

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6911

PETITION OF BENJAMIN KAUFMAN

OPINION OF THE BOARD

(Opinion Adopted April 23, 2025)

(Effective Date of Opinion: May 7, 2025)

Case No. A-6911 is an application by Petitioner Benjamin Kaufman (the "Petitioner") for a variance needed for the proposed construction of a screened porch. The proposed construction requires a variance of 1.8% from the lot coverage limitation, as it creates a total lot coverage of 16.8%. The maximum lot coverage is 15%, in accordance with Section 59.4.4.6.B.1.a of the Zoning Ordinance.

The Board held a hearing on the application on April 23, 2025. Petitioner Benjamin Kaufman appeared at the hearing in support of the requested variance with his wife, Beth Kaufman.

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

EVIDENCE PRESENTED

1. The subject property is Lot 5, Block 33, Olney Mill Subdivision, located at 4117 Mount Olney Lane in Olney, Maryland, 20832, in the RE-1 Zone.¹ It is an interior lot, rectangular in shape, with a width of approximately 110 feet and a depth of approximately 140 feet, giving the property an area of 15,400 square feet. The subject property is located on the east side of Mount Olney Lane. The subject property is located in a subdivision that was recorded in 1969, and it contains a house that was built in 1971. It was purchased by the Petitioner in 2004. See Exhibits 3, 4, and 11(a)-(b).

¹ The Petitioner's Statement of Justification states that when the property was developed, it was in the R-E Zone. See Exhibit 3.

2. The Petitioner's Statement of Justification ("Statement") states that the Olney Mill community in which the subject property is located is comprised of 1,035 homes. The Statement states that most of the homes in the Olney Mill community are zoned R-200, which allows for up to 25% lot coverage, but that 137 of the homes, including the Petitioner's home, are zoned RE-1, which only allows for up to 15% lot coverage. The Statement states that "[r]esearch including a query of the Montgomery County Planning Department into the history of this zoning discrepancy reveals no reasonable explanation." The Statement states that the property "immediately adjacent" to the Petitioner's property has the same square footage as the Petitioner's property, but is in the R-200 Zone. See Exhibit 3. The Zoning Vicinity Map shows this to be true. See Exhibit 11(a).

3. The Petitioner is seeking a 1.8% variance from the RE-1 lot coverage limitation in order to construct a screened porch on a portion of his existing deck. The Statement states that with the construction of the screened porch, the total lot coverage on the subject property would be 16.8%, far less than the 25% allowed in the R-200 Zone, but more than is allowed in the RE-1 Zone. The Statement asserts that the proposed screened porch is consistent with the intent and spirit of the Zoning Ordinance, and notes that the proposed porch "adds no additional lot coverage over existing green space," but rather "will result only in partial coverage of the existing deck with roofing." See Exhibit 3.

4. The Statement states that the proposed screened porch substantially conforms with the established historic or traditional development pattern of the Olney Mill neighborhood. The Statement states that the neighborhood is over 50 years old and is "well regarded for its beautiful homes." The Statement states that many homes in the neighborhood "have undergone extensive renovation, additions, and modernization, yet the neighborhood maintains the traditional stylizing of the original development." It states that the proposed screened porch "coincides with the essential character of the house and the neighborhood," and that the "building materials, roofing and style of the proposed project would match the existing house and would be in substantial conformity with the development pattern of the neighborhood because there are many similar homes that have added rear decks covered by roofing." Finally, as noted in the preceding paragraph, the Statement states that the vast majority of the homes in the Olney Mill community are zoned R-200, including the property that abuts the subject property. The Statement states that "[t]hese neighboring properties that are zoned R-200 have a coverage allowance of up to 25%, therefore this modest increase in coverage to just 16.8% will conform to the surrounding homes." See Exhibit 3.

5. The Statement states that the proposed porch will provide needed living space for the Petitioner and his family, and will allow them protected, main-level access to the outdoors as they seek to age in place in their home. See Exhibit 3.

