

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6645  
PETITION OF BENJAMIN AND MONICA BOND-LAMBERTY**

OPINION OF THE BOARD  
(Opinion Adopted January 29, 2020)  
(Effective Date of Opinion: February 6, 2020)

Case No. A-6645 is an application for a variance necessary for construction of an entry addition on the front of an existing house. The proposed addition requires a variance of 7.96 feet as it is within 17.04 feet of the front lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The subject property is Lot 8, Block 11, Indian Spring Club Subdivision, located at 9624 Flower Avenue, Silver Spring, Maryland, 20901, in the R-60 Zone.

As authorized by Section 59-7.3.2.A, the Board of Appeals held a hearing on the application on January 29, 2020. Petitioners Benjamin and Monica Bond-Lamberty appeared at the hearing in support of the application, assisted by their architect, Mark Guild.

Decision of the Board: Requested variance **GRANTED**.

**EVIDENCE PRESENTED**

1. The subject property is a four-sided corner lot located on the southwest corner of Flower Avenue and Granville Drive. The northeast corner of the property is arced at the intersection of these roads. See Exhibit 4(c). The subject property has a total area of 5,899 square feet, less than the 6,000 square foot minimum lot size in the R-60 Zone.

2. The Statement of Justification ("Statement") describes the property as both small and shallow. With respect to the property's small size, the Statement notes that "[i]n reviewing several Tax Records for neighboring properties, many of the surrounding lots exceed 6,000 and even 7,000 SF; however, the Property at 9624 Flower Avenue, Lot 8 [the subject property] is 5,899 SF making it uniquely smaller than others, exacerbating the Increased Setback Requirements for a Corner Lot." See Exhibit 3. The Statement

includes a calculation showing that corner lots have a smaller buildable area than interior lots of the same size. With respect to its shallowness, the Statement states that “[t]he house fronts toward Flower Avenue instead of Granville Avenue resulting in a very shallow lot with almost no room for expansion toward the ‘Front’ or ‘Rear’ of the property. Because of the shallowness of Lot 8 (9624) from Flower to Lot 7 (on Granville), the Zoning Rear Yard was located to the house’s functional ‘Side’ near Lot 9, and the Zoning Side Yard was location to the house’s functional ‘Rear.’” The Statement concludes, speaking of the subject property, that “[t]he Corner Lot with two 25’ Setbacks required by Zoning, paired with the comparatively shallow and small lot, in conjunction with the rotated, functional orientation of the house ALL result in an extraordinary condition for 9624 Flower.” See Exhibit 3.

3. The Statement describes the house on the subject property as “a 2-story, 1,484 SF, brick Colonial built in 1940,” and notes that the “front door enters directly into the Living Room.” It states that the Petitioners are seeking to add an enclosed foyer to reduce air infiltration every time the front door is opened, to add storage space for outerwear and equipment, and to add natural light to brighten the arrival area and conserve energy. It states that the proposed enclosure is 72 square feet in size.

4. The Statement states that because of its designation as a “Primary P-2” street, Flower Avenue has a 70-foot right-of-way, 20 feet wider than the 50-foot right-of-way present on most neighborhood streets, including Granville Drive. The Statement further indicates that Flower Avenue is a long road that ends at its “T-intersection” with Granville Drive, and that the volume of traffic on Flower in the area of the subject property is less than that on the remainder of the road, as follows:

...the unique condition at 9624 Flower Ave. is that the Master Plan created a 60-foot setback from centerline of roadway to face of structure, that is 10 feet greater than the 50-foot setback from centerline of road required of the majority of neighborhood houses located on Local roads, even though the traffic volume is no different at the northmost point of Flower Avenue. The Department of Transportation recognizes the diminished traffic flow as evidence by the cessation of the double-yellow “No Passing” centerline markings, which stop at the intersection of Lawndale Drive and Clearview Place. Flower Avenue is unmarked for two final blocks north of this point, typical of Local neighborhood roads.

