

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
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Rockville, Maryland 20850  
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**CASE NO. A-6586**

**PETITION OF NANCY LIEBERMANN AND JOSEPH GODLES**

OPINION OF THE BOARD

(Opinion Adopted October 24, 2018)  
(Effective Date of Opinion: November 5, 2018)

Case No. A-6586 is an application for a variance needed to allow the construction of a screened porch. The proposed construction requires a variance of nine (9) feet as it is within eleven (11) 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 Board held a hearing on the application on October 24, 2018. Petitioner Nancy Liebermann appeared at the hearing in support of the application with her contractor, James Moylan of Design Builders, Inc.

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

**EVIDENCE PRESENTED**

1.     The subject property is Lot 18, Block 1, Brookdale Subdivision, located at 5102 Western Avenue, Bethesda, MD, 20816, in the R-60 Zone. It is a corner property, bordered by Western Avenue to the southeast and Harrison Street to the northeast. It is 7,137 square feet in area, and is generally rectangular in shape. See Exhibit 4.

2.     Per the Justification Statement, the existing house was built on the subject property in 1938 by architect/builder Cooper Lightbrown:

Ours is one of the original Cooper Lightbrown houses and they are substantially similar in construction and color (mostly brick and painted white), scale and layout. The majority of the homes have porches or covered decks, including the houses contiguous to ours and on the other side of Harrison Street.

Most of the houses were built as three bedroom homes and many have additions that increase living space while maintaining the integrity of the architecture and neighborhood. Almost all of the additions are in the rear of the properties.

See Exhibit 3. The Justification Statement later reiterates the existence of this neighborhood pattern, stating that "[t]he proposed screened porch is similar with typical locations and layouts of porches and covered decks on houses in the neighborhood...."

3. The side of the original house that is closest to Harrison Street extends nine (9) feet into the rear lot line setback. The Petitioners received a variance in 1996 to allow a second story addition over this "existing nonconforming structure that extends 9 feet into a portion of the rear lot line setback." See Exhibits 3 and 7 (BOA Case No. A-4502).

4. The variance application asserts that the subject property is a "[c]orner lot with a substantially smaller rear yard than neighboring properties and properties in the subdivision." It cites the narrowness, shallowness, and shape of the property as reasons why the Zoning Ordinance requirements result in a practical difficulty for the Petitioners in that they preclude construction of a "small screened porch (9' x 13' 8")" in a neighborhood where "porches are typical." See Exhibit 1.

5. The Statement of Justification states that the Petitioners purchased this property in 1990, and have raised their family there. It states that "[b]ecause of the lot layout, we have a much smaller, narrower back yard than is typical in the neighborhood," and that numerous professionals have concluded that the proposed location is the only possible location for a porch. It notes that the Petitioners are not responsible for these special circumstances, and states that the nine (9) foot wide porch that they are seeking to construct "is the minimum practical size to place furniture and allow for circulation," adding that "a 'typical' screened porch is 16' by 16' or 16' by 20'." Finally, the Statement states that "9 feet is the width of the existing nonconforming structure on the property and is also the allowable encroachment for an unenclosed roofed porch or terrace." See Exhibit 3.

6. The contiguous neighbors along Western Avenue and Harrison Street have submitted letters supporting the grant of the variance. See Exhibit 3(b). In addition, regarding the impact of the proposed screened porch on neighboring properties, the Justification Statement notes that:

The screened porch will not be visible from the street (either Western Avenue or Harrison Street) and there is a fence across the entire rear yard and portions of the side yard and the Harrison Street frontage. There are no windows along the façade facing the proposed porch to the north (4602 Harrison Street) and the house on the other contiguous property (5100 Western Avenue) is more than 25 feet from the proposed porch. Other neighbors will not be able to see the porch from their properties.

See Exhibit 3.

