

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6865

PETITION OF JUSTIN BALCHUN

OPINION OF THE BOARD
(Opinion Adopted May 29, 2024)
(Effective Date of Opinion: June 5, 2024)

Case No. A-6865 is an application for a variance necessary for the proposed construction of a deck/covered porch. The proposed construction requires a variance of 7.30 feet as it is within 23.70 feet of the front lot line. The required setback is thirty-one (31) feet, in accordance with Sections 59.4.1.7.B.5.a.i and 59.4.4.7.B.2 of the Zoning Ordinance. Section 59.4.1.7.B.5.a.i of the Zoning Ordinance provides that decks and unenclosed porches (including unenclosed, roofed porches) can project up to nine (9) feet into the front setback, which in the instant case is forty (40) feet.

The Board of Appeals held a hearing on the application on May 29, 2024. Petitioner Justin Balchun appeared pro se at the hearing in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Parcel P578, Martha and Mary Subdivision, located at 11841 Marmary Road in Gaithersburg, Maryland, 20878, in the R-200 Zone. It is a rectangular lot, slightly deeper than it is wide, located on north side of Marmary Road. The subject property has an area of 35,719 square feet (Tax Record), and was purchased by the Petitioner in 2008. It contains a septic tank and septic field. See Exhibits 4 and 7, and SDAT Printout.

2. The Petitioner's Statement of Justification ("Statement") states that the subject property is improved with a house that was built in 1945 and that has an existing front

porch. The Statement states that the Petitioner is seeking to replace the existing porch with a wrap-around front porch. The Statement states that because the existing house was constructed too close to the front property line, there is no room for a front porch without variance relief. See Exhibit 3. The Site Plan shows that the front wall of the Petitioner's house (exclusive of the existing front porch) is located 31.7 feet from the front property line instead of the required forty (40) feet. See Exhibit 4.

3. The Existing Foundation plan shows that the existing front porch is six (6) feet deep and ten (10) feet wide. See Exhibit 5(c). The Proposed Foundation plan shows that the proposed wrap-around front porch will also be six (6) feet deep. See Exhibit 5(d). The Site Plan indicates that when the roof overhang for the proposed porch is included, the proposed wrap around front porch will be 23.7 feet from the front property line. See Exhibit 4.

4. The Statement states that the Petitioner is seeking to construct new decks on either side of his house, connected by the proposed front porch. The Statement states that "[t]he reason for the front porch connecting the two is so that the entire house and both decks can be accessed without using any steps" by the Petitioner's elderly father. See Exhibit 3.

5. The Statement states that the Petitioner cannot construct the proposed front porch without variance relief because the original positioning of the house on the property left no room for a front porch, and that this makes the property unique. The Statement states that if the house had been built in accordance with the required front setback, there would have been room for the proposed front porch, and no variance would have been needed. The Statement further states that because the existing house was not sited in accordance with the required setbacks, the proposed construction uses an existing legal nonconforming property or structure. See Exhibit 3.

6. The Statement states "[t]here are two other houses on our small street that are closer to the property line than my proposed setback," noting that one sits 14 feet from the property line, and the other sits 15 feet from the property line. Accordingly, the Statement concludes that the proposed construction would substantially conform with the established historic or traditional development pattern of the Petitioner's street or neighborhood. See Exhibit 3.

7. The Statement states that the Petitioner is not responsible for the siting of the existing house on the property. See Exhibit 3.

8. The Statement states that the requested variance is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would cause. The Statement states, in support of this, that the proposed six (6) foot deep porch "would allow for safe passage of two people, or the safe passage of one person with a chair(s) left on the front porch." The Statement indicates that the balance of the variance needed is for the two (2) foot roof overhang. See Exhibit 3.

9. The Statement notes that “[o]f the 15 homes on Marmary Road, two have encroached closer to the property line than this variance is requesting,” and states that granting the requested variance “would not be adverse to the use or enjoyment of neighboring properties.” See Exhibit 3.

