

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
<http://www.montgomerycountymd.gov/boa/>  
(240) 777-6600

**Case No. A-6885  
PETITION OF HANNAH LENTZ AND CHARLES HARRY**

OPINION OF THE BOARD  
(Hearing Held: October 16, 2024)  
(Effective Date of Opinion: October 23, 2024)

Case No. A-6885 is an application by Hannah Lentz and Charles Harry (the “Petitioners”) for a variance needed for the proposed construction of a second story addition. The proposed construction requires a variance of one (1) foot as it is within six (6) feet of the side lot line. The required setback is seven (7) feet, in accordance with Section 59.4.4.10.B.3 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, October 16, 2024. Petitioner Charles Harry participated in the hearing, assisted by architect Eric Saul.

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

**EVIDENCE PRESENTED**

1.     The subject property is Lot 5, Block A, Flower Avenue Park Sec 2 Subdivision, located at 7904 Greenwood Avenue in Takoma Park, Maryland, 20912, in the R-40 Zone. It is an interior lot located on the west side of Greenwood Avenue. It is a four-sided property that is shaped like a parallelogram, with 50 foot front and rear lot lines that are parallel to one another, and 108.67 foot side lot lines that are parallel to one another but set at an angle to the front and rear lot lines. The property has an area of 5,406 square feet. See Exhibits 3, 4, and 7.

2.     The property contains a house that was built in 1928 and that encroaches approximately one (1) foot into the required seven (7) foot setback from the property’s northern (right side) lot line. The Petitioners’ Justification Statement (“Statement”) states that because the seven (7) foot setback was not established when the house was built, the house is a legal, nonconforming structure (“At the time it was built, the house was located approx 6’ from the north side lot line. A 7’ side yard setback was not established

at the time the existing house was constructed, therefore the existing structure is considering legal and nonconforming.”). See Exhibit 3.

3. The Statement lists numerous physical factors that make the subject property unique, including its size, shape, and width. The Statement states that with an area of 5,406 square feet, the subject property is substandard for the R-40 Zone, which has a 6,000 square foot minimum lot size. In addition, the Statement states that the R-40 Zone has a minimum 60-foot lot width for “detached, single family structures,” and that the subject property is only 50 feet wide, “10’ less width than what is considered standard per Montgomery County Zoning regulations.” Finally, the Statement states that the “shape of the lot is a parallelogram, with the side lot lines not 90 degrees from the front and rear line,” and states that the shape of the property “has caused the existing house to encroach the north side yard setback.” See Exhibit 3. The Site Plan confirms that a portion of the right side of the existing house encroaches on this setback. See Exhibit 4.

4. The Statement states that the Petitioners purchased the subject property in 2017. The Statement states that at that time, “[t]he existing structure was already constructed 6 feet from the north side lot line,” thus concluding that “the special circumstances or conditions were not a result of actions by the Petitioner.” See Exhibit 3.

5. The Statement states that the Petitioners are seeking to “construct a second-story addition directly above the footprint of the existing first floor,” noting that like the existing first floor, the proposed addition “would also encroach 1 foot into the north side yard setback.” The Statement makes clear that the proposed addition will be “no closer to the property line than the existing structure below,” and that “[t]he height of the addition will be under the height limit of 30’ to the midpoint of roof.” See Exhibit 3.

6. The Statement states that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would pose for the Petitioners on account of the unusual or extraordinary situations or conditions peculiar to their property. In support of this, the Statement indicates that without the grant of the requested variance, because of the way the existing house is placed on the subject property, the Petitioners will be unable to “match what many neighbors have been able to do, which is to construct a full second floor addition on their craftsman style bungalow houses,” noting that the bungalow houses in the neighborhood “have small footprints compared to the modern houses built today.” In addition, the Statement states that without variance relief, construction of the proposed second-story addition would be “impractical from a structural standpoint” because it would result in the Petitioners having to “build an exterior wall not directly over an existing bearing wall,” going on to note that such construction would require “several additional beams, columns, and posts ... through the existing home all the way through the basement to bear the weight of the new second floor addition.” See Exhibit 3.

7. The Statement states that the craftsman style bungalow houses in this neighborhood, such as the house on the subject property, “are usually 1½ stories with a modest second floor plan,” noting that some of these second floors “don’t meet the

minimum ceiling height requirement of 7 feet.” The Statement proceeds to state that “[b]eing able to build a new second floor over the original footprint of the house would provide much needed space to create a legal second floor in this modest sized home.” See Exhibit 3.

8. The Statement notes the following with respect to master plan compliance and the effect of the proposed construction on neighboring properties:

By keeping within the existing footprint that is 6 feet from the side lot line and keeping the overall building height under the allowable limit, the proposed addition preserves the residential character of the neighborhood and allows the Petitioner to reinvest in their home and enhance their quality of life. It is our strong belief that the variance can be granted without impairment to the intent and integrity of the general plan and any applicable master plan in this area.

