

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6897

PETITION OF STEVEN E. DAVIS AND SUSAN NOBLE DAVIS

OPINION OF THE BOARD
(Opinion Adopted December 18, 2024)
(Effective Date of Opinion: January 8, 2025)

Case No. A-6897 is an application for a variance needed to allow construction of a screened porch. The proposed construction requires a variance of eight (8) feet as it is within seventeen (17) feet of the rear lot line. The required setback is twenty-five (25) feet, in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on December 18, 2024. Petitioner Steven Davis participated in support of the requested variance. The Petitioners' architect/engineer, Constantin Noroi, was also present, along with project manager Tudor Loghin.

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

EVIDENCE PRESENTED

1. The subject property is Lot 42, Block C, Beverly Farms Subdivision, located at 12001 Coldstream Drive in Potomac, Maryland, 20854, in the R-90 Zone. It has an area of 10,420 square feet. The subject property is a four-sided interior lot, located on the east side of Coldstream Drive. The property's front (eastern) lot line follows the curvature of Coldstream Drive, and is concave. The property's side lot lines meet the front lot line at right angles, but because of the curvature of the property's front lot line, diverge from one another. The property's right (southern) side lot line is significantly shorter than its left (northern) side lot line (89.9 feet versus 117.24 feet). The property's rear lot line is straight and is longer than any of the other lot lines. It intersects the right side lot line at a right

angle, and the left side lot line at an acute angle. The result is an unusually shaped and shallow property that has no parallel sides. In addition, the property slopes up from the street to the house, and again from the house to the property's rear lot line. The property is improved with a single family home that was built in 1966. It was purchased by the Petitioners in 2009. See Exhibits 3(a), 4(a), and 9, and SDAT Printout.

2. The Petitioners' Statement of Justification ("Statement") states that the property has an "irregular shape." The Statement describes the shape of the property as a "modified 'wedge-shape'," and notes that the "right side of the wedge" is approximately eighteen feet shorter than the left side, which "limits the rear yard area." See Exhibit 3(a).

3. The Statement states that the Petitioners are proposing to construct a thirteen foot wide by twelve foot deep (13' x 12') screened porch on the rear of their house, in an area currently occupied by a brick patio. The Statement states that the proposed porch would extend nine (9) feet into the setback from the rear lot line, the same amount that a roofed but open porch is allowed to extend. See Exhibit 3(a).

4. The Statement states that the property's rear lot line is shared with Beverly Farms Local Park. The Statement states that the park "is partially wooded and has baseball diamonds and open fields for soccer and other recreational activities." It states that "[t]he wooded area is directly behind the proposed building site with a down-sloping transition to the open field," and that "[a]n approximately 65-foot 'buffer zone' with dense trees planted for noise abatement separates [the Petitioners'] property from the improved parts of the field where recreational activities take place." See Exhibit 3(a).

The Statement further states that "[t]he County park presents a unique situation where there are no residential properties behind [the Petitioners'] property and the park has a wide buffer zone that creates additional separation for noise abatement (and the prevention of the occasional rogue baseball or soccer ball)," and notes that "[a]lthough these facts are not considered 'hardship', the unique situation should further justify the reasonable and minimal amount of setback variance [the Petitioners] are requesting." See Exhibit 3(a).

5. The Statement states that errors or omissions that occurred in connection with the planned construction of a drainage swale behind the subject property on the abutting Beverly Farms Local Park property have caused water problems on the park property and on the Petitioners' property, and that this, in turn, has resulted in an insect problem on the subject property, as follows:

Ineffective Drainage Swale

In 2012, Beverly Farms Elementary school was re-built. Along with the school, the adjacent property, Beverly Farms Local Park, was re-graded, a geo-thermal well system was installed, and the field is now home to much recreational activity. Along with the re-grading, a grass swale was planned (see attached Muse Architects, Civil Site Plan, C-3.0, 3 May, 2011, "Grass Swale Cross Section",

7_DAVIS_BFES_Civil_Site_Plan.pdf) that would run along our rear property line to collect water that originates from the higher wooded elevation to the right of our property. The collected water would then continue along the back edge of our property and eventually drain to the field to the left (where the power line towers reside).

We don't believe this swale was implemented properly or at all since there are tree roots and uneven topology where the swale should be. Unfortunately, when it rains, water collects just behind our property where the swale is supposed to carry water away (see attached photos, "Standing Water in Beverly Farms Local Park", 8_DAVIS_Standing_Water_BFLP.pdf). The photos in the attachment were taken just beyond our rear property line and shows just how much standing water collects when it rains. Since this pooling is at a higher elevation, the water finds its way down hill to our property creating excess water in our back yard. We have sump pumps at each rear corner of our house to pump water away from our foundation in hard rains because of the excess water.