6. The Statement states that the more restrictive zoning of the Petitioner's property relative to most of the properties in his neighborhood, including the property next to his property, "causes the zoning requirements to disproportionately impact the reasonable use and enjoyment of [his] home, creating a practical difficulty." The Statement further

states that the requested variance from the lot coverage limitation is the minimum needed to overcome the practical difficulty imposed by the strict application of the Zoning Ordinance. See Exhibit 3. In support of this, the Statement states the following:

This minimal variance request would allow an increase in coverage by just 1.8% over the 15% limit. The property immediately adjacent includes an identical lot size but is zoned R-200, allowing up to 25% coverage. The subject property, Lot 5, is one of the smallest in the neighborhood in terms of total square footage. The RE-1 maximum zoning coverage places an impractical restriction on property use when compared to other similarly situated homes. This variance will allow us to match what many neighbors have been able to do, which is to add a roof structure over a rear deck.

Without the variance, adding outdoor coverage of the rear deck would require demolition of another portion of the house to remain under the 15% zoning requirement. Without the variance, I will have a substantial deprivation of the use of my property. At this point in time I have no other choice than to obtain a variance.

7. The Statement states that the requested variance “does not affect” the intent and integrity of the Olney Master Plan, and further states that “[a] map from the Master Plan depicts the entirety of Olney Mill with R-200 zoning.” See Exhibit 3.

8. The Statement states that the requested variance can be granted without adversely impacting the use and enjoyment of neighboring properties. The Statement states that the deck on which the Petitioner proposes to build his screened porch “is located in the rear of the house and it is not visible from the street or from Lot 6.”² The Statement further states that “[t]he closest structural visibility of the proposed project is 45’ from the property line of Lot 4³ and 56’ from the rear property line.” The Statement states that the Petitioner’s backyard “includes several shrubs and mature trees which somewhat obscure the sight lines from the adjoining properties to the structure.” See Exhibit 3.

The Petitioner includes a letter of support for the grant of the requested variance that is signed by all four of his abutting neighbors (left, right, and rear). See Exhibit 9. In addition, he includes approval for his proposed screened porch from the Chairman of the Architectural Control Committee of the Olney Mill Community Association. See Exhibit 8. Finally, the Board is in receipt of a letter from the Patuxent Watershed Protective Association, stating that their organization has reviewed the Petitioner’s variance materials and has no objection to the request. See Exhibit 10.

9. At the hearing, the Petitioner testified that he is seeking to convert a portion of his existing deck into a screened porch. He testified that when his contractor went to get permits for the proposed construction, he was informed that the proposed construction

² Lot 6 abuts the left side of the subject property.

³ Lot 4 abuts the right side of the subject property.

would cause the lot coverage on the property to exceed the allowed 15%. The Petitioner testified that his property is one of a handful of properties in his neighborhood that are zoned RE-1. He testified that the remainder of the neighborhood is zoned R-200, which allows for 25% lot coverage. The Petitioner testified that his property is the exact same size as his next door neighbor's property, which is zoned R-200, and that because of the difference in zoning, his neighbor is allowed 25% lot coverage whereas he is only allowed 15% lot coverage. He testified that at 15,400 square feet, his property is far smaller than the 40,000 square foot minimum lot size in the RE-1 Zone. The Petitioner testified that his lot is one of the smaller lots in his neighborhood. He testified that the lot coverage limitation causes him a hardship, and noted that the Olney Master Plan shows the entirety of the Olney Mill neighborhood as being located in the R-200 Zone.

The Petitioner testified that while the existing deck does not count against lot coverage, the proposed porch would because it would have a roof. He testified that the proposed porch would substantially conform with his house and with the neighborhood. In response to a Board question asking if he knew why his property was zoned RE-1 as opposed to R-200, the Petitioner testified that the 1969 plat shows that his property was originally zoned R-E, then RE-1. He testified that the 15% lot coverage limitation was added after the change to the RE-1 Zone, and that the R-E Zone did not have lot coverage restrictions. The Petitioner testified that he tried to get information from the Planning Department regarding the reasons for the zoning of his property but was unsuccessful. He testified that all four of his abutting neighbors support his variance request.

