

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6778**

**PETITION OF CHRISTOPHER WHALEN**

OPINION OF THE BOARD

(Hearing Held: November 9, 2022)

(Effective Date of Opinion: November 16, 2022)

Case No. A-6778 is an application by Christopher Whalen (the "Petitioner") for variance relief needed for the construction of a front porch and steps. The proposed construction requires a variance of 8.60 feet as it is within 13.40 feet of the front lot line. The required setback is twenty-two (22) feet, in accordance with Section 59.4.9.9.D.2 of the Montgomery County Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, November 9, 2022. Petitioner Christopher Whalen appeared at the hearing in support of the variance application, assisted by his architect, Tamar King.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 10, Block 98, Lot 11 Garrett Park Subdivision, located at 10905 Montrose Avenue in Garrett Park, Maryland, 20896, in the R-90 Zone. See Exhibit 1. Per SDAT, the Petitioner purchased this property in 2005.
2. The subject property is located in the Garrett Park Historic District. It contains an historic "Chevy House" that was built in the 1920s and substantially modified in the 1960s. The subject property is considered a "Contributing Resource" in the Garrett Park Historic District. See Exhibit 3.
3. The Petitioner's Statement of Justification ("Statement") indicates that he is seeking to construct a new front entry to the existing house. The Statement states that "[t]he proposed front entry is modeled on the original Chevy Clipped style," and that "[t]he

scale, orientation of the gable roof to the street, railings and materials are characteristic of this style.” See Exhibit 3.

4. The proposed construction has been approved by the County’s Historic Preservation Committee (“HPC”) as Historic Area Work Permit (“HAWP”) No. 978323. The HPC considered the Petitioner’s application for “a partial demolition, building addition, and front porch alterations to the highly modified 1925 Chevy House” at its January 5, 2022, meeting, and approved the HAWP for the reasons set forth in the Planning staff report, after determining that the proposed porch modifications “were more in keeping with the historic character of the house and surrounding district.” The HPC submitted a letter of support for the grant of the requested variance. They noted in that letter that at the time of their review, they were aware that the front porch encroached beyond the front building line, and that they concluded nonetheless that “the historic resource was best served by the proposed new front porch and granting the variance.” See Exhibit 7.

5. The Garrett Park Historic Preservation Committee (“GP HPC”) has submitted a letter indicating that it supported the issuance of the HAWP for the proposed construction, and that it also supports the granting of the requested variance. The GP HPC letter states that the owners of the subject property “seek a setback variance for the addition of a front porch,” that their property “is a ‘contributing’ resource within the Garrett Park Historic District,” that their house, which was built in 1925, “is an altered ‘Chevy House,’” and that “Chevy Houses are a distinctive and cherished architectural feature of Garrett Park.” The letter further states that in supporting the issuance of the HAWP and the grant of the requested variance, the GP HPC “was aware that the front porch encroached beyond the front building restriction line and felt that the historic resource was best served by the reconfigured front porch.” Finally, the letter notes that in reaching this decision, the GP HPC “was also influenced by the fact that the Town of Garrett Park’s porch ordinance recognizes that street-side porches serve desirable community aims, bringing activity to the front of residences with resulting benefits to sociability, openness and communal security.” See Exhibit 8.

6. In addition to noting that the subject property contains a historically significant contributing resource, the Statement states that the proposed construction would use an existing legal nonconforming use, stating that “[p]ortions of the existing home, including the original Chevy house and the front entry, encroach into the front yard setback, and are nonconforming. The front entry also encroaches into the Garrett Park overlay zone 9 feet exemption.” See Exhibit 3. The Statement further notes that the proposed new entry would substantially conform with the established historic or traditional development pattern of the street or neighborhood, as follows:

The many architectural styles and site location of the homes in the Garrett Park Historic District contribute to the character and fabric of the district. The relationship to the street and property lines of the homes were taken into consideration with the setbacks related to the period of construction.

The proposed front entry is modeled on the original Chevy Clipped style. The scale, orientation of the gable roof to the street, railings and materials are characteristic of this style.

