

**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-6744

PETITION OF JOSEPH AKMAN AND JESSICA VEFFER

OPINION OF THE BOARD
(Hearing Held: April 27, 2022)
(Effective Date of Opinion: May 11, 2022)

Case No. A-6744 is an application by Joseph Akman and Jessica Vefffer (the "Petitioners") for a variance needed in connection with the proposed construction of an addition. The proposed construction requires a variance of 1.50 feet as is it within 5.50 feet of the right side lot line. The required setback is seven (7) feet, in accordance with Section 59-7.7.1.D.3 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, April 27, 2022. Both Petitioners appeared at the hearing in support of the variance, assisted by their attorney, Soo Lee-Cho, Esquire. Matthew Shawn Buehler, AIA, also participated in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Lot 38, Block 13, Kensington Park Subdivision, located on the south side of Washington Street in the R-60 Zone at 3906 Washington Street in Kensington, Maryland, 20895. The subject property is a long, narrow lot, generally rectangular in shape, with a total area of 10,108 square feet, a width of approximately 50 feet, and a depth of approximately 200 feet. It was platted in 1890 as part of the original Kensington Park subdivision and is located in the Kensington Historic District. Per SDAT, the Petitioners purchased the subject property in 2015. See Exhibits 3, 4(a), 9(b), and the SDAT printout.
2. The subject property contains an existing, historic house that was constructed in 1908, prior to enactment of the County's first Zoning Ordinance. The existing house is located 4.83 feet (4 feet, 10 inches) from the property's right side lot line, and is a legal,

non-conforming structure. The required setback from that lot line is seven (7) feet. The Petitioner's Statement of Justification ("Statement") states that the special circumstances unique to the subject property "are not the result of any action of the Petitioners," noting that the "existing legal nonconformity of the historic house was established in 1908, and pre-dates the advent of zoning regulations in the County." See Exhibit 3.

3. In 1988, a previous owner was granted a four (4) foot variance from the right side lot line to construct a one-story rear addition. In granting that variance, the Board found that the original house was both non-conforming and historic. See Exhibit 8 (BOA Case No. A-2165). The Statement indicates that the previously constructed rear addition was not properly differentiated for historic preservation purposes from the original structure. See Exhibit 3.

4. The Petitioners are seeking to "replace an existing one-story addition with a two-story addition in the same location," in a manner that is "compatible and sensitive to the historic character of the home." Pursuant to guidance from the Historic Preservation Commission and the Town of Kensington, the proposed replacement addition will have a reduced width "to achieve a more desirable historic massing for the overall structure," and will be "set in" so as to properly differentiate the addition from the original structure. As a result, whereas the prior addition required a four (4) foot variance from the seven (7) foot setback required from the right side lot line, the proposed replacement addition will only need a 1.50 foot variance. See Exhibit 3.

5. The Statement indicates that the grant of the requested variance and construction of the proposed two-story rear addition "will not impair the intent and integrity" of the Kensington Sector Plan, but rather will "support/enhance the historic character of the property." See Exhibit 3.

6. The Statement states that the grant of the requested variance and construction of the proposed addition will not be adverse to the use and enjoyment of neighboring properties, noting that the extent of the deviation from the required setback is actually being decreased. In addition, the Statement states that the Petitioners have provided letters of support from neighboring property owners. See Exhibits 3 and 7(a)-(b).¹

7. At the hearing, Mr. Akman testified that he and Ms. Veffer purchased the subject property in 2015. He described for the Board which sides of the existing house were depicted on the "existing site photographs" included as part of Exhibit 4(b). Mr. Akman testified that he and Ms. Veffer had discussed potential alternatives to their current proposal with their architect, Mr. Buehler, and that there is no other practical location for the proposed addition. He testified that they had spoken with their abutting neighbors to the east and to the west, and that both support their proposed construction.

¹ The letters of support are from the owners of the properties to the right (west) and left (east) of the subject property. See Exhibits 7(a)-(b).

Mr. Akman testified that the Historic Preservation Commission issued a Historic Area Work Permit for the proposed construction on January 5, 2022. He further testified that they had received approval for their project from the Town of Kensington on March 14, 2022. See Exhibits 12 and 13.²

8. Ms. Veffer testified that she and Mr. Akman are seeking to maintain the character of the existing home while expanding it to provide safer and more practical living space.

9. Mr. Buehler stated that he had previously testified as an expert before the Board, and he was accepted as an expert in architecture. See Exhibit 15. He provided the Board with a new Exhibit 14, which is a side-by-side depiction of the existing and proposed site plans, floor plans, and elevations. Mr. Buehler testified that the Historic Preservation Commission ("HPC") wants all additions to this historic house to be behind the existing structure. He explained that the existing rear addition extends beyond the sides of the existing house, and stated that the HPC was pleased to see that the existing addition would be removed. Mr. Buehler further testified that the HPC wants the Petitioners to "step in" their proposed replacement addition from the sides of the original house, and that the proposed addition has been "stepped in" eight (8) inches from the sides of the existing house to satisfy this request. He testified that the proposed replacement addition has been approved by the HPC and the Town of Kensington.

