

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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

**Case No. A-6925**

**PETITION OF MIGUEL HERNANDEZ**

**OPINION OF THE BOARD  
(Hearing Held: July 23, 2025)  
(Effective Date of Opinion: July 30, 2025)**

Case No. A-6925 is an application by Petitioner Miguel Hernandez for a variance needed for the proposed construction of a covered deck. The proposed construction requires a variance of 18.70 feet as it is within 11.30 feet of the rear lot line. The required setback is thirty (30) feet, in accordance with Section 59.4.4.7.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, July 23, 2025. Petitioner Miguel Hernandez was present in support of the requested variance with his son, Juan Hernandez.

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

**EVIDENCE PRESENTED**

1. The subject property is Parcel P366, Pleasant Hill Subdivision, located at 15015 Darnestown Road in Germantown, Maryland, 20874, in the RC Zone. It contains a house that was built in 1957. The subject property, in its current form, was created by a 1961 subdivision. It was purchased by the Petitioner in 1998. See Exhibits 1 and 3.
2. The Petitioner's variance Application states that "[t]he existing single family dwelling was built in 1957. After being built the lot was subdivided, making the existing SFD non-conforming. The existing SFD sits at 10 ft from the rear lot line which makes it non-conforming." The Application states that this condition makes the property unique for the purpose of granting a variance. The Application further states that this condition

causes the Petitioner a practical difficulty in complying with the Zoning Ordinance, stating that because of the siting of the Petitioner's house relative to the rear and side lot lines, "no additions would comply with required setbacks ordinance," and that full compliance with the required setbacks "would mean that the entire house would need to be moved away from two lot lines...." See Exhibit 1.

3. The Petitioner's Statement of Justification ("Statement") states that the subject property is unique for the purposes of Section 59.7.3.2.E.2.a.i and Section 59.7.3.2.E.2.a.ii of the Zoning Ordinance because it has an "unusual shape" and because the "existing house encroaches into the rear and western side setbacks, rendering it nonconforming." The Statement states that the existing house "was built in 1957, before the lot was subdivided." Thus the Statement also asserts that the conditions that make the subject property unique are not the fault of the Petitioner, who purchased the property in 1998. See Exhibit 3.

4. The Statement states that the requested variance is the minimum needed to overcome the practical difficulties caused by full compliance with the Zoning Ordinance on account of the unique features of this property. In support of this, the Statement states that "[t]he proposed roof and deck modifications will expand the existing home on the front and eastern sides," and that the "location of the nonconforming home makes any addition to the house without variance practically impossible," noting that "[t]he house and driveway would have to be moved in order to have full compliance." See Exhibit 3.

5. The Statement states that granting the requested variance to allow the proposed construction will not be adverse to the use and enjoyment of neighboring properties. The Statement states, in support of this, that "[t]he home sits in the northwest corner of the property, creating significant separation from abutting homes." The Statement further states that "[t]he proposed modifications will not obstruct light, air, or views, nor introduce noise or privacy impacts due to the ample distancing and existing tree cover." See Exhibit 3.

6. The Petitioner's Site Plan shows that the proposed covered deck will not extend any closer to the rear lot line than the existing house, as it will be coplanar with the rear (northern) façade of the house. Rather, as shown on the Site Plan, the proposed covered deck will be located along the right (eastern) side and front (southern) facade of the house. See Exhibit 4. The existing and proposed elevations illustrate this, and also show that the proposed covered deck will not extend further into the rear setback than the existing house. See Exhibits 5(a)-(d).

7. The Petitioner's Building Permit Denial confirms that the Petitioner's home is nonconforming, and that the Petitioner is proposing to add a covered deck to this nonconforming structure. To this end, the Building Permit Denial states that "[t]he existing single-family dwelling (SFD) was built in 1957, and sometime later the lot was subdivided making the existing SFD nonconforming. The existing SFD sits at 10 feet from the rear lot line which makes it non-conforming. The proposed construction is to add a covered deck to the existing SFD." See Exhibit 6.