7. At the hearing, Petitioner Nancy Liebermann stated that she has lived in her home since 1990. She testified that the corner on which her property is located is one of two entrances to the northern part of the Brookdale neighborhood, and that there are not many such corner lots. She testified that her property has two large front yard setbacks, and a back yard that is smaller and more narrow than is typical in her neighborhood. She explained that while most of the houses in the neighborhood "go back," her house faces Western Avenue and "is sideways," presumably referring to the fact that most of the properties in the neighborhood are deeper than they are wide, but her property is wider than it is deep. See Exhibit 8(b).

Ms. Liebermann testified that the majority of surrounding homes have porches or covered decks, and that her proposed porch would be consistent with this pattern. She further testified that the proposed construction would be consistent with the pattern of rear additions on neighboring Cooper Lightbrown houses. Ms. Liebermann testified that she believes the den in her house was originally a screened porch that had been closed in at some point. She testified that the only two neighbors who would be able to see the proposed porch support the grant of the variance. She reiterated the statement in her written materials that an unenclosed porch could extend nine feet into the rear lot line setback, as is proposed, without the need for a variance, and that the opposite side of the original house was constructed so that it extended this same nine feet into the rear lot line setback. She agreed with a Board statement that there is essentially no buildable area to the rear of her home without the grant of a variance. See Exhibit 4.

## 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, based on the Justification Statement and the testimony of the Petitioner, that the subject property has an unusually shallow rear yard, leaving virtually no buildable area without the grant of a variance. The Board further finds that the subject property is one of a limited number of corner lots in this neighborhood. See Exhibits 3, 4 and 8(b). The Board finds that these unusual or extraordinary situations or conditions combine to limit the useable area of this property for the proposed construction, and to satisfy Section 59.7.3.2.E.2.a of the Zoning Ordinance.

*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 Justification Statement and the testimony of Ms. Liebermann, that there is a pattern of houses with porches and decks in this neighborhood, and that the proposed porch is consistent with that pattern. The Board further finds that most additions to the neighborhood's Cooper Lightbrown houses are to the rear, and that the proposed screened porch is also consistent with that pattern. Finally, the Board notes that this house may historically have had a screened porch, and that it already has an existing nonconforming wing that encroaches nine feet into the rear lot line setback. Thus the Board finds that the grant of this variance would substantially conform with the established historic or traditional development pattern of this street or neighborhood.

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, who purchased this property in 1990, are not responsible for the shallowness of their yard or the paucity of similar corner lots, and similarly are not responsible for the established historic or traditional development pattern of their street or neighborhood.

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 requested nine (9) foot variance is the minimum needed to allow construction in this property's shallow rear yard that is commensurate with that in the surrounding neighborhood, and thus to overcome the practical difficulties that would otherwise be imposed by compliance with the rear lot line setback imposed by the Zoning Ordinance.

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 thus can be granted without substantial impairment to 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 that the proposed screened porch will not be adverse to the use and enjoyment of abutting or confronting properties. In support of the finding, the Board notes that the Justification Statement states that the porch will not be visible from Western Avenue or Harrison Street, that there are no windows along the façade of the home facing the proposed porch to the north (4602 Harrison Street), and that the house on the other contiguous property (5100 Western Avenue) is more than 25 feet from the proposed porch. The Board notes that the proposed porch is deliberately modest in scale, encroaching no further into the rear lot line setback than the original house already does, and is consistent with the development pattern of the neighborhood. Finally, the Board

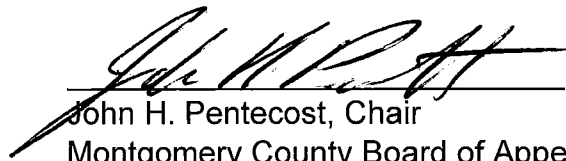
notes that the record contains letters of support from the abutting neighbors. See Exhibits 3 and 3(b).

Accordingly, the requested variance of nine (9) 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 (inclusive).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, with Stanley B. Boyd and Katherine Freeman in agreement, and with Edwin S. Rosado, 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 5<sup>th</sup> day of November, 2018.

  
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.