Mr. Buehler testified that the existing house is located four (4) feet, ten (10) inches from the west side lot line, where a seven (7) foot setback is required. He testified that the HPC's request that the addition be behind and "stepped in" from the sides of the original house eliminates the Petitioners' ability to locate the proposed addition further towards the eastern side of the property. Mr. Buehler testified that as shown on Exhibit 14, the footprint of the proposed addition is narrower than the footprint of the existing addition, and its depth is the same as that of the existing addition. He elaborated on the challenges posed by working within these confines. Mr. Buehler testified that the Petitioners originally explored trying to put a bedroom in the attic, but that the HPC would not allow this because of the changes it would entail to the historic structure.

Mr. Buehler testified that the subject property is unique because of its narrowness, noting that it is only 50 feet wide whereas the Zoning Ordinance requires that properties in the R-60 Zone be 60 feet wide at the front building line. In addition, he testified that the existing house is unique because it is historically designated, and because it is a legal, nonconforming structure due to its location in the side setback. Mr. Buehler testified that none of the conditions that make this property unique are the result of actions taken by the Petitioners, and that the requested variance is the minimum needed to overcome the difficulties that full compliance with the Zoning Ordinance would impose for the Petitioners on account of these unique conditions. Finally, Mr. Buehler testified that the variance requested for the proposed addition can be granted without substantial impairment to the

² The Board notes that the Petitioners did not provide the approvals from the Historic Preservation Commission and Town of Kensington with their application, but testified as to their existence, and agreed to submit them for the record following the hearing. Accordingly, the Board assigned them Exhibit Nos. 12 and 13.

applicable Master Plan, and that its grant will not be adverse to the use and enjoyment of neighboring properties.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variance from the right side lot line can be granted. The Board finds that 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, per the Statement, that the house on the subject property was built in 1908, before the County enacted its first Zoning Ordinance, at a distance from the side lot line that is less than the seven (7) feet that is now required. Accordingly, the Board finds, as it had in Case No. A-2165, that the existing house is a legal nonconforming structure. See Exhibits 3, 4(b), and 8. Because the proposed rear addition will use this existing structure, the Board finds that this element of the variance test is satisfied.

Section 59-7.3.2.E.2.a.iv. - the proposed development contains a historically significant property or structure;

As it had in Case No. A-2165, the Board finds, based on the Statement and the testimony of Mr. Akman and Mr. Buehler, that the subject property is located in the Kensington Historic District and is a historic resource. See Exhibit 3. Thus the Board finds that the proposed development contains a historically significant property, 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 testimony of Mr. Akman, and the SDAT printout, that the Petitioners' nonconforming, historic home was constructed in 1908, and that the Petitioners, who purchased this home in 2015, are not responsible for its nonconforming location. The Board further finds that there is nothing in the record to suggest that the Petitioners are responsible for the inclusion of their home in the Kensington Historic District. Thus, the Board finds that the special circumstances or conditions relating to this property and home are not the result of actions by the Petitioners, and 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 that the historic designation and nonconforming nature of the existing home cause the strict application of the requirements set forth in the Zoning Ordinance to disproportionately impact the Petitioners' ability to undertake the proposed construction, causing them a practical difficulty. The Board further finds that the requested variance is the minimum needed to overcome this practical difficulty, and to allow the Petitioners to construct the proposed two-story rear addition to this existing historic, nonconforming structure. In support of this, the Board notes, per the Statement and testimony of Mr. Buehler, that the proposed construction will be stepped in from and behind the original structure, as per guidance from the Historic Preservation Commission and the Town of Kensington, and that the extent of the addition's encroachment into the right side setback will be less than the encroachment of the existing one-story addition. Thus 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;*

The Board finds that the proposed construction will continue the residential use of the property, and thus finds that that the grant of the variance will not impair the intent, purpose, or integrity of the Kensington Sector 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.*

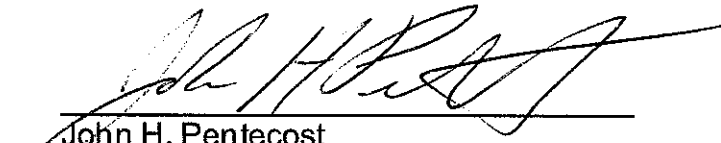
The Board finds, per the Statement and comparative site plans, as well as the testimony of Mr. Buehler, that granting the requested variance to allow the proposed two-story rear addition will actually decrease the extent of the deviation from the required right side setback. See Exhibits 3 and 14. The Board further finds that consistent with the testimony of Mr. Akman, the record contains letters of support for the proposed construction and requested variance from the owners of the abutting properties to the left and right of the Petitioners' property. See Exhibits 7(a)-(b). On the basis of the foregoing, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance from the right lot line is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5 (interior floor plans/layout excluded).

Based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by Caryn Hines, with John H. Pentecost, Chair, in agreement, and with Roberto Pinero 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 11th day of May, 2022.



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.