

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**<http://www.montgomerycountymd.gov/boa/>**

**Case No. A-6749**

**PETITION OF GEORGE AND ELEANOR HOWE**

**OPINION OF THE BOARD  
(Opinion Adopted June 15, 2022)  
(Effective Date of Opinion: June 29, 2022)**

Case No. A-6749 is an application for two variances necessary for the construction of an accessory structure (detached deck). The proposed construction requires a variance of sixty (60) feet as it is within zero (0) feet of the front lot line. The required setback is sixty (60) feet, in accordance with Section 59.4.4.9.B.2 of the Montgomery County Zoning Ordinance. In addition, the proposed construction requires a variance to be forward of the rear building line. Section 59.4.4.9.B.2.a of the Montgomery County Zoning Ordinance requires that accessory structures be located behind the rear building line of the principal building.

The Board of Appeals held a hearing on the application on June 15, 2022. Petitioners George and Eleanor Howe participated in support of the requested variances, assisted by their landscape architect, Paxton Holt Jordan.

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

**EVIDENCE PRESENTED**

1.        The subject property is Lot 8, Block G, Sligo Park Hills Subdivision, located at 20 Hilltop Road in Silver Spring, Maryland 20910, in the R-60 Zone. The subject property is a corner lot, approximately 12,578 square feet in size, located on the north side of Hilltop Road and the west side of Park Crest Drive. The Site Plan and Zoning Vicinity Map show that Hilltop Road and Park Crest Drive meet an acute angle such that the southeast portion of the property has a rounded "corner;" and that the remaining two property lines,

one extending from each street frontage, meet at an obtuse angle, giving the property a peninsula shape. Per SDAT, the Petitioners have owned the subject property since 1987. See Exhibits 4 and 7, and SDAT printout.

2. The Petitioners are seeking to construct an above-grade deck and walkway from Hilltop Road to their house to create an accessible entrance to their home. Their variance application states that the proposed deck and walkway will allow this to be achieved "without tree removal," and without disruption to the "existing natural drainage flow." See Exhibit 1.

3. The Petitioners' Statement of Justification ("Statement") further elaborates on the topographical, environmental, and accessibility-related reasons for the Petitioners' variance request, and notes that none of these conditions are the result of actions by the Petitioners, as follows:

Evidence to support the variance is as follows:

- Unusual and extraordinary conditions exist on the property since two large deciduous trees (20" maple, 24" oak) are located in an area of lower topography between the public right of way on Hilltop Road and the front entry to the home.
- The front yard of the property contains environmentally sensitive features of mature canopy trees.
- The special conditions are not a result of actions of the applicant as the mature canopy trees were planted by previous owners and have been in place for more than 50 years.
- The detached accessory structure (wood deck) is small in size and aligned to connect the lead walk in public space with the front entry door with space to turn and maneuver a wheelchair. Hilltop Road and the finish floor of the home are at approximately at the same elevation allowing an ADA accessible connection via a low deck structure. The structure is designing to minimize compaction and disturbance at the mature canopy trees.
- The proposed structure will be constructed of wood and does not have vertical elements that will impact the visual aesthetic of the neighborhood.
- Due to the depressed topography between Hilltop Road and the front entry, the proposed wood deck will not impact site (sic) lines for the adjacent properties. A concrete lead walk with stairs exists in this location, so the function and use of the space will be the same. If an ADA accessible paved walkway/ramp between the home and Hilltop Road were constructed (no variance required), the paved walkway would disrupt the natural drainage pattern of the site.

See Exhibit 3. The Petitioners include photographs showing the topography between their house and Hilltop Road. They also include photographs of the trees that would be affected if the requested variances were denied and they had to use pavement to construct an accessible entrance to their home. See Exhibit 10. In addition, the Petitioners include a Site Plan with contour lines showing the topography of their property, and illustrative three-dimensional images of their proposed deck and walkway. See Exhibits 4 and 5(a)-(c).

4. The Petitioners submitted an additional document further explaining the rationales for their request. This document notes that the primary goal of the proposed walkway is to increase accessibility to their home for family and friends who use wheelchairs. This submission indicates that after trying unsuccessfully to construct a ramp themselves, the Petitioners engaged a designer who, after conducting a topographic survey, "noted that the level of our first floor approaches that of the street a number of yards further down the street (toward the east), allowing for very gradual drop to the level of the house (within ADA standards) that could accommodate walkers or wheelchairs." The submission states that the design of the proposed walkway is "built around these geographic constraints." (emphasis in original). It states that the walkway is intended to be wide enough to provide room for a person using a wheelchair or walker to be able to turn around, and that it "broadens as it approaches the road" to provide access "from both the west side of the parking spot (where the current stairs are) as well as at the east end (where the elevation is lower, given the street drops in grade from west to east)." See Exhibit 10.

The Petitioners' additional submission states that the second primary goal of the proposed walkway is environmental, allowing for the protection of two white oaks and their root systems. The submission states that the proposed elevated walkway will reduce compaction and eliminate the current concrete path, which in turn would allow for rainwater to access the root system of these trees. The submission further notes that "[t]his was the reason for proposing wood decking material with openings in between slats, rather than a single solid surface or substantial dirt fill, which could kill the trees." See Exhibit 10.