8. At the hearing, the Petitioner's son testified that his father purchased the subject property in 1998, and that it contains a house that was built in 1957. He testified that the house has not changed since that time, and that the house is now nonconforming because the property on which it is located was divided after the house was built. The Petitioner's son testified that he and his father are seeking to add a covered front porch and side deck to their existing house. The Petitioner's son testified that the subject property is unusual in that it lacks the setbacks needed to allow the proposed construction of a covered deck, and that the existing house would have to be moved in order to allow the proposed construction without first having to obtain a variance.

The Petitioner's son testified that the existing house is located in the corner of the property, and that the proposed covered deck on the right side of the house does not meet the required setback from the rear lot line. He made clear that as shown on Exhibit 4, the proposed covered deck would be built on the front and right side of the existing house, not on the rear of the house.

The Petitioner's son testified that the subject property has an unusual shape. In response to a Board question asking if he knew why the property was shaped as it is, the Petitioner's son testified that he did not know the story behind the property's unusual shape other than that the V-shaped "cut out" on the southern side of the property was for the neighbor's septic system. In response to a Board question asking if he had talked to his neighbors about the proposed construction, the Petitioner's son testified that they had spoken with all their neighbors, and that none had issues with the proposed construction. He further testified that there are woods behind the house.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and 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 of the Zoning Ordinance, 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 Application, Statement, Site Plan, Building Permit Denial, and testimony of the Petitioner's son, that the Petitioner's home was built prior to the subdivision that created his lot, and that it is nonconforming because it does not comport with the required setbacks, including the property's rear setback. See Exhibits 1, 3, 4, and 6. The Board further finds, based on the foregoing and on the elevations of the proposed covered deck, that the proposed deck will be attached to, and therefore uses, this existing legal nonconforming structure. See Exhibit 5. 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 Application, Statement, Building Permit Denial, and the testimony of the Petitioner's son, that the Petitioner's house was built in 1957, and that the subject property was created as a result of a 1961 subdivision, pursuant to which the existing house was made nonconforming. The Board further finds that the Petitioner purchased the property in 1998. See Exhibits 1, 3, and 6. Accordingly, the Board finds that the Petitioner is not responsible for the construction of the house or the subsequent subdivision that made it nonconforming, 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 the Petitioner's son, that the location of the Petitioner's nonconforming house, which encroaches into the property's rear and western side setbacks, makes it "practically impossible" to construct any addition to the house without variance relief. See Exhibit 3. The Board finds that this causes the Petitioner a practical difficulty, and that the requested variance, needed to allow the Petitioner to add a covered deck to his house that will not increase the extent of the home's existing encroachment into the rear setback, is the minimum needed to overcome the practical difficulty that results from the nonconforming location of his house. In light of the foregoing, 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 proposed construction will continue the residential use of the property and accordingly can be granted without substantial impairment to the intent and integrity of the Potomac Subregion Master Plan (2002). 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.*

The Board finds, based on the Statement and the testimony of the Petitioner's son, that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties. In support of this, the Board finds that the proposed deck will not be located on the rear of the house, and that there are woods behind their house that would presumably limit any view of the proposed deck from the property's rear lot line. The Board further finds, based on the testimony of the Petitioner's son, that they have spoken with all of their neighbors, and that none object to the proposed construction. The Board notes, per the Statement, that there is a "significant separation" between the Petitioner's house and abutting houses. In addition, the Board finds, based on the Statement, that the proposed covered deck "will not obstruct light, air, or views, nor introduce noise or privacy impacts due to the ample distancing and existing tree cover."

See Exhibit 3. Finally, the Board finds that the property was properly posted, and that no one appeared at the hearing in opposition to the Petitioner's variance request. In light of the foregoing, the Board finds that this element of the variance test is satisfied.

Accordingly, the requested variance needed to allow construction of the proposed covered deck 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)-(n).

Therefore, based upon the foregoing, on a motion by Alan Sternstein, seconded by Caryn L. Hines, Chair, with Richard Melnick, Vice Chair, Amit Sharma, and Donald Silverstein 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 30th day of July, 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.