

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6701

PETITION OF THOMAS AND TIA HUNTLEY

OPINION OF THE BOARD
(Opinion Adopted May 26, 2021)
(Effective Date of Opinion: June 4, 2021)

Case No. A-6701 is an application for a variance necessary for the proposed construction of a porch. The proposed construction requires a variance of nine (9) feet as it is within seven (7) feet of the front lot line. The required setback is sixteen (16) feet, after application of the nine (9) foot encroachment allowed by Section 59.4.1.7.B.5.a.i of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on May 26, 2021. All participation was done through Microsoft Teams. Petitioners Thomas and Tia Huntley participated in support of the requested variance, assisted by Brian Burns of The B. Burns Company, LLC.

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

EVIDENCE PRESENTED

1. The subject property is Lot 50, Block 19, Lot 51 American University Park Subdivision, located at 4844 Park Avenue in Bethesda, Maryland, 20816, in the R-60 Zone. The subject property is a small, four-sided lot, generally rectangular in shape, located on the west side of Park Avenue. The property has a width of 40 feet and a depth of 104.4 feet, giving it a total area of 4,176 square feet, just over two-thirds of the 6,000 square foot minimum lot size in the R-60 Zone.

2. The Justification Statement ("Statement") submitted by the Petitioners states that the house on the subject property was built in 1948, and was purchased by the Petitioners in 2020. The Statement indicates that the Petitioners' house is setback 16' 11" from the property's front lot line. The Statement further indicates that the house has an uncovered front stoop and walkway that project six (6) feet from the house's façade, leaving them 10' 11" from the property's front lot line. The Statement notes that the front setback of the Petitioners' home "matches neighboring homes." See Exhibit 3.

3. The Statement states that Park Avenue has a 90-foot right-of-way, and that the existing home was built "before the 25' setback ordinance was enacted." The Statement further states that "[t]he structure on the subject property ... has not changed since its original configuration, which results in its non-conforming front property setback," noting that "[t]he house set back is 16'-11" from the property line and 47'-3" from the Park Ave curb." See Exhibit 3.

4. The Petitioners' variance application and the Statement both indicate that the concrete/masonry on the existing stoop and walkway is in poor condition and is deteriorating, and the Petitioners submitted photographs to confirm this. See Exhibits 1, 3, and 5(p). The Statement indicates that the Petitioners are seeking to replace the existing stoop with a covered porch that will extend seven (7) feet from the face of their house with a roof overhang of one (1) foot. See Exhibit 3. The Petitioners are also proposing steps that will extend 2' 9" from the porch towards the street. See Exhibit 5(g). The Petitioners include photographs with their submission showing that their proposed porch and steps will match the style of those on abutting homes, and will not extend any closer towards the front lot line than the porches on the abutting properties to either side. See Exhibits 5(m), (n), and (o).

5. The Statement indicates that 21 out of 28 houses on Park Avenue have front porches, and goes on to state that:

On the subject property side of the street there are 18 houses (including the subject property), only three of which of which do not have a front porch, including that of the petitioners. Of the five houses across the street and confronting the subject property, four have front porches, and one has an overhung roof protecting the front entryway from the elements.

See Exhibit 3. The Petitioners include photographs of other front porches in their neighborhood with their submission. See Exhibits 5(n) and (o). The Petitioners also include a Google map and site plans for the some of the abutting and confronting properties, showing the depths of their porches. Those documents indicate that the porches on the abutting homes are both seven (7) feet deep, and that the porches on the confronting properties range from 6' 1" to 9' 11". See Exhibits 8(a)-(e) and 9(b).

6. The record contains four letters of support for the proposed construction, including letters from the Petitioners' abutting neighbors to the left and right of their home, and from

two confronting neighbors. See Exhibit 7(a)-(d). The record contains no letters of opposition.

7. At the hearing, Petitioner Thomas Huntley testified that he and his wife purchased their home a little over a year ago. He explained that the proposed front porch will protect them from the elements when entering their home, and will provide additional space for their family. He further testified that the design of the proposed porch will match the architectural design and feel of the neighborhood, a sentiment echoed by Mr. Burns. Mr. Huntley testified that the neighborhood was built before imposition of the current setback, and that many of the homes have porches that appear to encroach on that setback.

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.ii the proposed development uses an existing legal nonconforming property or structure;

Based on the Statement submitted by the Petitioners, the Board finds that the existing house has not been altered since it was originally constructed in 1948, and does not conform to the required front setback (including the required porch setback) required by the current Zoning Ordinance. Thus the Board finds that the existing house is a nonconforming structure. Because the proposed construction uses the existing house, the Board finds that the requested variance satisfies Section 59-7.3.2.E.2.ii of the Zoning Ordinance. See Exhibit 3.

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;

The Board finds, based on the evidence submitted by the Petitioners, that while the Petitioners' home currently has a front stoop, most of the homes on Park Avenue (21 of 28), including both homes flanking the subject property and four of five homes across the street, have front porches. The Board further finds that the front porches on the flanking homes are setback a similar distance from the property line as the Petitioners' proposed porch. Thus the Board finds that the development the Petitioners propose substantially conforms with the established historic or traditional development pattern of their street.

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 in 1948, and that the Petitioners purchased the property in 2020. Thus the Board finds that the Petitioners took no actions to create the unusual characteristics of this property.

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 nonconforming location of the existing house, set 16' 11" from the front property line, in the front setback, effectively eliminates the ability of the Petitioners to construct a front porch consistent with the established development pattern on their street without variance relief, even after application of the nine (9) foot projection exemption allowed for open front porches. The Board finds that this constitutes a practical difficulty for the Petitioners, and that the requested variance relief is the minimum needed to overcome this practical difficulty and to allow the Petitioners to construct a front porch commensurate with this established pattern. Accordingly, the Board finds that the requested variance is the minimum needed 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 proposed construction will continue the residential use of this property, consistent with the recommendations 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." Accordingly, the Board finds that this element of the variance test is satisfied.

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 the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties since it will allow construction of a front porch that is consistent with the development pattern on the street, and notably with the form and setback of the front porches on the flanking properties. In addition, the Board finds that the proposed porch will be only one foot deeper than the existing masonry stoop, and that the house and porch will still be set back a significant distance from the curb because of the unusually wide Park Avenue right-of-way. Finally, the Board notes that the record contains letters of support for the proposed construction from several neighbors, and no letters of opposition. Thus the Board finds that this element of the variance test is satisfied.


Accordingly, the requested variance necessary to allow the proposed construction of a porch is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and by the exhibits of record; and

2. Construction shall be in accordance with Exhibits 4(a)-(c) and 5(a)-(l).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, with Bruce Goldensohn, Vice Chair, Mary Gonzales, 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.



John H. Pentecost, Vice Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 4th day of June, 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.