

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
<http://www.montgomerycountymd.gov/boa/>

(240) 777-6600

**Case No. A-6724**

**PETITION OF MELISSA KLEIN**

OPINION OF THE BOARD

(Hearing Held: December 1, 2021)

(Effective Date of Opinion: December 8, 2021)

Case No. A-6724 is an application by Melissa Klein (the "Petitioner") for two variances needed for the construction of a second-story addition above an existing single family home. The proposed construction requires a variance of one (1) foot as it is within twenty-four (24) feet of the front lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of one (1) foot as it is within six (6) feet of the left side lot line. The required setback is seven (7) feet, also in accordance with Section 59-4.4.9.B.2.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, December 1, 2021. All participation was done via Microsoft Teams. Petitioner Melissa Klein participated in the hearing, assisted by her architect, Eric Saul. Gabriel Seiden, who also resides at the property, also participated.

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

**EVIDENCE PRESENTED**

1.        The subject property is Lot 8, Block 117, Glazewood Manor Subdivision, located 812 Elm Avenue in Takoma Park, Maryland, 20912, in the R-60 Zone. It is a rectangular lot, with east (front) and west (rear) sides measuring 50 feet each, and with north (right) and south (left) sides measuring 100 feet each, giving the property a total area of 5,000 square feet. See Exhibits 3 and 4. The minimum lot size in the R-60 Zone is 6,000 square feet.

2. The subject property contains an existing one-story house, built in 1949, which extends approximately one (1) foot into both the left side and front setbacks. See Exhibits 3 and 4.
3. The Justification Statement ("Statement") indicates that the Petitioner is seeking to construct a second-story addition "over the entire footprint of the existing first floor structure...." Per the Statement, the proposed second-story addition will be six (6) feet from the left side lot line and 24 feet from the front lot line, "a distance no closer to the property lines than the existing structure below." See Exhibit 3.
4. The Statement states that the existing structure is legal and nonconforming because "[a]t the time it was built, the house was located approx. 6' from the south side lot line, and 24' from the front property line," and because "[t]he setbacks were not established at the construction of the existing house...." See Exhibit 3. The building permit denial issued by the Department of Permitting Services ("DPS") categorizes the house as an "existing nonconforming sfd [single family dwelling]." See Exhibit 6.
5. The Statement states that the Petitioner purchased the subject property in 2001, and is not responsible for the placement of the existing house in the side and front setbacks. See Exhibit 3.
6. The Statement indicates that without the grant of the requested variances, because of the way the existing house is placed on the subject property, the Petitioner will be unable to "match what so many neighbors have been able to do, which is to construct a full second floor addition on these houses with small footprints compared to modern homes built today." In addition, the Statement states that without variance relief, construction of the proposed second-story addition would be "impractical" because it would be "very difficult to build exterior walls not directly over existing bearing walls," going on to note that such construction would require "[a]dditional steel beams, columns, and posts ... through the existing home all the way through the basement to bear the weight of the addition." See Exhibit 3.
7. The Statement at Exhibit 3 notes the following with respect to master plan compliance and the effect of the proposed construction on neighboring properties:

By keeping within the existing footprint of 6 feet from the side lot line and 24 feet from the front lot line, the proposed addition preserves the residential character of the neighborhood while allowing the Petitioner to invest in their home and enhance their quality of life. It is our strong belief that the variance can be granted without impairment to the intent and integrity of the general plan and any applicable master plan in this area.

\* \* \*

The proposed addition of a new second floor on the existing structure will not extend beyond the existing footprint below, thus it will not negatively impact the adjoining side yard. The addition will not negatively impact the character, health,

safety, welfare, or security of the neighboring residents. Many of the neighboring houses have much larger additions than the Petitioner is proposing.

8. The record contains a document with signatures from the Petitioner's abutting and confronting neighbors, indicating their support for the grant of the requested variances. See Exhibit 9.

9. At the hearing, Ms. Klein testified that she has lived in the house on the subject property for 20 years.

10. Mr. Seiden testified that the existing house that he shares with Ms. Klein has two bedrooms, and that additional space is needed to accommodate their growing family. He testified that he and Ms. Klein have talked to all of their neighbors about their proposed construction, and that none have any objections.