10. The Petitioner's wife testified that the proposed screened porch will not change the existing "green space" on their property. She testified that she and her husband are only seeking to cover a part of their deck with the proposed porch.

CONCLUSIONS OF LAW

Based on 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.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, the Zoning Vicinity Map, and the testimony of the Petitioner, that the vast majority of the lots in the Petitioner's neighborhood are zoned R-200 and thus have a 25% lot coverage limitation, but that for unknown reasons, a small number of lots in this neighborhood, including the Petitioner's property, are zoned RE-1 and have a 15% lot coverage limitation. The Board further finds that the porch proposed by the Petitioner would bring his total lot coverage to 16.8%, well within the 25% lot coverage that is allowed in most of his neighborhood. Thus the Board finds that the proposed porch, with its resultant 16.8% lot coverage, would substantially conform with the established historic or traditional development pattern of this

neighborhood. See Exhibits 3, 6(a), and 11(a). Accordingly, 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;*

The Board finds, based on the Statement and subdivision plat, that the subject property was recorded in 1969 and developed in 1971. Thus the Board finds that the Petitioner, who purchased the subject property in 2004, is not responsible for the zoning of the property, or for the disproportionate and restrictive impact of the RE-1 lot coverage limitation on the property relative to the lot coverage limitation placed on the majority of properties in his neighborhood by their R-200 zoning. See Exhibit 3. Thus the Board finds that this element of the variance test is satisfied.

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 the Petitioner, that the application of the 15% lot coverage limitation results in the subject property having an unusually constrained buildable area, which in turn limits the Petitioner's ability to expand his home in a manner commensurate with other homes in his neighborhood, causing him a practical difficulty. See Exhibit 3. To illustrate the impact of the RE-1 lot coverage restriction on the subject property, application of the 15% lot coverage limitation allows for only 2,310 square feet of lot coverage on the subject property, whereas if the subject property had been zoned R-200, like the majority of properties in the Olney Mill neighborhood and like the identical property next door to the Petitioner's property, the Petitioner would have been allowed up to 3,850 square feet of lot coverage. The Board further finds that the requested 1.8% variance from the lot coverage limitation, necessary to permit the Petitioner to construct the proposed screened porch, is the minimum necessary to overcome the practical difficulty that would otherwise be imposed on this property by strict adherence to the lot coverage limitations in the Zoning Ordinance. 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 granting the requested variance is necessary to allow the Petitioner to construct a screened porch on his existing deck. The Board further finds that the proposed porch would continue the residential use of the subject property, and thus finds that the requested variance can be granted without substantial impairment to the intent and integrity of the applicable Olney Master Plan, in satisfaction of this element of the variance test.

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 Statement and the testimony of the Petitioner, that granting the requested variance to allow construction of the proposed screened porch will

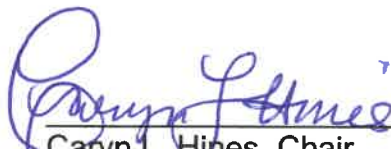
not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test. The Board finds that view of the proposed porch from across the street or from the abutting property to the left would be blocked by the Petitioner's house, and further finds that any view from the abutting properties to the right and rear is mitigated by distance and vegetation. See Exhibit 3. The Board finds that the Petitioner's abutting neighbors to the left and right, and to the rear, have all signed a letter supporting the grant of the requested variance. See Exhibit 9. In addition, the Board finds that the proposed porch has been approved by the Architectural Control Committee of the Olney Mill Community Association, and that the Patuxent Watershed Protective Association has no objection to the request. See Exhibits 8 and 10. Finally, the Board finds that the property was properly posted, that the record contains no letters of opposition to the grant of the request variance, and that no one appeared at the hearing in opposition to the requested variance.

Accordingly, the requested variance from the lot coverage limitation 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 Exhibits 4 and 5(a)-(f).

Therefore, based upon the foregoing, on a motion by Alan Sternstein, seconded by Donald Silverstein, with Caryn L. Hines, Chair, Richard Melnick, Vice Chair, 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.


Caryn L. Hines, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 7th day of May, 2025.


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.