\* \* \*

The proposed addition to the existing structure will not extend beyond the existing footprint below, thus will not negatively impact the adjoining side yard. The addition will not negatively impact the character, health, safety, welfare, or security of the neighboring residents. Many of the neighboring houses are larger and taller than the Petitioner is proposing.

See Exhibit 3. The Petitioners have submitted a letter signed by three of their abutting neighbors, stating that they have seen the architectural drawings for the proposed construction, and support the grant of the requested variance. See Exhibit 9.

9. At the hearing, Mr. Harry testified that the subject property has an odd shape, with sides that are “not straight.” He testified that the proposed construction would stay within the footprint of the existing house and that it would “re-do” the home’s second floor. Mr. Harry testified that he had reviewed the drawings for the proposed construction with his neighbors, that they were very supportive of the project, and that they had submitted a letter to that effect. See Exhibit 9.

10. Mr. Saul testified that the subject property is a very small lot with a very small house. He testified that because of lot coverage restrictions, building up a story rather than building out on this property works best. Mr. Saul testified that a “sliver of an angle on the front corner” of the right side of the house needs a variance, and noted that the extent of the encroachment decreases from a maximum of one (1) foot to zero (0) feet along the right side of the house (moving front to back).

## **FINDINGS OF THE BOARD**

Based on the binding testimony and 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 of the Zoning Ordinance, 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, the Site Plan, and the testimony of Mr. Saul, that at 5,406 square feet, the subject property is "very small" and is substandard for the R-40 Zone, which has a 6,000 square foot minimum. See Exhibits 3 and 4. In addition, the Board finds, based on the Statement, the Site Plan, and the testimony of Mr. Harry, that the subject property has an unusual "parallelogram" shape, with side lot lines that are slightly angled. The Board finds that these unusual or extraordinary conditions combine to limit the useable area of this property and to cause the existing house to encroach on the required side setback, in satisfaction of this element of the variance test.

*Section 59.7.3.2.E.2.a.ii. the proposed development uses an existing legal nonconforming property or structure;*

The Board finds that the proposed development uses an existing structure (the Petitioners' home) that was built in 1928 and extends approximately one (1) foot into the northern (right) side setback. Thus the Board finds that the existing home does not comply with the side setback required by the Zoning Ordinance and, as noted in the Statement, is nonconforming. See Exhibits 3 and 4. Accordingly, the Board finds that this element of the variance test is satisfied.

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, that the house on the subject property was built in its current location in 1928. See Exhibit 3. The Board further finds, based on the Statement, that the Petitioners purchased the subject property in 2017. Thus the Board finds that the Petitioners took no actions to create the special circumstances or conditions peculiar to this 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, based on the Statement, that the requested variance is the minimum necessary to allow the proposed construction to proceed on top of an existing bearing wall. The Board finds that the requested one (1) foot variance is minimal in that it would not increase the footprint of the existing nonconforming house or allow the proposed construction to extend any further into the side setback than the existing house, which has been in place since 1928. The Board further finds that without the grant of the requested variance, the Petitioners could not use the bearing wall of the existing house as support for the proposed second-story addition, which in turn would necessitate the

installation of additional beams, columns, and posts through the existing home and down through the basement in order to withstand the weight of the addition. See Exhibit 3. Thus the Board concludes that compliance with the required side setback, which is violated by the existing house, would pose a practical difficulty for the Petitioners, and that the grant of the requested one (1) foot variance is the minimum necessary to allow construction of a second story over the existing structure and therefore 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, and that the grant of the requested variance will not impair the intent, purpose, or integrity of the East Silver Spring Master Plan which seeks, among other things, to “[s]ustain and enhance residential neighborhoods.” Thus 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, per the Statement and the Site Plan, that the proposed second-story addition will maintain the footprint of the existing home, and thus will not encroach any closer on the property’s side lot line than the existing house does. See Exhibits 3 and 4. In addition, the Board notes, per the Statement, that the height of the house will remain compliant with the Zoning Ordinance, even with the proposed addition. The Board further finds that the proposed addition would not be out of place in the neighborhood, since the Statement indicates that many of the neighboring houses are larger and taller than the Petitioners’ house would be with the proposed addition. Finally, the Board finds that the Petitioners’ immediate neighbors have submitted a letter supporting the grant of the requested variance, and notes that the property was properly posted, that no written opposition was received, and that no one appeared at the hearing in opposition to the grant of the requested variance. See Exhibit 9. On the basis of the foregoing, the Board finds that the grant of 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 needed to allow the proposed construction of a second story addition 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(a)-(c) (interior layouts excluded).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair,<sup>1</sup> seconded by Richard Melnick, Vice Chair, with Caryn Hines, Alan Sternstein, and Amit Sharma 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.

  
Caryn L. Hines, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 23rd day of October, 2024.

  
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.

<sup>1</sup> When this vote was taken, Mr. Pentecost's term as Chair was ending. Between the Board's vote in this case, and the issuance of its written decision, Ms. Hines succeeded Mr. Pentecost as the new Chair of the Montgomery County Board of Appeals.