10. At the hearing, the Petitioner testified that his house was built in 1945, and that it has a small front porch that is in disrepair. He testified that he is seeking to remove the existing porch, and to replace it with a porch that stretches across the front of his house. The Petitioner testified that because his house is sited too far forward on the property, the County’s Department of Permitting Services advised him he would need a variance for this construction. He later confirmed, in response to a Board question, that the existing house encroaches on the required front setback. The Petitioner testified that like the existing front porch, the new porch will be six (6) feet deep. He then noted that the proposed porch would also have a two (2) foot roof overhang that was similar in style to the roof overhang on the accessory structure in his back yard. Thus, the Petitioner testified that while the footprint of the porch would be no closer to the front lot line than the existing porch, the roof of the porch would be slightly closer. The Petitioner testified that there are two homes on his street that are closer to the front lot line than his house would be, even with the proposed porch. The Petitioner testified that the proposed front porch would be flush or almost flush with the ground for ease of access.

In response to a Board question asking if he had received any feedback about his proposed construction from his neighbors, the Petitioner testified that his neighbors are supportive of his request, and that they had asked if there was anything they could do to help.

FINDINGS OF THE BOARD

Based on the Petitioner’s binding testimony and 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.ii the proposed development uses an existing legal nonconforming property or structure;

The Board finds, based on the Statement, Site Plan, and the testimony of the Petitioner, that the existing house was constructed in 1945, and does not conform to the required front setback (including the required porch setback) required by the current Zoning Ordinance. Thus the Board finds that the existing house is a nonconforming structure. Because the proposed construction uses the existing house, the Board finds that the requested variance satisfies this element of the variance test. See Exhibits 3 and 4.

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 and the testimony of the Petitioner, that there are two houses on the Petitioner's street that are located closer to their respective front lot lines than the Petitioner's proposed front porch would be. In addition, the Board finds that the Petitioner currently has a front porch that extends as close to the front lot line as the footprint of the proposed porch. See Exhibit 3. In light of the foregoing, the Board finds that the proposed construction would substantially conform with the established traditional pattern for placement of structures relative to the front lot line, 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, the SDAT Printout, and the testimony of the Petitioner, that the subject property contains a house that was constructed in 1945, and that the Petitioner purchased the subject property in 2008. See Exhibit 3. Therefore, the Board finds that the Petitioner did not construct or have control over the nonconforming placement of his house. See Exhibit 3. The Board further finds that there is nothing in the record to suggest that the Petitioner was involved in any way with the siting of other houses in the neighborhood. Accordingly, the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioner, 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 non-conforming location of the existing house causes the Petitioner a practical difficulty, since if the house had been located in accordance with the required forty (40) foot front setback, the proposed wrap-around porch and roof projection would not have needed a variance. The Board further finds that the requested variance is the minimum needed to allow for the construction of a wrap-around porch, with a porch depth of six (6) feet and a two (2) foot roof overhang, on the front of the Petitioner's house. In addition, the Board finds, based on Foundation Plans, that the proposed porch will be replacing Petitioner's existing porch, which is also six (6) feet deep. See Exhibits 5(c)-(d). Finally, the Board finds, based on the Statement, that the proposed depth is the minimum needed to "allow for safe passage of two people, or the safe passage of one person with a chair(s) left on the front porch." In light of the foregoing, the Board finds that the requested variance is the minimum needed to allow construction on this property commensurate with its past and with other properties in the neighborhood, and to overcome the practical difficulties that would otherwise be imposed by compliance with the Zoning Ordinance, 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 allowing the Petitioner to proceed with the proposed construction will continue the residential use of this home, consistent with the Greater Seneca Science Corridor Master Plan, which seeks, among other things, to maintain the established residential neighborhoods throughout the GSSC Master Plan area. Thus 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 that allowing the construction of the proposed front porch/deck, which will extend a similar distance towards the street as the existing front porch (which will be removed), will not infringe on the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test. See Exhibits 3, 4, 5(c)-(d). In further support of this, the Board finds, based on the testimony of the Petitioner, that his neighbors support his variance request. In addition, the Board notes that the variance was properly noticed, that the record contains no letters of opposition to the proposed construction, and that no one appeared at the hearing to object to the grant of this variance.

Accordingly, the requested variance to allow the construction of a deck/covered porch is **granted**, subject to the following condition:

1. The Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4, 5(b), and 5(d)-(f).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Alan Sternstein, with Richard Melnick, Vice Chair, Caryn Hines, and Amit Sharma 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 5th day of June, 2024.



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.