See Exhibit 3. The Statement includes a calculation showing the effect of the wider right-of-way along Flower Avenue as opposed to that typical of a local neighborhood road on the required front lot line setbacks, as follows:

Building Setbacks from Centerline of Road:

Flower Avenue	60' = (half of 70' R/W)+25' R-60 Zoning Setback
Local Neighborhood Roads	50' = (half of 50' R/W)+25' R-60 Zoning Setback

It asserts that the right-of-way in front of the subject property is "excessively large," and states that the "traffic in front of this house is no more than typical 50' R/W local neighborhood roads."

5. The Statement asserts that the proposed addition substantially conforms with the established historic or traditional development pattern of this neighborhood, noting that "...walking the neighborhood in the immediate vicinity of this property, numerous other houses include enclosed foyers and additions, showing a development pattern for an enclosed Foyer on these homes." The Statement identifies and maps 24 properties in the neighborhood that have enclosed front additions similar to that proposed by the Petitioners, and includes photographs of 22 of those properties. See Exhibit 3.

6. The Statement states that after the application of the required front lot line setback along Flower Avenue, there is only one (1) foot available to expand the functional front of this house without seeking variance relief. It notes that if the proposed foyer addition were to be "embedded" in the existing house, it would "reduce the size of the existing living room by 35% and eliminate access to the only stairwell serving the upstairs." See Exhibit 3. The Statement explains that using the existing garage as an entrance vestibule would not only eliminate parking, but also "is not possible due to the location of the overlapping stairways extending up to the upper level and down to the basement." Thus the Statement concludes that "[t]he only viable option is to extend outward beyond the front of the house," and that this is the "minimum necessary to overcome the practical difficulties of the existing structure." See Exhibit 3. The Statement further notes that the proposed addition will replace an "existing, unenclosed portico in disrepair" in "much the same area," and that the proposed addition will not extend as far into the setback as an "unenclosed porch, deck, terrace, steps, or stoop" is permitted to extend pursuant to Section 59-4.1.7.B.5.a.i of the Zoning Ordinance.

7. Regarding the impact of the proposed addition on neighboring properties, the Statement states that "[t]he visual impact from the street will not be significantly different based on the small footprint of the proposed addition and the distance from the street centerline," noting that "[s]ince the setback from [the] centerline of Flower Avenue will be over 52-feet, the perception of the Entry Foyer addition will match that of the typical 50-foot distance from [the] centerline of most Local roads to [the] front of the main house structure." The Statement further notes that the subject property includes "several mature, shade trees and plantings which partially screen the front of the house from street view." It states that the Petitioners have discussed their proposed construction with all of their abutting and confronting neighbors, and have obtained their support. See Exhibit 3. The record contains letters of support from the Petitioners' abutting and confronting neighbors. See Exhibits 9(a)-(c). In addition, the Statement indicates that the Petitioners have notified the local civic association, the Indian Spring Citizens Association, of their intent to seek a variance for their proposed entrance foyer.<sup>1</sup> See Exhibit 3.

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<sup>1</sup> At the hearing, Petitioner Benjamin Bond-Lamberty testified that while the Indian Spring Citizens Association had been informed about their plans, the Association typically does not take a position on these types of things.

8. Mark Guild, the Petitioners' architect, testified at the hearing in support of the variance application. Mr. Guild explained the proposed construction and the need for it to the Board, testifying that the Petitioners' home is a colonial typical of the area, and that the Petitioners are seeking to construct a foyer addition to provide storage space for coats and boots, and to serve as a climate buffer between the front door and living room.

Mr. Guild testified that standing in front of the house, the yard feels generous because of the 70 foot wide right-of-way imposed by the Master Plan on Flower Avenue, which he stated makes the front yard "feel" as though it has an extra 10 feet of space. He testified that the double yellow line on Flower Avenue stops about two blocks up from the subject property, and that the portion of Flower Avenue that is in front of the Petitioners' home gets no more traffic than any other neighborhood road, such as Granville Drive. Mr. Guild noted that the right-of-way for Granville Drive is only 50 feet wide. In response to a Board question, Mr. Guild confirmed that it was his position that the right-of-way for Flower Avenue should only be 50 feet wide in front of the subject property because Flower Avenue is really a neighborhood road at that point, and that if that were the case, the front lot line of the subject property would be that much farther from the front of the house, and a variance would not be needed for the proposed addition.

