the immediate area along Grafton Street." See Exhibit 1.

3. The Petitioner's Statement of Justification ("Statement") states that the subject property and the abutting property at 5902 Kirkside Drive were developed before current zoning regulations were in effect as a single lot that was later subdivided, as follows:

The subject property, 127 Grafton Street, Chevy Chase, MD, originally was developed as a single lot with two residences for a family "compound", including the adjacent property at 5902 Kirkside Drive, Chevy Chase, MD. Subsequently, the lot containing two houses was subdivided into two residential lots, both listed as Part Lot #1. That subdivision created two lots, both smaller than the minimum R-60, 6,000 Sq. Ft. area.

See Exhibit 3. The Statement states that with a width of 55 feet, the subject property is exceptionally narrow for the R-60 Zone, which has a 60 foot minimum width, and that it is "the narrowest in the immediate area along Grafton Street & Kirkside Drive, in Chevy Chase, MD." The Statement states that the impact of this narrowness is compounded by the fact that the subject property is a corner lot and is therefore subject to two front yard setbacks. In addition, the Statement states that with an area of 4,950 square feet, the subject property is "the smallest in the immediate area along Grafton Street," and is substandard for the R-60 Zone, which has a 6,000 square foot minimum lot size. The Statement notes that in addition to being substandard for the Zone, the subject property is small relative to the other properties on the block, stating that "[t]he average lot area of all properties on our block is 8,636 square feet," and that the subject property is "3,686 square feet smaller than that average." See Exhibit 3.

4. The Statement states that the Petitioner's house "was built with an enclosed, screen porch, encroaching in the current front corner yard setback on Kirkside Drive, creating an existing non-conforming use." The Statement states that this existing porch is in "severely deteriorating condition," and that the Petitioner is proposing to replace this porch with a new screened porch that is one foot, four inches (1'-4") wider. The Statement further notes that the usable width of the existing porch is constrained by the presence of a "large masonry chimney" that "mak[es] the interior of the porch nearly impossible to furnish or use comfortably." The Statement states that the Petitioner is seeking to "rebuild the structure, and make it a functional space." See Exhibit 3.

5. The Statement states that strict compliance with the setbacks imposed by the Zoning Ordinance would cause the Petitioner a practical difficulty. The Statement states in support of this that "[t]he combination of the property's exceptional narrowness, minimal lot area, existing non-conforming use, proximity of the existing structure to building restriction lines, and the additional restrictions of a corner lot make it impossible to reconstruct the enclosed, screen porch structure into a functioning space for our

family.” See Exhibit 3. The Statement further states that the “requested 1'-4" front yard variance, and the ability to rebuild the existing non-conforming use, will be virtually indistinguishable from the original structure's visual impact on the corner and to the neighbors.” The Statement further states that the Petitioner intends to replace the hip roof of the existing porch with a “flat roof with visually open handrails,” which the Statement indicates “will create an environmentally sensitive, visually smaller structural volume, for the neighbors.” Finally, the Statement states that the design of the proposed porch “substantially conforms with the traditional development pattern of the street or neighborhood.”

6. The Petitioner has submitted letters of support for the requested variance from several of her neighbors, including her confronting neighbors on Kirkside Drive, who would arguably be most impacted by the grant of the requested variance and the proposed construction. See Exhibits 6(a)-(d).

7. At the November 1, 2023, hearing, Ms. Maruszewski testified that she purchased the subject property in 2009. She testified that the subject property is a narrow and small corner lot with two front setbacks, describing the property as being “half of a normal size lot” in the area. Ms. Maruszewski testified that the subject property contains a house that was built in 1934. She testified that there is an existing, dilapidated porch on the right side of the house (when viewed from Grafton Street). Ms. Maruszewski testified that this porch is located sixteen feet, two inches (16'-2”) from the property line along Kirkside Drive. She further testified that there is a two (2) foot chimney inside the porch that limits its usable space. Ms. Maruszewski testified that she and Mr. Maruszewski are seeking to extend their porch sixteen inches (16”) closer to their Kirkside Drive property line, to make the area inside the porch more usable.

Ms. Maruszewski testified that the view of the porch from Grafton Street will be obscured by existing trees. She testified that when viewed from the abutting property to the north, the proposed porch would increase the openness of that view, as compared with the existing porch, because the existing hip roof will be replaced with a flat roof and railing. Ms. Maruszewski testified that her neighbors are supportive of the proposed construction, and are excited to have the porch look nicer.

