

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6635
PETITION OF DANIEL AND CHENIECE KELLEHER**

**OPINION OF THE BOARD
(Opinion Adopted October 23, 2019)
(Effective Date of Opinion: October 31, 2019)**

Case No. A-6635 is an application for a two (2) foot variance necessary for the proposed construction of an addition within five (5) feet of the side lot line. The required setback is seven (7) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on October 23, 2019. Petitioners Daniel and Cheniece Kelleher appeared at the hearing in support of the application, assisted by Brett Schoolnick with Landis Architects/Builders.

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

EVIDENCE PRESENTED

1. The subject property is Lot 17, Block 2, Pinecrest Subdivision, located at 6415 5th Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone. It is a 42.84-foot wide¹ by 150-foot deep rectangular lot, giving it an area of 6,427 square feet. See Exhibit 4. The subject property was recorded in 1909, and was originally located in Prince George's County, Maryland. See Exhibit 3.
2. The Petitioners' Justification Statement ("Statement") indicates that the house on the subject property was built in 1964, and was set back five (5) feet from each side lot line, in compliance with the setbacks imposed at the time by Prince George's County. It states that the portion of Takoma Park in which this property is located was incorporated into Montgomery County in 1997, and that in 2007, the Montgomery County Zoning Ordinance was changed to make this property subject to a seven (7) foot side lot line setback because the property is more than 40 feet wide. It notes that had the width of the property been 40 feet or less, a five (5) foot

¹ Board Member Katherine Freeman noted during the hearing that in the R-60 Zone, the minimum width at the front building line is 60 feet, thus illustrating by comparison how narrow this property is.

side setback would still apply. See Exhibits 3 and 6(b). The Statement explains that this change made the house “non-compliant by approximately two foot (2’) in relationship to the side setbacks on both the right and left sides of the property,” and notes that the proposed addition follows “the same building line as the existing structure on the right side building line.” The Statement also asserts that the narrowness of the lot makes it extremely difficult to design an addition that would satisfy “minimum room spatial requirements.” See Exhibit 3.

3. The Statement states that the proposed addition “uses an existing nonconforming property or structure” by following the same building line along the right side as the existing structure, and further states that the proposed addition “substantially conforms with the established historic or traditional development pattern of the property” because the Petitioners are only seeking to expand “within the existing building line of the house from the right side,” and thus “the subject property will look as though it is and was the original site lines of the house.” It notes that the proposed addition will “not even be noticeable from the street view” and that “[t]he rear lot lines view will be negligible because the rise of the grade precludes viewing the structure from the rear neighboring properties.” See Exhibit 3. The subject property rises approximately 14 feet from the back of the house to the rear lot line. See Exhibit 4.
4. The Statement at Exhibit 3 indicates that the granting the variance will not be adverse to the use and enjoyment of abutting or confronting property owners, as follows:

The right-side view will be seen as an extension of the existing building line of the house ... the rear lot lines view will be negligible because the rise of the grade precludes viewing the structure from the rear lot line and the project for the most part will not be seen from the front street view.

5. At the hearing, Petitioner Cheniece Kelleher testified that she and her husband purchased the subject property in 2015. She testified that the subject property was recorded in 1909, and that it was originally located in Prince George’s County. She testified that the existing house was built in accordance with the applicable code in the early 1960s.

Ms. Kelleher testified that the subject property was annexed into Montgomery County in 1997, and that the existing house, which was constructed with five (5) foot side lot line setbacks, does not conform to the seven (7) foot side lot line setbacks that are now required. She stated that this presents a hardship for her, and that the proposed addition will continue the existing side lot line setback.

6. Mr. Schoolnick echoed the statements made by Ms. Kelleher, testifying that this lot was recorded in 1909 with five (5) foot side lot line setbacks, that the existing house was built in 1964 in compliance with those five (5) foot side setbacks, that the property was annexed into Montgomery County in 1997, and that in 2007,

zoning changes made a seven (7) foot side lot line setback applicable to this property because of its width. He noted that had the property been a couple of feet less wide, the five (5) foot side lot line setbacks would have continued to apply and no variance would have been needed. He testified that both the left and right sides of the existing house were built with five (5) foot setbacks, and thus both encroach on the seven (7) foot setbacks now required. Mr. Schoolnick explained that the addition proposed is the minimum width needed to be workable, and that it cannot be stepped two feet farther back from the property line because it would block a bathroom window.

Mr. Schoolnick testified that the proposed construction uses an existing nonconforming structure and conforms with the historical development of this property in that the addition will maintain the building and sight lines of the original home. He testified that the requested variance is the minimum needed to allow expansion of this home, that the addition cannot be pushed any farther to the north, and that without the grant of the variance, the resultant addition would be too narrow to be workable.

Mr. Schoolnick testified that the proposed addition, if constructed, will have no impact on the applicable Master Plan, and that it will not be adverse to the use and enjoyment of neighboring property owners because it will continue the existing plane of the house along the right side, and because the view from the rear will be negligible due to a rise in elevation. He testified that the record contains letters of support from the Petitioners' neighbors. See Exhibits 9(a)-(d).

7. Petitioner Daniel Kelleher testified that the proposed construction will not affect any trees or existing vegetation. He explained that the addition would be constructed on piers, in the area currently occupied by a deck.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested side lot line 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 that the subject property was originally located in Prince George's County, and was recorded in 1909. The Board further finds that the house on the subject property was constructed in compliance with the then-applicable five (5) foot side lot line setbacks, and due to its annexation into Montgomery County in 1997 and changes to the Montgomery County Zoning Ordinance in 2007, no longer complies with the required side lot line setbacks, making it a legal nonconforming structure. The Board further finds that the Petitioner is proposing to construct an addition that will align with the existing

nonconforming side wall. Thus the Board finds that the proposed development uses an existing legal nonconforming structure, and satisfies this element of the variance test. See Exhibits 3 and 4.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioners purchased this property in 2015, and did not construct or have control over the placement of the original house, its annexation into Montgomery County, or subsequent changes to the setbacks imposed by the Montgomery County Zoning Ordinance. Thus the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioner.

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 testimony of Mr. Schoolnick and the Statement, that the requested variance is the minimum necessary to create an addition of workable size and to allow this modest addition² to align with the right side wall of the existing legal nonconforming house. Thus the Board finds that requested variance is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would otherwise impose.

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 proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the Takoma Park Master Plan (2000) which seeks, among other things, "to support stable residential neighborhoods."

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 addition, flush with the right side of the original house, will not infringe on the use and enjoyment of abutting or confronting properties because of its limited visibility, given its positioning and the grade to the rear of the property, and because it is modest in size and will not bring the house any closer to the side lot line than is already the case. The Board notes that the record contains letters of support for the proposed construction from the Petitioners' neighbors. See Exhibits 3, 4, and 9(a)-(d).

Accordingly, the requested side lot line variance to allow the construction of the proposed addition on this existing home is **granted**, subject to the following conditions:

1. The Petitioners shall be bound by the testimony and exhibits of record; and

² The Site Plan shows that the proposed addition is 12' x 14', or 168 square feet in size, and will be located in the area of the property currently occupied by a deck. See Exhibit 4.

2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by Jon W. Cook, seconded by Katherine Freeman, with John H. Pentecost, Chair, and Mary Gonzales in agreement, and with Bruce Goldensohn, Vice Chair, necessarily absent, 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 31st day of October, 2019.



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.