

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
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<http://www.montgomerycountymd.gov/boa/>**

**Case No. A-6741**

**PETITION OF BENJAMIN BLATT**

OPINION OF THE BOARD  
(Opinion Adopted April 13, 2022)  
(Effective Date of Opinion: April 22, 2022)

Case No. A-6741 is an application for two variances needed to allow the enclosure of an existing porch. The proposed construction requires a variance of 3.33 feet as it is within 6.67 feet of the right side lot line. The required setback is ten (10) feet, in accordance with Section 59-4.4.8.B of the Zoning Ordinance. In addition, the proposed construction also reduces the sum of both side yard setbacks to 17.67 feet, necessitating a variance of 3.33 feet. The required sum of both sides is twenty-one (21) feet, in accordance with Section 59-4.4.8.B of the Zoning Ordinance.

The Board held a hearing on the application on April 13, 2022. The Petitioner's contractor, Sean Edwin, appeared at the hearing in accordance with written permission granted by the Petitioner, in support of the requested variances.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 18, Block 20, Rock Creek Hills Subdivision, located at 3607 Littledale Road in Kensington, Maryland, 20895, in the R-90 Zone. It is a narrow, four-sided lot, approximately three times as deep as it is wide. The width of the lot narrows from front to back, such that the front lot line is 77.63 feet long and the rear lot line is only 62.65 feet long. Per SDAT, the property was purchased by the Petitioner in 1990, and contains a house that was built in 1956. See Exhibits 4, 7, and SDAT printout.
2. The Statement of Justification ("Statement") submitted with the variance request states that the Petitioner is seeking to enclose an existing six (6) foot by four (4) foot open

porch, which the Site Plan shows is located on the right side of his house. See Exhibits 3 and 4. The Statement and the Petitioner's Variance Application both state that the existing porch encroaches into the allowed side setback, and that the proposed enclosure of this porch will not bring the structure any closer to the side lot line than it already is. See Exhibits 1(a) and 3.

3. The Statement indicates that the proposed construction has been reviewed and approved by the Rock Creek Hills Neighborhood Association, and that all of the neighbors who could see the proposed construction have given their approval. The Statement states that the porch the Petitioner is seeking to enclose is located behind a privacy fence, and that the proposed enclosure will not change the use or enjoyment of neighboring properties. See Exhibit 3.

4. The Statement states that if the variance is not granted, the Petitioner will have to demolish and rebuild the concrete pad and roof of the existing porch in order to meet the allowed setbacks, and that this would bring about significant design and construction costs. See Exhibit 3.

5. At the hearing, Mr. Edwin testified that the variance relief is requested to allow enclosure of an existing roofed porch that sits on a concrete pad, stating that the Petitioner is basically seeking to erect three walls and move the door. He testified that the porch is original to the house, as shown on the blueprints. See Exhibits 5(a) and (e). Mr. Edwin testified that the lot is restricted on the side by the setbacks.

Mr. Edwin testified that the proposed construction would have no bearing on the neighbors, stating that there is a tall fence on the right side of the house that you cannot see through. He testified that the neighbor on that side does not have a problem with the proposed construction, and that the neighborhood association has also approved it. In response to a Board question asking if he had anything in writing from the neighborhood association or any of the neighbors, Mr. Edwin stated the Treasurer of the neighborhood association had stated there was no issue with the proposed construction.

In response to a Board question asking if there would be stairs to the new enclosure, Mr. Edwin testified that there is a six (6) inch step down from the kitchen to the concrete pad, and then grass. He testified in response to another Board question that there was already a path to the door on that side, and a paved area where the Petitioner keeps his grill. He testified that there were no plans to change the hardscape in this area. Mr. Edwin testified that the intent with the proposed construction is to keep the roof and columns of the existing porch, and to reuse the existing concrete pad if it is strong enough to bear the weight of the enclosed space.

## **CONCLUSIONS OF LAW**

Based on the evidence of record, the Board finds that the requested variances can be granted. The 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, based on the Site Plan, that the subject property is very narrow, with a depth that is approximately three times its width, and that as a result, the property has an extremely narrow buildable area. The Board finds that this is an extraordinary condition that is peculiar to this property, in satisfaction of this element of the variance test. See Exhibit 4.

*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 construction would enclose an existing open porch that encroaches into the right side setback. The Board further finds that, as shown on the plans in the record at Exhibits 5(a) and (e), the porch is part of the original house, and thus was presumably legal when constructed but is no longer so, rendering it nonconforming. See Exhibits 5(a) and (e). Because the proposed development uses this existing 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;*

Per SDAT, the Petitioner purchased this property, which was developed in 1956, in 1990. Thus the Board finds that the Petitioner is not responsible for the narrowness of the subject property or for the construction of the nonconforming porch, 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 requested variances are the minimum necessary to allow the proposed enclosure of the existing nonconforming porch and to overcome the practical difficulty that full compliance with the setbacks imposed by Zoning Ordinance would cause the Petitioner, on account of the constraints on the buildable area posed by the narrowness of this lot. The Board notes in this regard that the proposed construction will not extend the footprint of the existing nonconforming porch. In addition, the Board notes that the Petitioner is seeking to retain and reuse the roof and columns of the existing porch, and if possible, its existing concrete slab. 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 requested variances will continue the residential use of this home, and thus can be granted without substantial impairment to the intent and integrity of the Kensington-Wheaton Communities Master Plan (1989), which seeks, among other things, to protect and stabilize the extent, location, and character of existing residential and commercial land uses, and to maintain the well-established low- to medium-density residential character which prevails over most of the planning area.

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 increase the incursion of the footprint of the existing porch into the right side setback. The Board further finds, per the Statement and the testimony of Mr. Edwin, that the porch the Petitioner is seeking to enclose is behind a privacy fence, and that the neighborhood association and the neighbors who could see the proposed construction are aware of the Petitioner's proposal and have approved it. Because the record contained no documentary evidence of this other than the representation made in the Statement, the Board has requested that the Petitioner provide a written statement from the owner of the property with whom he shares the affected side lot line indicating that that property owner does not oppose the proposed enclosure. With this additional evidence, the Board finds that granting the requested variances, to allow enclosure of this existing side porch, will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variances from the right side lot line and sum of both sides are **granted**, subject to the following conditions:

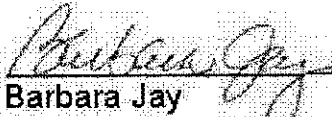
1. Petitioner shall submit to the Board a written statement from the owner of the property with whom he shares the affected right side lot line indicating that that owner does not object to the proposed enclosure of the existing porch;
2. Petitioner shall be bound by the testimony and exhibits of record; and
3. Construction shall be in accordance with Exhibits 4 and 5(a)-(i), insofar as those Exhibits pertain to the proposed porch enclosure.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines and Roberto Pinero 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 22nd day of April, 2022.



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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.