

**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-6906

PETITION OF MICHAEL AND HOLLY FELDMAN-WIENCEK

OPINION OF THE BOARD

(Hearing Held: February 19, 2025)

(Effective Date of Opinion: February 26, 2025)

Case No. A-6906 is an application by Michael Feldman-Wiencek and Holly Feldman-Wiencek (the "Petitioners") for multiple variances needed in connection with proposed improvements to their house, as follows:

The proposed construction, a carport/canopy at the front of the house, requires a 5.20 foot variance as it is within 19.80 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 proposed construction, a front enclosed addition, requires an 8.10 foot variance as it is within 16.90 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 proposed construction, a landing/front steps, requires a 3.20 foot variance as it is within 12.80 feet of the front lot line. The required setback is sixteen (16) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance. The proposed construction requires a variance from the Exemption from Controls, set forth in Section 59.4.1.7.B.5 of the Zoning Ordinance, which allows the proposed steps to extend nine (9) feet into the required 25-foot setback.

The proposed construction, a front screened porch, requires an 8.20 foot variance as it is within 16.80 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 proposed construction, a second story addition, requires a 14.90 foot variance as it is within 5.10 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.

The proposed construction, a porch roof, requires a 10.25 foot variance as it is within 0.75 feet of the rear lot line. The required setback is eleven (11) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance. The proposed construction requires a variance from the Exemption from Controls, set forth in Section 59.4.1.7.B.5 of the Zoning Ordinance, which allows a porch to extend nine (9) feet into the required setback from the rear building line.

The proposed construction, a deck/stairs, requires a 5.30 foot variance as it is within 5.70 feet of the rear lot line. The required setback is eleven (11) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance. The proposed construction requires a variance from the Exemption from Controls, set forth in Section 59.4.1.7.B.5 of the Zoning Ordinance, which allows the proposed steps to extend nine (9) feet into the required setback from the rear building line.

The Board of Appeals held a hearing on the application on Wednesday, February 19, 2025. Petitioners Michael Feldman-Wiencek and Holly Feldman-Wiencek appeared at the hearing in support of the variances.

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

EVIDENCE PRESENTED

1. The subject property is Lot 12, Block 50, F D B Austins Subdivision, located at 124 Sherman Avenue in Takoma Park, Maryland, 20912, in the R-60 Zone. It is a four-sided property, roughly rectangular in shape, located on the southwest side of Sherman Avenue. The property has an area of 4,671 square feet, with approximately 90 feet of frontage on Sherman Avenue and a depth of approximately 52 feet. See Exhibits 4 and 9.
2. The Petitioners' Statement of Justification ("Statement") states that the property was recorded in 1926, that the existing house was built in 1928, and that the Petitioners purchased the property eight years ago. The Statement states that the subject property, with its depth of 52.35 feet, is the only lot in the subdivision to have a depth of less than 100 feet, and that it is "the shallowest property within at least a 1,000' radius." See Exhibit 3.
3. The Statement states that because of the property's shallowness, the Petitioners' existing house encroaches into both the front and rear setbacks, rendering it nonconforming, and making any addition to the house without variance relief "virtually impossible." See Exhibit 3. Indeed, the Site Plan shows that the front plane of the existing house sits 22.8 feet from the front lot line, closer than allowed by the 25 foot building restriction line, and that the rear plane of the house sits only 5.1 feet from the property's rear lot line. The Site Plan shows that the home's existing screened porch, which would be considered enclosed space, is located only 16.9 feet from the front lot line. See

Exhibit 4. The Statement states that “almost all of the variances requested maintain the existing lot line proximity, apart from proposed new stairs leading to the proposed new entry vestibule.” See Exhibit 3.

4. The Statement states that the Petitioners are outgrowing their two-bedroom, one-bath home, and are seeking to renovate it to provide an additional bathroom and one or two additional bedrooms. The Statement states that the proposed construction would substantially conform to the established development pattern of their street or neighborhood. In support of this, the Statement states that the proposed “partial Level 2 addition and other modifications will bring the scale and massing to be more in line with other houses in the neighborhood.” In addition, the Statement states that the “proposed new entry vestibule re-establishes the entrance to the home at the front of the house as it once was (evidenced by a painted-over doorbell on the existing screen porch) and as nearly every other home on the street is designed.” Finally, the Statement states that with the proposed improvements, the Petitioners’ house “will blend in more with the surrounding neighborhood than it does currently as the smallest house on the smallest lot in the vicinity.” See Exhibit 3.