5. The Petitioners' additional submission also notes that the white oaks that the Petitioners are seeking to preserve have been integrated into the design of the walkway in an "aesthetically pleasing" manner that fits into the neighborhood, and further states that the Petitioners "have shown the plans to all of our neighbors, who find it meets these goals." See Exhibit 10. The Petitioners include numerous letters of support with their submission, and the record contains no letters of opposition. See Exhibits 9(a)-(k).

6. At the hearing, Mr. Howe testified that there is a "moat" around their house, referring to the property's topography and drainage. He testified that he worked with Mr. Paxton to come up with a way to provide an accessible entrance to their home while addressing the property's topographical and drainage challenges. Mr. Howe testified that Mr. Paxton gave them two options: fill the lot and add concrete, which he said would kill the existing trees, or construct an elevated walkway made of decking that would let rainwater flow through, and then remove the existing concrete walkway. Mr. Howe testified that he and his wife have spoken extensively with their neighbors about their proposed construction, and that all are supportive.

7. Mr. Holt testified that his main focus was to preserve the drainage flow through the Petitioners' property and its existing tree. He testified that the proposed elevated deck would create a comfortable, inviting, and accessible space where people could congregate for conversation. He testified that Hilltop Road is narrow and does not have sidewalks. Mr. Holt estimated that the elevated "deck" would extend about 16 feet from the front of the house to the street, and testified that in most cases, it would be no more

than two (2) feet tall. See Exhibit 5(a). Mr. Holt testified that the proposed decking may need rails or a curb, and that if a railing were necessary, he would prefer to use cable railing or something else that is transparent.

8. Mrs. Howe testified that the Petitioners started on this process when their front stairs began to separate from their house. She testified that they believe in community, and that the proposed construction would make their home accessible to all.

## FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the variances from the front lot line and from the requirement that accessory structures be located behind the rear building line of the principal building 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, based on the Statement, photographs, and Site Plan with contour lines, and based on the testimony of Mr. Howe, that the topography of the subject property drops and then rises again between Hilltop Road and the front of the Petitioners' home, such that Hilltop Road and the "finish floor" of the Petitioners' house are at a similar elevation. The Board further finds, based on the Statement, that this topographical "dip" in the Petitioners' property serves as a natural drainage area for the property. The Board finds that the property's changes in elevation, which form a natural drainage area between the Petitioners' home and the street, constitute an extraordinary condition peculiar to the property, in satisfaction of this element of the variance test. While not critical to the Board's finding under this element of the test, the Board also observes, based on the Statement, that this area of the property also contains mature forest canopy and two large deciduous trees, and that while the property is not in Takoma Park, the Petitioners' desire to preserve these trees is worth noting. See Exhibits 3, 4, and 10.

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, per the Statement and SDAT printout, that the special circumstances pertaining to this property, namely its topography and natural drainage area, are not the result of actions by the Petitioners, who purchased the subject property in 1987, 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 and the testimony of Mr. Howe, that the topographical features that make this property unique pose a practical difficulty for the Petitioners in fully complying with the Zoning Ordinance, since the construction of an accessible concrete walkway to their house that complied with the Zoning Ordinance would disturb the property's existing drainage pattern, as dictated by the property's topography, and would harm the property's existing trees. The Board further finds that the requested variances are the minimum needed to overcome this practical difficulty, and to allow the Petitioners to create an accessible entrance to their home from Hilltop Road that works with the natural topography and drainage pattern of their 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;*

The Board finds that the requested variances, needed to create an accessible walkway to the Petitioners' home without disrupting the property's existing drainage pattern or tree canopy, can be granted without substantial impairment to the intent and integrity of the East Silver Spring Master Plan (2000), which seeks, among other things, to preserve existing residential character, encourage neighborhood reinvestment, provide a greater range of housing types, and enhance the quality of life throughout East Silver Spring.

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.*

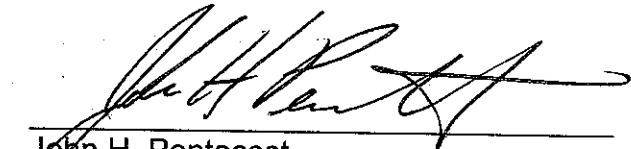
The Board finds that granting the requested variances to allow the proposed construction will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test. In support of this, the Board finds, per the Statement, that the proposed walkway and deck will not impact sight lines for the adjacent properties on account of the dip in the topography between the Petitioners' house and Hilltop Road. The Board further finds, per the testimony of Mr. Howe, that he and his wife have spoken extensively with his neighbors, and that their neighbors are supportive of the proposed construction. Finally, the Board notes that the record contains numerous letters of support for the proposed construction, and no objections. See Exhibits 3 and 9(a)-(k).

Accordingly, the requested variances are **granted**, subject to the following conditions:

1. The Petitioners are bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5(a)-(c).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Richard Melnick, Vice Chair, 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.

  
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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 29th day of June, 2022.

  
\_\_\_\_\_  
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.