Mr. Guild testified that the subject property is less than 6,000 square feet in size, making it substandard for the zone and limiting the area in which to build. He testified that an informal survey of houses in the neighborhood showed that many have enclosed foyers, as detailed in the Petitioners' Statement, and that the proposed construction would fit this pattern. Mr. Guild testified that the proposed addition is approximately 70 square feet in size, with about 45 square feet devoted to the entrance area and the remainder to closets and shelves. Thus he testified that the Petitioners are requesting the minimum amount of space needed for this project. Mr. Guild testified that had this house been built so that it faced Granville Drive instead of Flower Avenue, there would have been no issue with the proposed construction, and reminded the Board that if the proposed addition were not enclosed, it would comply with the limits on projections.

## **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 upon the representations in Exhibit 3, the Board finds that at 5,899 square feet, the subject property is substandard for the R-60 zone and smaller in size than many nearby properties which, per the Statement, are greater than 6,000 and sometimes

greater than 7,000 square feet in size. In addition, because of the shallow nature of this property, the Board finds that the application of the required setbacks leaves only one (1) foot in which to expand this home in the direction of its functional front, and little room for expansion to the functional rear. Thus the Board finds that the substandard and shallow nature of this property combine to significantly limit the area available for construction without variance relief. Accordingly, the Board finds that this element of the variance test is satisfied.

*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;*

Per the Statement and the testimony of the Petitioners' architect, the Board finds that many of the homes in this neighborhood have enclosed front foyer additions such as that proposed by the Petitioners, as shown in the photographs attached to Exhibit 3. Thus the Board finds that the proposed addition substantially conforms with the established historic or traditional development pattern of this neighborhood.

*3. 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 Petitioners are not responsible for the size or shape of the subject property, or for the development pattern in the neighborhood, in satisfaction of this element of the variance test.

*4. 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 Petitioners to construct the proposed 72 square foot front foyer addition in the same general location as their existing portico, and thus to overcome the practical difficulty that arises from the application of the required setbacks to this property, due to its shallowness and substandard size. The Board notes, per the Statement, that the proposed improvements could not be located in the existing space because they would block the stairway. Additionally, the Board finds that the requested variance is the minimum necessary to permit the proposed construction of an enclosed front foyer on this home so that the home will substantially conform with the established development pattern in the neighborhood. Based on the foregoing, the Board finds that this element of the variance test is satisfied.

*5. 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 front addition will continue the residential use of the property and accordingly 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.

6. *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 that the proposed front addition will replace an existing portico, albeit with a slightly larger structure, and that views of the proposed structure will be partially obscured by existing mature vegetation. The Board further notes that with the proposed construction, the home would conform with the established development pattern in this neighborhood. Finally, the Board notes, per the Statement, that the Petitioners have discussed their plans with all of their abutting and confronting neighbors, and have obtained their support. Thus the Board finds that the grant of the requested variance will not be adverse to the use and enjoyment of abutting or confronting property owners. In addition, as further support for this finding, the Board notes that the record contains letters of support for the proposed construction from the Petitioners' three closest neighbors (two abutting and one confronting), and contains no letters of opposition. See Exhibits 9(a)-(c).

Accordingly, the requested variance of 7.96 feet from the 25-foot setback required along the property's Flower Avenue front lot line is **GRANTED**, subject to the following conditions:

1. The Petitioners shall be bound by the testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a)-(b) and 5(a)-(h).

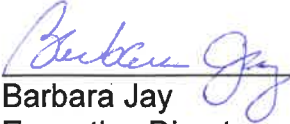
Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Mary Gonzales, with Katherine Freeman in agreement, and with Bruce Goldensohn, Vice Chair, necessarily absent, the Board adopted the following Resolution:

**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.

  
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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 6th day of February, 2020.



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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.