5. The Statement states that the requested variances are the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose due to the unusual or extraordinary situations or conditions on the property. See Exhibit 3. In support of this, the Statement explains the negligible impact of the proposed changes on the footprint of the existing structure, and states the following:

- None of the proposed modifications + additions encroach on setbacks any more than the existing structure with the exception of the proposed new stairs leading to the proposed new entry vestibule at the existing screened porch. The new entry vestibule re-establishes the entrance to the home at the front of the house as it once was and the proposed new entry stairs that encroach slightly more into the front setback are placed to optimize access from the existing front sidewalk and better visually conform to the surrounding homes.
- The existing Level 1 has 930 s.f. of gross conditioned floor area. The proposed modifications would add 145 s.f. of gross conditioned floor area to Level 1 (enclosing existing screen porch and converting the existing entry porch to a stairway) and 500 s.f. on the new Level 2. The proposed new square footage will bring the floor area of the home more in line with its abutting and confronting neighbors.
- We are building a partial second story because we have virtually no room to build the first level out laterally without further encroachment into front and rear setbacks. We have limited the second story to around half of the footprint of the first level and specifically on the uphill portion of our lot to minimize visual disturbance to the condominiums downhill from us and also blend more seamlessly into the uphill and confronting single family homes.

6. The Statement states that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties. In support of this, the Statement states that in designing the improvements to their house, the Petitioners "were careful to consider how the scale and look of the proposed addition could be done to actually enhance the visual appeal of the surrounding properties and lean into the unique topography of our street (i.e. the steep hill [the Petitioners] live on)." The Statement states that the Petitioners "live on the northern side of [their] single-family neighbors and will not obstruct access to sunlight or views," and that they "also chose to orient the roof of the partial 2nd level as a perpendicular gable so that [they] are minimizing new windows that face [their] closest neighbor (122 Sherman Ave)." Finally, with respect to the impact of their proposed construction on the condominium building behind their house, the Statement states that the Petitioners "have intentionally limited the upper-level addition to the uphill portion of [their] home to increase the distance from the condo building and minimize visual disruption to them of a 2nd story while also minimizing impact to sunlight that reaches the condo building." See Exhibit 3. The record contains letters of support for the grant of the requested variances from six of the Petitioners' neighbors. See Exhibits 8(a)-(f).

7. At the hearing, Petitioner Michael Feldman-Wiencek testified that he and his wife have owned their two-bedroom, one bath home for seven years, and that they need additional space to accommodate their growing family. He described their home as a small home on a very small lot. Mr. Feldman-Wiencek testified that their property is exceptional, and that unusual and extraordinary conditions pertinent to his property justify the grant of the requested variances. He testified that his lot is exceptionally shallow at just over 52 feet deep, and that it is the shallowest property within 1,000 feet. He referred the Board to the Zoning Vicinity Map which he testified illustrates how shallow his property is relative to neighboring properties, testifying that it is at least 50% shallower than its neighbors. See Exhibit 9. Mr. Feldman-Wiencek testified that the application of the 25 foot front and 20 foot rear setbacks to the property leaves a narrow, 7.25 foot deep area in which to build without seeking a variance. He testified that the existing house, which was built in 1928, extends into both the front and rear setbacks, and as such, is a legal nonconforming structure.

Mr. Feldman-Wiencek testified that he and his wife are seeking to construct a modest addition to their house that is worked almost entirely within the footprint of the existing house. He testified that the proposed expansion of their home would be consistent with other homes in the neighborhood. Using the Site Plan, Mr. Feldman-Wiencek narrated the proposed changes requiring variance relief from the front or rear setbacks. He testified that the landing/front steps (variance #3) and the deck/stairs (variance #7) expand the footprint of the existing home into the required front and rear setbacks. Mr. Feldman-Wiencek later noted, in response to a Board question, that the proposed front screened porch with a level 2 addition (variance #4) also extends the footprint of the existing house, but does not extend it into the front or rear setback.

Referring to the elevations and floor plans in Exhibit 5, Mr. Feldman-Wiencek further explained the proposed changes to the existing house to the Board. He then read

Exhibit 1(a) into the record, describing each of the changes for which variance relief is sought, explaining why the changes are needed, and noting their impact.

Mr. Feldman-Wiencek testified that he has received no opposition to the requested variances. In response to a Board question, he testified that he had spoken with his abutting neighbor at 122 Sherman Avenue, and that they did not object. In response to a Board question asking if he had any feedback from the commercial property to the rear of his property, Mr. Feldman-Wiencek testified that that is a six-unit condominium building, that they had received notice of the variance hearing, and that he was not aware of any objections.

FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the requested variances can be granted. The requested variances comply 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, Site Plan, Zoning Vicinity Map, and the testimony of Mr. Feldman-Wiencek, that the subject property, with its depth of 52.35 feet, is the only lot in the subdivision that has a depth of less than 100 feet, and that it is the "shallowest property within at least a 1,000' radius." See Exhibits 3, 4, and 9. The Board finds that the exceptional shallowness of the subject property constitutes an extraordinary condition peculiar to the subject property, 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, based on the Statement, Site Plan, and plans of record, that the proposed construction uses the Petitioners' existing house, which was built in 1928 and extends into the front and rear setbacks imposed by the Zoning Ordinance. The Board further finds, based on the Site Plan, that the front plane of the existing house sits 22.8 feet from the front lot line, forward of the 25 foot front setback line, and that that the home's existing screened porch, which would be considered enclosed space, is located only 16.9 feet from the front lot line. In addition, the Board finds that the Site Plan shows the rear plane of the house sitting only 5.1 feet from the property's rear lot line, and thus encroaching on the required twenty (20) foot rear setback. See Exhibits 3, 4 and 5(a)-(j). Accordingly, because the Petitioners' existing home was built before the enactment of the County's first Zoning Ordinance and does not comply with the setbacks mandated by that Ordinance, the Board finds that it is a legal nonconforming structure. Because the

proposed improvements use this nonconforming structure, 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 and the testimony of Mr. Feldman-Wiencek, that the subject property was recorded in 1926, that the house on the subject property was built in its current nonconforming location in 1928, and that the property and house were purchased by the Petitioners seven years ago. See Exhibit 3. The Board thus finds that the property was created and developed long before the Petitioners took ownership, and thus finds that the Petitioners are not responsible for its unusually shallow shape or for the nonconforming location of their house. Accordingly, 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, Site Plan, and the testimony of Mr. Feldman-Wiencek, that the unusual shallowness of the subject property leaves the Petitioners with no practical room to extend their existing house to the front or the rear without first obtaining a variance, causing them a practical difficulty. The Board further finds, based on the Statement, Site Plan, elevations and floor plans, and the testimony of Mr. Feldman-Wiencek, that the majority of the requested improvements needing variance relief will not extend beyond the footprint of the existing house which, as noted above, is nonconforming and encroaches into the front and rear setbacks, and that the proposed improvements that will encroach farther into the property's front or rear setbacks than the existing home are minimal. See Exhibits 3, 4, and 5(a)-(j). In light of the foregoing, the Board finds that the requested variances are the minimum necessary to allow the proposed improvements to the Petitioners' existing nonconforming house, and therefore to overcome the practical difficulty imposed by full compliance with the Zoning Ordinance. Thus 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 grant of the requested variances 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," in satisfaction of this element of the variance test.

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, that in designing their proposed improvements, the Petitioners have been "careful to consider how the scale and look of the proposed addition could be done to actually enhance the visual appeal of the surrounding properties and lean into the unique topography of our street (i.e. the steep hill [the Petitioners] live on)." The Board further finds, based on the Statement, that the Petitioners have designed their addition so that it would not block the "sunlight or views" of their abutting neighbor to the south, and have oriented their roof so "minimize[e] new windows that face [their] closest neighbor (122 Sherman Ave)." Finally, with respect to the impact of their proposed construction on the condominium building behind their house, the Board finds, based on the Statement, that the Petitioners "have intentionally limited the upper-level addition to the uphill portion of [their] home to increase the distance from the condo building and minimize visual disruption to them of a 2nd story while also minimizing impact to sunlight that reaches the condo building." See Exhibit 3. In addition, the Board finds, based on the testimony of Mr. Feldman-Wiencek, that his abutting neighbor to the south does not object to the proposed construction, and that the owners of the condominiums behind the Petitioners' house have been notified about the proposed construction and have not objected. The Board notes that six of the Petitioners' neighbors have submitted letters of support for the grant of the requested variances. See Exhibits 8(a)-(f). Finally, the Board finds that the variance proceedings were properly noticed and the variance sign was properly posted, that the record contains no opposition to the grant of the requested variances, and that no one appeared at the hearing in opposition to the variances. In light of the foregoing, the Board finds that granting the variances 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 variances are **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)-(j) (interior layouts excluded).

Therefore, based upon the foregoing, on a motion by Amit Sharma, seconded by Richard Melnick, Vice Chair, with Caryn L. Hines, Chair, Alan Sternstein, and Donald Silverstein 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 26th day of February, 2025.


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.