11. Mr. Saul testified that the existing house is six (6) feet from the left lot line, which has a required setback of seven (7) feet, and is 24 feet from the front lot line, which has a required setback of 25 feet. See Exhibit 4. He testified that in order to bear the weight of the proposed second floor addition, it would be better from to build on top of the walls of the existing house than it would be to try to offset the proposed second story to meet the required setbacks.

In response to Board questions about the appearance of the existing house and the house as renovated, Mr. Saul showed the Board photographs of the front and back of the existing house. See Exhibit 10. Referring to the elevations in the record at Exhibit 5(a), Mr. Saul testified that these were preliminary drawings and that the style of the proposed addition has changed a little bit from the style shown on that Exhibit, specifically mentioning changes to the dormers, but testified that the general shape of the addition is staying the same. He testified that the height of the house with the proposed addition will be lower than the maximum height allowed by the Zoning Ordinance, that the roof over the main house will have asphalt shingles, and that the front porch will have a metal roof.

Finally, Mr. Saul confirmed, in response to a Board question, that the existing house is a legal nonconforming structure. He testified that the house was built in 1949, that the setbacks were established after that date, and that the house has not been changed since its original construction.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and evidence of record, the Board finds that the requested variances can be granted. The requested variances comply 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 that the proposed development uses an existing structure (the Petitioner's home) which was built in 1949 and extends approximately one (1) foot into the side setback and one (1) foot into the front setback. Thus the Board finds that the existing home does not comply with the side and front lot line setbacks required by the Zoning Ordinance and, as noted in the Statement and by Mr. Saul, and as confirmed by DPS on the building permit denial, is nonconforming. See Exhibits 3, 4, and 6. 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 the testimony of Mr. Saul, that the house on the subject property was built in its current location in 1949, and has not changed since that time. See Exhibit 3. The Board further finds, based on the testimony of Ms. Klein, that she purchased the property twenty years ago (2001). Thus the Board finds that the Petitioner took no actions to create the special circumstances or conditions peculiar to this property, 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 Mr. Saul, that the requested variances are the minimum necessary to allow the proposed construction to proceed on top of the existing exterior walls. The Board finds that the requested variances are minimal—allowing only a one (1) foot encroachment in the front and side setbacks—and would not increase the footprint of the existing house or extend any further into the setbacks than the existing house, which has been in place since 1949. The Board further finds that without the grant of the requested variance relief, the Petitioner could not use the existing bearing walls as support for the proposed second-story addition, which in turn would necessitate the installation of additional beams, columns, and posts through the existing home and down through the basement in order to withstand the weight of the addition. See Exhibit 3. Thus the Board concludes that compliance with the required side and front lot line setbacks, which are violated by the existing house, would pose a practical difficulty for the Petitioner, and that the grant of the requested variances is the minimum necessary to allow construction of a second story over the existing structure and therefore to overcome the difficulties that full compliance with the Zoning Ordinance would impose, 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 the property, and that the grant of the requested variances 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," 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, per the Statement and the Site Plan, that the proposed second-story addition will maintain the footprint of the existing home, and thus will not encroach any closer on the property's side and front property lines than the existing house does. See Exhibits 3 and 4. The Board further finds that the record contains support for the grant of the requested variances from Petitioner's abutting and confronting neighbors, a circumstance confirmed by the testimony of Mr. Seiden, and contains no opposition to the proposed construction. See Exhibit 9. Finally, the Board finds that the proposed addition would not be out of place in the neighborhood, since the Statement indicates that many of the Petitioner's neighbors have larger additions than the Petitioner is proposing. On the basis of the foregoing, the Board finds that the grant of the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variances needed to allow the proposed construction of a second-story addition above an existing single family home are **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record;
2. Construction shall be in accordance with Exhibit 4; and
3. Petitioner shall submit as-built plans to the Board once the addition is completed.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, Vice Chair, with Mary Gonzales, Richard Melnick, and Caryn Hines 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.



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John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 8th day of December, 2021.



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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.