See Exhibit 3. The Petitioner includes photographs of two neighboring homes with similar porches with his submission. See Exhibit 5(j).

7. The Statement states that the nonconforming house and the existing side-loading front entry existed when the Petitioner purchased the house. See Exhibit 3.

8. The Statement states that the home's existing front entry is not a historic feature of the house, and that "[g]ranteeing the variance would replace the non-historic entry feature of the house with one that is consistent with the intent, character, and integrity of Garrett Park." Thus the Statement concludes that the requested variance can be granted without substantial impairment to the intent and integrity of the general plan and applicable master plan. See Exhibit 3.

9. The Statement states that without the requested variance relief, the Petitioner could not build the proposed new entry, which is needed to better comport with his home's historical architecture. The Statement further states that the requested variance is the minimum needed to allow the proposed construction, stating that "[a]ccess to the front door within the required setbacks is not possible without the requested variance," and that granting the requested variance would allow for "a front-facing gable approach to the house consistent with the historic architectural proportions and steps to access existing grade." See Exhibit 3.

10. The Statement states that granting the requested variance will not be adverse to the use of neighboring properties, noting that "[t]he proposed front entry will continue to function as the main entry to the home," and that the "scale, configuration and location of the entry will not have a detrimental impact on the lighting or views of the abutting and confronting properties." See Exhibit 3.

11. At the hearing, the Petitioner explained the history of "Chevy Houses" in Garrett Park, stating that they were built between 1920 and 1925, and that they originally came with two bedrooms, a porch, a Murphy bed, a radio, and a new Chevrolet. He testified that before the designation of the Garrett Park Historic District, many of the Chevy houses in Garrett Park were modified because they were so small. The Petitioner testified that his house was built in 1923, and that a 1960's addition to his house eliminated its front porch. He testified that when he and his wife moved into the house in 2005, they tried to "dress up" the deck that had replaced the original front porch, and that they are now seeking to restore the original "Chevy" look to their house with the construction of a small front porch in lieu of that deck. The Petitioner testified that his home is in a row of four Chevy Houses on his side of the street, that there are two more across the street, and that most, if not all, have front porches. He testified that he is trying to match the design of these porches, and that they had made some adjustments to the design of their proposed porch after consulting with the Garrett Park Historic Preservation Commission.

The Petitioner testified that there were no setback rules when his home was first built, and that his proposed front porch would extend into the front setback. He testified that he had done an unscientific survey of Chevy Houses in his area using an on-line measurement tool, and had concluded that more than half of the Chevy Houses have front porches that extend over the setback line. The Petitioner testified that Exhibit 5(j) shows the front porches on some of his neighbors' homes, and that Exhibit 5(i) depicts his home. He testified that his house has a side-loading front entrance, and that most Chevy Houses were front-loading so that they engaged more with the street. The Petitioner testified that with the proposed front porch, his home would also be front-loading. See Exhibit 5(g). Finally, the Petitioner testified that his neighbors are supportive of the proposed construction.

12. The Petitioner's architect, Tamar King, testified that because the existing front entrance and part of the original house are over the front setback, the existing home is non-conforming. She testified that both the Montgomery County Historic Preservation Commission and the Garrett Park Historic Preservation Commission support the proposed project. Ms. King testified that the construction would entail removing the existing porch (deck), and overbuilding the existing roof to bring the project forward. She testified that the proposed porch would be closer to the front lot line than the existing structure. In response to a Board question, Ms. King testified that Exhibit 5(c) shows what the house will look like with the proposed porch, and that this look is consistent with the historic design of Chevy Houses.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and the evidence of record, the Board finds that the requested 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.ii. – the proposed development uses an existing legal nonconforming property or structure;*

The Board finds, based on the Statement and the testimony of record, that portions of the original Chevy home, which was built before the County's first Zoning Ordinance was enacted, extend into the front setback, making the home a legal nonconforming structure. See Exhibit 3. The Board further finds that the proposed construction involves partial demolition of an existing, non-original addition to this home and the construction of a new front porch entry to this historic home that is more consistent with its architecture. Accordingly, the Board finds that the proposed development uses an existing legal nonconforming property or structure, in satisfaction of this element of the variance test.