Another consequence of this unfortunate drainage is the amount of mosquitos and gnats that we experience in our yard because of the standing water. The "bug problem," as we call it in our household, prevents us from enjoying our existing backyard, open-air patio.

See Exhibit 3(a). The Statement states that the Petitioners "consider this situation of standing water and the ineffective drainage that was not properly implemented for proper water management a hardship that should be considered for our variance request." In addition, as indicated above, the Statement reiterates that "the excess water contributes to the increased insect population in [the Petitioners'] immediate area," and states that "[i]n order to keep [their] family safe and to follow the county recommendations for preventing disease, [the Petitioners] need to enclose the proposed porch with screens," consistent with recommendations posted on the County's website. See Exhibit 3(a).

6. The Statement states that the property's shape, topography, and natural features limit its buildable area, as follows:

Due to the property shape, topology, and natural features, building options for a screened porch are limited. The rear of the lot slopes up (as much as 20-degrees near the property line) while the front of the lot slopes down (driveway to carport is approximately an 11-degree slope). Also, a mature silver maple tree grows near the rear property line. The 25-foot rear setback requirement restricts us from constructing any practical structure in the rear yard, which impedes the effective and efficient utilization of the property.

See Exhibit 3(a). The Statement states that without the grant of a variance, "[t]he required setback of 25-feet would limit any attached and screened construction to a depth of only 3-feet; which is not a practical option."

7. The Statement states that the Petitioners could, in theory, build their proposed screened porch closer to the rear lot line if it were constructed as an accessory structure, but states that because of the property's sloping topography, among other things, such construction is not feasible, noting that "the slope rises significantly near the rear property line, which would elevate the structure or require significant excavation and further drainage." In addition, the Statement states that construction of the proposed porch as an accessory structure "would bring the construction closer to the existing tree, which could be damaged by post footing excavation (particularly given its mature root zone), complicate digging and drainage, and may result in footing plan County permit revisions." Finally, the Statement observes that "[a] raised structure would detract from the seamless appearance of a screened porch aligned with the ground and the entry/exit doors of our home," and would "devalue the property instead of enhancing the property with a structure similar to comparable houses in our neighborhood." See Exhibit 3(a).

8. The Statement states that the requested variance is the minimum necessary to overcome the practical difficulties imposed by full compliance with the Zoning Ordinance. The Statement states that the Petitioners "have limited the overall size of the screened porch to enable a minimal setback reduction request," and that the "9-foot encroachment aligns with the accepted encroachment for a screen-free structure." The Statement further states that the resultant 16 foot setback from the rear lot line "is the minimum necessary to achieve the desired use without overburdening the property or making an unreasonable request." See Exhibit 3(a).

9. The Statement states that the proposed screened porch "maintain[s] the aesthetic quality and residential character of the neighborhood," and will be designed to "harmonize with [the Petitioners'] existing home and other structures in the area." The Statement states that strict adherence to the required rear setback would "preclude[] ... construction that is otherwise typical in the community," and "gives no room to build a minimally sized screened-in porch as measured by comparable houses in the neighborhood." The Statement thus asserts that granting the requested variance "would not negatively affect surrounding properties or the general neighborhood character," or "infringe on neighbors' privacy, safety, or enjoyment of their own property." The Statement notes in support of this that the proposed porch "was designed to complement the existing surroundings while ensuring that it does not obstruct neighbors' views or sunlight," and that "[t]he fact that the rear property is a wooded public park with an obvious 'buffer zone' further limits the impact on neighbors; since the nearest neighboring property is non-residential." See Exhibit 3(a). Finally, the Statement notes that the Petitioners' abutting neighbors have both signed letters of support for the proposed construction. See Exhibits 7(a)-(b).

10. The Statement concludes that the Petitioners' request meets the standards for the grant of a variance. It states that the property's "size, shape, topology, and other natural features significantly constrains the available buildable options to add an attached structure" to the rear of their home. The Statement states that the Petitioners have made their "best efforts" to design a "minimally-sized screened-in porch," but that "with the installation of screens for safety," they need a variance to permit a nine (9) foot encroachment into the rear setback. The Statement asserts that the requested nine (9)

foot variance is “the minimum necessary to overcome the practical difficulties created by the conditions of [the Petitioners’] property.” The Statement states that the fact that their property abuts a “wooded area and recreational field (non-residential lot) with [a] wide ‘buffer zone’” also makes the property “exceptional” for the purpose of granting the requested variance. Finally, the Statement concludes that as evidenced by the letters of support, “granting the variance will not be aversive to the use and enjoyment of abutting properties.” See Exhibit 3(a).

11. At the hearing, Mr. Davis testified that he and his wife are trying to construct a small (12’ x 13’) screened porch on the back of their home where a 12’ x 12’ brick patio currently exists. He testified that the proposed porch would encroach nine (9) feet into the rear setback and noted that the porch would be allowed by right if it were not screened.