Ms. Maruszewski agreed with the Board that the existing porch is nonconforming. In response to a Board question asking whether her abutting neighbor to the north was aware of and supported the proposed construction, Ms. Maruszewski testified that that neighbor is fully supportive of the project.

8. Mr. Maruszewski testified at the November 1, 2023, hearing that the additional sixteen inch (16”) encroachment that he and Ms. Maruszewski are seeking will allow them to fit furniture on their porch without visually impacting the neighborhood. He testified that the subject property is “super small” at about 1/10<sup>th</sup> of an acre, and “super narrow” with a depth of only 55 feet. Mr. Maruszewski testified that the impact of the property’s small size and narrowness is further exacerbated by the need to observe two front yard setbacks, causing them a hardship. He testified that their intent was to

generally replace the existing porch in kind, and that many homes in the neighborhood have porches with similar roofs and railings.

## **CONCLUSIONS OF LAW**

Based on the evidence of record, the Board finds that the requested variance can be granted. The 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 Application, Statement, Site Plan, Zoning Vicinity Map, and testimony of record, that the subject property is substandard in size for the R-60 Zone, and significantly smaller than the average size of properties on the Petitioner's block. The Board finds that this results in a buildable envelope that is very constrained, a condition that is further exacerbated by the property being a corner property. See Exhibits 1, 3, 4, and 7. The Board finds that this is an extraordinary condition that is peculiar to this property, in satisfaction of this element of the variance test.

*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 Statement, that the Petitioner's existing house and porch were built in 1934 as a single structure before current zoning regulations were in effect. See Exhibit 3. The Board further finds that because the porch portion of this structure encroaches into the required front setback along Kirkside Drive, the structure (house and porch) is now nonconforming. Finally, the Board finds that because the proposed development is a renovation of this existing nonconforming structure, 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;*

Per SDAT, the Petitioner purchased this property, which was developed in 1934, in 2009. Thus the Board finds that the Petitioner is not responsible for the substandard size of the subject property or its constrained buildable envelope, and in addition, is not responsible for the nonconforming location of the existing structure. Thus the Board finds that this element of the variance test is satisfied.

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 requested variance is the minimum necessary to allow the proposed reconstruction and slight enlargement of an existing porch, and thus to overcome the practical difficulty that full compliance with the setbacks imposed by Zoning Ordinance would cause the Petitioner, on account of the constraints on this property's buildable area that are posed by the property's exceptionally small size and by the nonconforming location of the existing improvements. The Board further finds, based on the Statement and the testimony of Ms. Maruszewski, that the proposed one foot, four inch (1'-4") increase to the width of the porch is the minimum needed to make the porch functional. 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 the proposed construction will continue the residential use of the subject property. Accordingly, the Board finds that the requested variance can be granted without substantial impairment to the intent and integrity of the Bethesda-Chevy Chase Master Plan, which seeks to "[p]rotect the high quality residential communities throughout the Planning Area" and to "[r]econfirm the zoning for the extensive single-family detached residential areas," 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.*

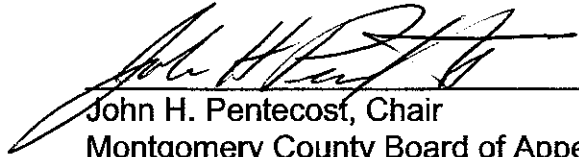
The Board finds that with the grant of the requested variance, the Petitioner's new porch will extend only slightly further into the setback along Kirkside Drive than her existing porch, which, per the Statement, has been in place since 1934. See Exhibit 3. The Board further finds, based on the Statement, that the additional encroachment will be "virtually indistinguishable" from that of the existing porch, and that the new porch has been designed to minimize its bulk and to fit with the neighborhood. See Exhibit 3. The Board notes that the Petitioner has testified that her neighbors support the proposed construction, and that the record contains letters of support from four neighbors, including her abutting neighbor to the north and her confronting neighbors across Kirkside Drive. See Exhibit 6(a)-(d). Finally, the Board notes that the record contains no opposition to the grant of the requested variance, and that no one appeared at either hearing in opposition to the requested variance. In light of the foregoing, the Board finds that granting the requested variance, needed to allow construction of the proposed replacement porch, will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance from the front lot line along Kirkside Drive is **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 Exhibit 4.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Laura Seminario-Thornton and Alan Sternstein in agreement, and with Caryn Hines 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 22nd day of November, 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.