

**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-6694**

**PETITION OF XXXXX XXXX**

**OPINION OF THE BOARD  
(Opinion Adopted May 12, 2021)  
(Effective Date of Opinion: May 19, 2021)**

Case No. A-6694 is an application for a variance needed to allow the construction of an open porch that encroaches into the side street setback. The proposed construction requires a variance of 5.20 feet as it is within 6.80 feet of the right lot line. The required setback is twelve (12) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on May 12, 2021. All participation was done via Microsoft Teams. Petitioner XXXXX XXXX participated in the proceedings, in support of the application. He was assisted by Neil Shaut and Zahra Keihani of Case Architects & Remodelers.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 26, Block 12, National Chautauqua of Glen Echo Subdivision, located at 7316 University Avenue in Glen Echo, Maryland, 20812, in the R-60 Zone. It is a four-sided corner lot, 6,084 square feet in size, located on the south side of the intersection of Harvard and University Avenues. There is an eight (8) foot wide WSSC right-of-way easement which existed prior to the Petitioner's ownership of the property that extends across the full width of the property's rear yard. See Exhibits 3, 4, and 7(b).

2. The Petitioner's Statement of Justification ("Statement") states that the Petitioner purchased the subject property in 2014. It indicates that in order to provide needed outdoor space, the Petitioner initially wanted to expand a small, existing deck on the rear of his house to create a porch, but was unable to do so because, as previously noted, there is "a large WSSC easement running through the entire rear yard." As a result, the Petitioner is seeking to extend an existing side porch to create usable outdoor space on the Harvard Avenue side of the house. The Statement indicates that the proposed side porch is "in-line with the design aesthetic for this home and the neighborhood," and that the variance requested is the minimum needed to allow its construction. See Exhibit 3.

3. The Statement at Exhibit 3 states that the Town of Glen Echo has already approved a variance for the proposed construction. It further indicates that all of Petitioner's neighbors support the Petitioner's request:

Before applying for the permit to the County, petitioners first obtained approval from their local jurisdiction, the Town of Glen Echo. The Town conducted a rigorous evaluation of the merits of their situation, including in-person visits from 75% of the Town Council and a 90-minute open hearing on the topic prior to voting unanimously to grant a variance in the Town's jurisdiction. The Town also considered, as part of their evaluation of the variance application, that 100% of neighboring residents supported the petitioner's request for the variance.

4. The Statement at Exhibit 3 further states that the grant of the requested variance will not be adverse to the use and enjoyment of neighboring properties for the following reasons:

The modest expansion of the open porch toward Harvard Avenue would not materially impact existing sightlines, the flow of light and air or the open character of the streetscape. The petitioner's plan to maintain existing vegetation would help shield the porch from view from abutting property. The scale of the construction would be minimized by the vegetative screening and open construction. In general, this project improves the feeling of community between neighbors. 100% of neighbors that could be impacted by the project approved the plans—there was no dissent of any kind from anyone in the Town.

5. At the hearing, Petitioner XXXXX XXXX testified that as it has for many people, the pandemic made him aware of a need for usable outdoor space. He testified that while his preference would have been to create this space to the rear of his home, that was not possible because of a large WSSC easement that runs that width of his rear yard. Mr. XXXX testified that he is seeking to construct a 12-foot wide open porch on the side of his home, noting that the existing porch on that side is not built to current code standards.

Mr. XXXX testified that in considering the proposed construction, three of four councilmembers of the Town of Glen Echo came to his home to view his property, and that the Town Council voted unanimously to grant a variance needed in connection with the proposed side porch expansion. He testified that all of his neighbors who can see the

proposed porch, as well as his abutting neighbor on the opposite side of his house, support the proposed construction, adding that he went door to door to visit his immediate neighbors so that he could explain the project and address any concerns that they might have.

6. Neil Shaut of Case Architects & Remodelers testified that the house on the subject property was built in 1998, and that the Petitioner is its second owner. He testified that the existing side porch is not wide enough to allow for comfortable circulation and use, and that a few more feet will give the Petitioner the room needed to move and entertain. Mr. Shaut testified that his firm is looking at cantilevering the new deck and roofing aspects of the proposed construction, but that some structural improvements will have to be made to meet the current building code. He testified that his firm and the Petitioner sought the approval of the Town of Glen Echo and surrounding neighbors prior to bringing this variance to the Board in an effort to be thoughtful to and respectful of the community.

### **FINDINGS OF THE BOARD**

Based on the binding testimony and 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 and Site Plan, that the rear yard of the subject property is encumbered by a large WSSC right-of-way easement that extends the entire width of the Petitioner's rear yard, and that this easement prevents expansion of the existing rear deck towards the rear lot line or its conversion into a usable porch. The Board finds that the presence of this easement constitutes an extraordinary condition, peculiar to the subject property, in satisfaction of this element of the variance test. See Exhibits 3 and 4.

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

The Petitioner, who purchased the subject property in 2014, did not construct or have control over the placement of the WSSC right-of-way easement. See Exhibit 3. Thus the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioner.

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 as noted above, the presence of a WSSC right-of-way easement across the entire width of the Petitioner's rear yard constrains the ability of the

Petitioner to create usable outdoor space on that side of his home, causing him a practical difficulty. The Board further finds, based on the testimony of Mr. Shaut, that the requested variance is the minimum needed to permit construction of an open porch of usable width on the side of the Petitioner's home, and thus to provide the Petitioner with the usable outdoor space that is unavailable to the rear of his home. Thus the Board finds that the requested variance is the minimum necessary to allow the proposed side porch, and to overcome the practical difficulty that full compliance with the Zoning Ordinance would otherwise impose.

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 continues the residential use of the home, and therefore can be granted without substantial impairment to the intent and integrity of the applicable 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.*

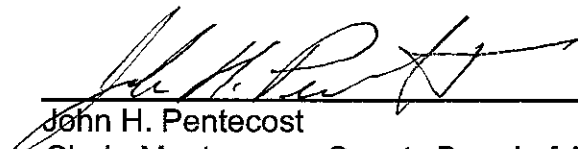
The Board finds, based on the Statement and testimony of the Petitioner, that the Petitioner's neighbors support the grant of the variance needed for the proposed construction. The Board further finds, based on the Statement, that the proposed side porch will not have a material impact on sight lines, light, or air, and will be somewhat shielded from the abutting property by existing vegetation. See Exhibit 3. Thus the Board finds that granting the requested variance will not adversely affect the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance 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 Exhibits 4 and 5(a)-(p).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, Vice 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 19th day of May, 2021.

  
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.