Mr. Davis testified that Coldstream Drive is curved in front of their house, and that as a result, they have a curved front lot line. Mr. Davis testified that their property’s rear lot line is straight. He testified that their back yard is small because it is “cut off” by this straight rear lot line, and noted that as a result, their back yard is shallower than either of their abutting neighbors’ back yards. Mr. Davis testified that their property abuts parkland to the rear. He testified that there is a 65 foot treed buffer between his property and the recreational area of the abutting park, and indicated that he believed the buffer was intended for noise abatement.

In response to Board questions, Mr. Davis testified that his house was built in 1966, and that he and his wife purchased it in 2009. He testified that they have no neighbors to their rear, and that their existing detached garage would block any view of the porch by their right side neighbor. He testified that they tried to make the size of the porch reasonable by limiting the extent of the encroachment to that which would have been allowed if the porch had not been screened.

In response to a Board question asking about the topography of his property, Mr. Davis testified that his house is built on a hill, and that the driveway has about an 11 degree slope up from the street. He testified that the back yard is relatively flat until you get close to the property line, where there is about a 20 degree slope up to the park. Mr. Davis testified that when it rains, their property receives water from the neighboring park and elementary school, and that they are looking to correct drainage issues in connection with the proposed construction. Finally, in response to a Board question asking why the proposed porch could not be located on the other side of their house, Mr. Davis testified that in addition to being awkward and devaluing their property, construction on that side would cause construction issues, such as the need to relocate an existing stairwell, and would necessitate extensive modifications to the house.

CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the 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;

The Board finds, based on the Statement, Site Plan, and the testimony of Mr. Davis, that the subject property is unusually shaped and shallow relative to its neighbors. See Exhibits 3(a) and 4(a). The Board further finds that because of the property's unusual shape and shallowness, its buildable envelope is also unusually shaped, shallow, and uniquely constrained, only allowing for a three (3) foot expansion of the Petitioners' home to the rear without variance relief. Finally, the Board notes that the subject property abuts parkland, and that the open and non-residential use of the abutting property detracts from the purpose for imposing a rear setback. 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.

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, based on the Statement and the testimony of Mr. Davis, that the Petitioners' home was built in 1966, and that the Petitioners purchased their home in 2009. See Exhibit 3. Accordingly, the Board finds that the Petitioners are not responsible for the unusual shape and shallow nature of their property, for its sloped rear yard, or for the constrained buildable area to the rear of their house that results from the application of the required setbacks to their 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 requested eight (8) foot variance is the minimum necessary to overcome the practical difficulty that full compliance with the setbacks imposed by Zoning Ordinance would cause because of the constrained buildable envelope that results from the application of the required setbacks to this property, on account of its shallow nature and unusual shape. The Board finds that when the setbacks are applied, there is inadequate room to expand this house in any meaningful way to the rear. The Board notes that the proposed encroachment for which the variance is requested does not extend beyond the encroachment that would be allowed by right for a roofed but open porch, and that if the structure were built as a detached structure, it could be located much closer to the rear lot line. Finally, the Board finds that the proposed thirteen foot wide by twelve foot deep (13' x 12') screened porch is not unreasonably large, and that it will not extend closer to the rear lot line than the existing brick patio. Thus the Board concludes that the grant of the requested variance is the minimum necessary to allow the proposed screened porch on this unusually shaped and shallow property, and 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; and*

The Board finds that the granting of this variance will continue the residential use of the home, and thus finds that the variance can be granted without substantial impairment to the intent and integrity of the applicable Potomac Subregion Master Plan.

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, based on the Statement and the Zoning Vicinity Map, that the Petitioners' property backs to a County park, and that there is a 65 foot wooded "buffer zone" between their property and the area of the park that is used for recreation (i.e. the playing fields, etc.). See Exhibits 3(a) and 9. The Board finds that the non-residential nature of the abutting property to the rear and the presence of a wooded buffer mitigate any adverse impacts that granting a variance from the setback for the shared lot line might cause. In addition, the Board finds, per the Statement, that the Petitioners have discussed their proposed construction with their neighbors, and that none expressed any opposition. See Exhibit 3(a). Indeed, the Board finds that the Petitioners' abutting neighbors to the left and right have submitted letters indicating support for the proposed construction and the grant of the requested variance. See Exhibits 7(a)-(b). Finally, the Board notes that despite the property having been properly posted and the hearing having been properly noticed, the record contains no opposition to the grant of the requested variances, and no one was present at the hearing in opposition. In light of the foregoing, 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 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) and 5(a)-(b).

Therefore, based upon the foregoing, on a motion by Alan Sternstein, seconded by Donald Silverstein, with Caryn L. Hines, Chair, and Amit Sharma in agreement, and with Richard Melnick, Vice Chair, 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.


Caryn L. Hines
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of January, 2025.



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.