

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
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Rockville, Maryland 20850  
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(240) 777-6600

**Case No. A-6711  
PETITION OF PETER BACHMAN AND SARAH LUECK**

**OPINION OF THE BOARD**

(Hearing Date: September 8, 2021)

(Effective Date of Opinion: September 22, 2021)

Case No. A-6711 is an application by Petitioners Peter Bachman and Sarah Lueck for a variance needed for the proposed construction of a screened porch. The proposed porch requires a variance of twelve (12) as it is within eight (8) feet of the rear lot line. The required setback is twenty (20) 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 this application on September 8, 2021. All participation was done via Microsoft Teams. Petitioners Peter Bachman and Sarah Lueck participated in support of the requested variance, assisted by their architect, Eric Saul.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 3, Block A, Hampshire Knolls Subdivision, located 6801 Woodland Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone. It is a four-sided interior lot located on the east side of Woodland Avenue. The property has a sharply angled rear lot line, such that the left side of the property is significantly deeper than the right side. It has an area of 5,104 square feet and is thus substandard for the R-60 Zone, which has a minimum lot size of 6,000 square feet. See Exhibits 3, 4, and 7.

2. The subject property contains a house, built in 1942, that encroaches approximately three (3) feet into the twenty (20) foot rear setback established by Section 59.4.4.9.2 of the Zoning Ordinance. The Petitioners purchased the subject property in 2009, and are proposing to construct a one-story screened porch on the rear of the existing house. See Exhibits 3 and 4.

3. The Petitioners' Justification Statement ("Statement") describes the practical difficulty faced by the Petitioners in seeking to develop their property, on account of its shape and size, as follows:

Subject property has an angled rear lot line that significantly reduces the square footage of buildable area in the rear yard (see attached Plat Map). The lot size is 5,104 sf which is well under the standard 6,000 sf minimum lot size for this zone. The existing house also encroaches the rear setback line, essentially making it impossible to build a rear addition of any practical size.

See Exhibit 3. The Statement proceeds to state that "[w]ithout a variance, a rear addition of any type can never be approved," and that "[t]he existing house is situated on the lot in such a way that eliminates that opportunity to match what many neighbors have been able to do, which is construct screen porches and larger additions on the rear of these typically small houses compared to today's standards." See Exhibit 3.

4. The Statement at Exhibit 3 asserts that the existing house is nonconforming, as follows:

The existing structure was built in 1942. At the time it was built, the house was located approximately 17' from the rear lot line. A 20' rear lot line was not established at the construction of the existing house, therefore the existing structure is considering legal and nonconforming.

5. The Statement states that the uniqueness of the subject property "causes the zoning requirements to disproportionately impact the reasonable use and enjoyment of this property, thus creating a practical difficulty" for the Petitioners. See Exhibit 3.

6. With respect to the impact of the proposed construction on neighboring properties, the Statement states that the proposed porch addition "will not negatively impact the adjoining properties," and "will not negatively impact the character, health, safety, welfare, or security of the neighboring residents." The Statement elaborates on this by noting that the proposed screened porch "will be single-story to reduce the effect of encroachment on the neighboring property to the rear," and that it "will remain under the allowable height limit and not be built any closer than a typical 7' side yard setback in this neighborhood." See Exhibit 3.

7. At the hearing, Petitioner Peter Bachman testified that he was looking for an outside space for his family to enjoy with some protection from insects, and that he was proposing a modest sized porch. He testified that his neighbors were all in agreement with the proposed porch, and that following the hearing, he would forward a document to the Board that was signed by his neighbors and that evidenced their support. See Exhibit 9. In response to questions from the Board, Mr. Bachman testified that the porch would be for seasonal use and would only contain screening.

8. Mr. Saul testified that Exhibit 4 depicts the lot, that the rear lot line is angled, and that the dash line on the exhibit show the actual buildable lines. See Exhibit 4. He testified that the existing house cuts through the setback. Mr. Saul testified that the house

currently has a deck and that the Petitioners want to build a modest one-story screen porch with no windows. In response to questions from the Board, he testified that the Petitioners plan to demolish the existing deck and put the porch in that spot. He testified that a deck is allowed to encroach nine feet into the rear setback.

Mr. Saul testified that the porch would only be 10 feet in length, whereas a typical porch is between 12-14 feet long. See Exhibit 4. He testified that anywhere that the Petitioners could put the deck would cross over the buildable lines somewhere, and that the subject property is a wooded area with no outdoor space. Mr. Saul testified that the proposed location of the porch would have the minimum impact.

In response to questions from the Board, Mr. Saul testified that there is a door to the house that the Petitioners want to utilize to enter the porch, which is how they selected the porch's location. See Exhibit 4. He testified that the other side of the house does not have a door, so that the proposed location provides easier access to the house and is appropriate for the way the house is laid out. Mr. Saul testified that the porch would be one step off grade, with one step down to the ground.

Mr. Saul testified that, as noted in the Statement, this property is about 900 square feet smaller than is typical for the zone. See Exhibit 7. He testified that the deck would be located on the north side of the property and would face the rear yard of the neighbor. See Exhibit 4. In response to questions from the Board, Mr. Saul testified that the right-hand corner of the property contains a retaining wall and that the property is on a hill and also contains a lot of bushes and trees. He testified the current unscreened deck protrudes eight feet into the lot line.

## 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 that at 5,104 square feet, the subject property is significantly substandard in size for the R-60 Zone, which has a 6,000 square foot minimum. In addition, the Board finds that the subject property has a sharply angled rear lot line which, when combined with the property's small size, significantly constrains the property's available buildable envelope, particularly behind the existing house. The Board finds that these circumstances constitute an extraordinary condition peculiar to the subject property, in satisfaction of this element of the variance test. See Exhibits 3 and 7.

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 Petitioners purchased the subject property in 2009, and are not responsible for the substandard size of this property, its sharply angled rear lot line, or the encroachment of the existing house on the rear setback, 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 full compliance with the rear lot line setback imposed by Zoning Ordinance would cause the Petitioners a practical difficulty because that setback eliminates the possibility of expanding the existing home to the rear on its right side, due to the proximity to and encroachment of the existing house on that setback, and leaves only a small, severely constrained, triangular-shaped buildable area behind the left side of the house, due to the property's sharply angled rear lot line and substandard size. The Board further finds that the requested variance is the minimum needed to overcome this practical difficulty and permit the proposed construction, which the Board notes is modest in size. 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 property and that the variance will not impair the intent, purpose, or integrity of the Takoma Park Master Plan (2000) which seeks, among other things, "to support stable residential neighborhoods."

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 neighboring properties. The Board notes, per the Statement, that the proposed construction is one-story in height in order to reduce the impact of the requested encroachment on the neighbor to the rear, and that the proposed porch will not be "built any closer than a typical 7' side yard setback in this neighborhood." In addition, the Board notes that the neighbors are all in agreement with the requested variance. Thus, the Board finds that granting this variance, to allow construction of the proposed screened porch, will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

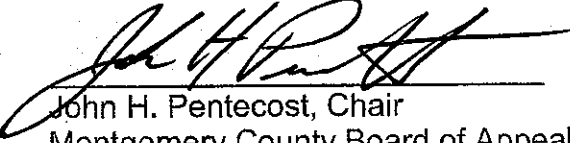
Accordingly, the requested variance of twelve (12) feet from the rear lot line setback is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, with Mary Gonzales and Caryn Hines 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.

  
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 September, 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.