

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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

**Case No. A-6717**

**PETITION OF RANDI AND CARY LEVENTHAL**

OPINION OF THE BOARD

(Opinion Adopted October 13, 2021)

(Effective Date of Opinion: October 20, 2021)

Case No. A-6717 is an application for a variance necessary for the proposed construction of a room addition (sunroom/screened porch). The proposed construction requires a variance of 1.54 percent as it exceeds the maximum lot coverage. The maximum lot coverage is thirty-five (35) percent, in accordance with Section 59-4.4.9.B.1 of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on October 13, 2021. All participation was done through Microsoft Teams. Petitioners Randi and Cary Leventhal participated in support of the requested variance, assisted by their contractor, Alan J. Horst, Jr.

Decision of the Board: Requested variance GRANTED.

**EVIDENCE PRESENTED**

1. The subject property is Lot 57, Block 19, LT 58 American University Park Subdivision, located 4850 Park Avenue, Bethesda, Maryland, 20816, in the R-60 Zone. The subject property is a small 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 minimum lot size in the R-60 Zone.

2. The Petitioners' variance application indicates that the house on the subject property was built in 1958, and SDAT indicates that the Petitioners purchased the property in 2016. See Exhibit 1 and SDAT.

3. The Petitioners are proposing to add a room addition (sunroom/screened porch) on the rear of their house. See Exhibits 4 and 5.

4. The Petitioners' Justification Statement ("Statement") indicates that with an area of 4,176 square feet, the subject property is substandard for the R-60 Zone, which has a minimum lot size of 6,000 square feet. The Statement indicates that the small size of the subject property creates a hardship for the Petitioners by constraining the square footage of lot coverage that is allowed on the subject property as compared with the square footage that would be allowed on an R-60 lot that met the required minimum lot size, thereby causing the Petitioner's proposed construction to exceed the 35 percent lot coverage limitation set forth in the Zoning Ordinance by approximately 1.5 percent. See Exhibit 3.

5. The Statement states that the requested variance is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance poses for the Petitioners on account of the small size of their property. The Statement further states that granting the requested variance from the lot coverage restriction will not be adverse to the use or enjoyment of abutting and confronting properties.

6. At the hearing, Mr. Horst testified that the property's front lot line is set back 50 feet from the center of Park Avenue, resulting in the subject property being very small for the R-60 Zone. He testified that the property's small size poses a hardship for the owners in constructing their proposed addition. In response to a Board question asking what the requested 1.54% lot coverage variance equaled in terms of square feet, Mr. Horst agreed with that Board member's rough calculation that this translated to about 63 square feet, and testified that the amount of the overage was very minimal. Mr. Horst testified that he had tried to redesign the porch to fit within the lot coverage limitation, but that the adjustments needed to accomplish that would negatively impact the usability of the porch.

7. Mr. Leventhal testified that he and his wife know their neighbors, and have spoken to many of them since posting the variance sign. He testified that they are proposing to add a small screened porch to the rear of their house, and that most of the neighbors they had spoken to do not understand why a variance is needed.

8. Ms. Leventhal testified that she and her husband purchased the subject property in 2016. She testified that contains a split level home, and that since they can't really build up, building to the rear is the only option. She noted that others on their street have received variances, and that they have watched those neighbors go through the variance process. In response to a Board question asking whether the proposed addition is a screened porch or a sunroom, Ms. Leventhal testified that it is a screened porch. In response to a Board observation that their property appears smaller than others on the street, based on the Zoning Vicinity Map in the record at Exhibit 7, Ms. Leventhal testified that their property is one of the smaller lots in the neighborhood. Finally, in response to a question asking if there was any way for them to undertake this project with less lot coverage, Ms. Leventhal testified that they could not reduce the size of the existing house, and that decreasing the size of the proposed porch would impair its functionality.

## **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 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 4,176 square feet, the subject property is significantly substandard for the R-60 Zone, which has a 6,000 square foot minimum lot size. See Exhibits 1, 3, and 4(a). The Board further finds, based on the Zoning Vicinity Map and the testimony of Ms. Leventhal, that the subject property is smaller than others in the neighborhood. See Exhibit 7. Accordingly, the Board finds that the property's small size constitutes an unusual condition peculiar to this property, in satisfaction of this element of the variance test.

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 house on the subject property was built in 1958, and that the Petitioners purchased the property in 2016. Thus the Board finds that the Petitioners are not responsible for the small, substandard size of the subject 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 that the unusually small, substandard size of the subject property causes the lot coverage restriction in the Zoning Ordinance to have an extraordinarily burdensome impact on the subject property, posing a practical difficulty for the Petitioners by restricting reasonable expansion of their home. By way of example, the Board notes in this regard that if the subject property met the 6,000 square foot minimum lot size for the R-60 Zone, this restriction would allow up to 2,100 square feet of lot coverage, but that because the lot is only 4,176 square feet in size, coverage on the subject property is limited to 1,461.6 square feet. The Board finds, based on the testimony of Mr. Horst and Ms. Leventhal, that the additional 1.54% of coverage being sought by the Petitioners—approximately 63 square feet—is the minimum needed to allow the proposed porch to function as intended, and thus to overcome the difficulty posed by the strict application of the Zoning Ordinance to this substandard property, 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.*

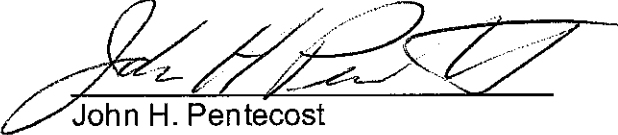
The Board finds, based on the testimony of Mr. Leventhal, that the Petitioners have spoken with several of their neighbors regarding the proposed construction, and that most did not understand why a variance would be necessary. The Board further finds that the record contains no opposition to the proposed construction, which would continue the residential use of this home. In addition, the Board notes that the proposed construction occasioning the need for the requested variance is to the rear of the existing home and does not encroach on any setbacks, and thus should have minimal impact on neighboring properties. On the basis of the foregoing, the Board finds that the grant of this 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 to allow the proposed construction of a room addition (sunroom/screened porch) 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(a) and 5(a)-(j).


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

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 20th day of October, 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.