*Section 59-7.3.2.E.2.a.iv. - the proposed development contains a historically significant property or structure;*

The Board finds that the subject property's "Chevy House" is a contributing resource in the Garrett Park Historic District. See Exhibit 3. Thus the Board finds that the proposed development contains a historically significant property or structure, in satisfaction of this element of the variance test. The Board notes that the Petitioner has applied for and received approval from the County's Historic Preservation Commission for the construction of the proposed front porch entry, in the proposed location, and that the proposed construction, in the proposed location, is also supported by the Garrett Park Historic Preservation Commission. See Exhibits 7 and 8.

*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 Statement, photographs, and testimony of record, that there are several Chevy Houses in the immediate vicinity of the Petitioner's home, and that the new front porch entry proposed by the Petitioner would not only be consistent with the original "Chevy Clipped" style, but would also be consistent with the style of those Chevy Houses located in the immediate vicinity of the Petitioner's house. See Exhibit 3 and 5(j). The Board further finds, based on the testimony of the Petitioner, that the majority of the Chevy homes in the area have porches that extend into the front setback. Finally, the Board finds, per the Statement, that the many architectural styles and site location of the homes in Garrett Park contribute to its historic character, and that the relationship of these homes to the street and property lines was taken into consideration in designing the proposed front porch entry, with the setbacks being related to the period of construction. See Exhibit 3. In light of the foregoing, the Board finds that the proposed new front entry would substantially conform with the established historic or traditional development pattern of this street or neighborhood, 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, based on the Statement and SDAT printout, that the Petitioner, who has owned this property since 2005, is not responsible for its historical designation, for the non-conforming placement of the existing house, or for the established historic or traditional development pattern of this street or neighborhood, 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 location of the subject property in the Garrett Park Historic District and the designation of the existing house as a contributing resource in that District necessitates review of any proposed development by the Historic Preservation Commission and the Garrett Park Historic Preservation Commission. The Board further

finds that the proposed front porch entry, in the proposed location, has already been approved by the HPC and the GP HPC, and is consistent with the established pattern on this street and in this neighborhood. In addition, the Board finds that the strict application of the Zoning Ordinance to the subject property would preclude construction of the proposed new front porch entry, which both the HPC and the GP HPC noted "best served" this historic resource, because of the home's nonconforming location and encroachment into the front yard setback. Accordingly, the Board finds that the strict application of the Zoning Ordinance would preclude the requested construction in the area approved by the HPC and the GP HPC, causing the Petitioner a practical difficulty, and that the requested variance is the minimum needed to overcome this difficulty and to allow the proposed construction, 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 home, and that as found by the HPC, despite the front lot line encroachment, the proposed new entry better aligns with the historic character of the house and surrounding district than the current entrance, and should be allowed. Therefore, the Board finds that the requested variance can be granted without substantial impairment to the intent and integrity of the 1992 North Bethesda-Garrett Park Master Plan (1992), which lists this property as a contributing resource in the Garrett Park Historic District. 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.*

Per the Statement, the Board finds that the proposed new front entry will continue to function as the main entrance to this home, and that the "scale, configuration and location of the entry will not have a detrimental impact on the lighting or views of the abutting and confronting properties." See Exhibit 3. The Board further finds that both the HPC and the GP HPC support the proposed construction as better aligning with the home's historic character. See Exhibits 7 and 8. In addition, the Board finds that the Town of Garrett Park's porch ordinance considers street-side porches to be a desirable community feature. See Exhibit 8. Finally, the Board finds, per the testimony of the Petitioner, that his neighbors support the proposed construction. Accordingly, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance to allow proposed construction of a new front porch and steps is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with the Exhibits 4(a)-(b) and 5(b)-(c) and (e)-(h).

Therefore, based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by Caryn Hines, with John H. Pentecost, Chair, 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 16<sup>th</sup> day of November, 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.