

**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-6806

PETITION OF MICHAEL KOEMPEL AND DIANNE HUNT

OPINION OF THE BOARD

(Hearing Held: April 26, 2023)

(Effective Date of Opinion: May 3, 2023)

Case No. A-6806 is an application by Michael Koempel and Dianne Hunt (the "Petitioners") for a variance from the side setback requirement of the Zoning Ordinance, needed for the proposed construction of a side addition. The proposed construction requires a variance of two (2) feet as it is 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 Montgomery County Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, April 26, 2023. The Petitioners' architect, Dana Haden, appeared at the hearing, in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Lot 2, Block 14, Pinecrest Subdivision, located at 6603 Eastern Avenue in Takoma Park, Maryland, 20912, in the R-60 Zone. It is a four-sided interior lot, rectangular in shape, with a width of 42 feet and a depth of 150 feet, resulting in an area of 6,300 square feet. The property is located on the eastern (Montgomery County) side of Eastern Avenue. See Exhibit 4(a).

2. The subject property was originally recorded in 1909, and was previously located in Prince George's County. See Exhibit 3. Per SDAT, the Petitioners purchased the subject property in 2004.

3. The property contains an existing two-story house that was built in 1988. The house has a walk-out basement. In 1994, a one-story addition was constructed in the rear of the house at basement level. Both the existing house and the addition are located five (5) feet from the left side lot line. The Petitioners' Statement of Justification ("Statement") states that "[w]hen this house was built and when the addition was built the interpretation of the zoning side yard setback was a 5' side yard for an R-60 zone. The original house and the addition were permitted and allowed to use the 5' side yard setback and as such were built that way." The Statement goes on to state that "at some point in time the zoning department changed the interpretation of the zoning regulations concerning the side yard setback and came to the conclusion that the side yard setback should now be 7' in the R-60 zone." See Exhibit 3.

4. The Petitioners are seeking a variance to permit them to build a two-story addition on top of the existing one-story addition, and thus to allow them to use the side wall of that addition and to adhere to the five (5) foot side setback of the existing house and addition. The Statement states that there are several reasons for this, both structural and aesthetic. From an aesthetic standpoint, the Statement indicates that if the addition had to be stepped in two (2) feet, it would be "very unattractive" and will "create an unusual look from the rear." From a structural standpoint, the Statement states that having to adhere to a seven (7) foot setback from the left side lot line would result in the need for "considerable engineering" since "a totally new load would be created where there is no support wall." Carrying this "new concentrated load" would entail "work to the existing walls and footings," including a possible need "to underpin at a couple of locations to accommodate the new loads coming down from the beam that would be needed..." See Exhibit 3.

The Statement states that the footings for the existing addition are unusually deep because "[u]nlike most footings that are 30" below grade these footings had to be dug much deeper to reach undisturbed soil." The Statement states that having to underpin these existing footings would be costly and "would not be optimal." The Statement goes on to explain that "the contractor had to dig very deep to reach solid ground," and that he then "overbuilt" the existing footings. Thus the Statement asserts that "[i]t wouldn't make sense to mess with those existing footings" which would "just create[] excessive digging." Finally, the Statement states that "[t]here are many springs on the property so anytime we can minimize digging we should," later noting that "[t]his area has many springs running through it and so it would be much better not to disturb the existing footings that are working and are sound." See Exhibit 3.

5. The Statement states that granting the requested variance, needed to allow the proposed addition at a distance of five (5) feet from the side lot line, "won't hurt the neighborhood as it was originally built with 5' setbacks." The Statement states that the (former) five (5) foot side setback requirement "was changed after most of these homes were built," and notes that the house on the subject property is "newer than most others built in this area." See Exhibit 3.

6. The Statement states that while the existing house and addition were built prior to the purchase of the property by the Petitioner, the "change in the reading of the zoning code happened after they bought the home. See Exhibit 3.

7. At the hearing, Ms. Haden testified that the subject property was originally located in Prince George's County. She testified that as is the case with most of the lots in the immediate neighborhood, the subject property is only 42 feet wide, whereas most lots in Takoma Park are 50 feet wide. Ms. Haden testified that the existing house was built in 1988 with a five (5) foot setback from the left side lot line, and that a few years later, a walk-out rear addition was built that adhered to this same side setback. She testified that the plan reviewer at the County's Department of Permitting Services told her that the interpretation of the setbacks applicable to this property used to be different. Thus she testified that the Petitioners' house was built with one understanding of these setbacks, and that at some point, that understanding had changed.

Ms. Haden testified that the Petitioners are seeking to build a two-story addition over their existing one-story basement addition, to provide an enclosed sunroom on the home's first floor and a sitting room on the second floor. She testified that the foundation of the existing addition can support the proposed additional stories, and that it would be good to reuse the existing foundation and to avoid foundation work. Ms. Haden testified that the existing footings had to be dug to a depth of five (5) feet to reach undisturbed soil, and that if the proposed addition had to be stepped in from the side lot line to meet the now-applicable seven (7) foot side setback, these footings would have to be supplemented. She testified that the Petitioners' neighbors have five (5) foot side setbacks. Finally, in response to a Board question, Ms. Haden testified that the Petitioners had talked with their neighbors about the proposed construction, and that she is not aware of any objections.

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 as follows:

1. *Section 59.7.3.2.E.2.a - one or more of the 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 Statement, that the subject property was originally located in Prince George's County, and that the existing house and basement addition were built in 1988 and 1994, respectively, at a distance of five (5) feet from the property's left side lot line. The Board notes that the annexation of this portion of Takoma Park into Montgomery County occurred in 1997, after construction of the existing house and addition. The Board further finds that the existing house and basement addition do not comply with the seven (7) foot side setback currently required by the Montgomery County

Zoning Ordinance, and that as a result, the existing structure is nonconforming. Finally, the Board finds that the proposed construction would use this existing structure. See Exhibits 3 and 4(a)-(b). 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 that the house on the subject property was built in 1988, and that the addition was built in 1994. Thus the Board finds that the Petitioners, who purchased this property in 2004, took no actions to cause the nonconforming location of their existing home, 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 that the Petitioners' existing house and basement addition were built at a distance of five (5) feet from their left side lot line. The Board further finds that due to this condition, the Petitioners cannot construct additional stories on top of their existing basement addition without obtaining variance relief, and that this prevents them from being able to use the bearing side wall of the existing addition as support for their proposed addition, causing them a practical difficulty. Furthermore, the Board finds that because of the subsurface conditions on this property, including the presence of springs, changes to the footings of the existing addition would be challenging, costly, and impractical. The Board finds that the grant of the requested variance, needed to allow the Petitioners to use the side wall of their existing addition to support their proposed addition, is the minimum needed to overcome the practical difficulties posed by full compliance with the Zoning Ordinance, 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 this property, consistent with the recommendations of the Takoma Park Master Plan, which seeks to "[p]reserve existing residential character, encourage neighborhood reinvestment, and enhance the quality of life throughout Takoma Park."

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 the proposed construction will maintain the existing setback of the Petitioners' home along the left side, and will be consistent with the neighborhood, which the Statement states, and Ms. Haden testified, was built with five (5) foot side setbacks. See Exhibit 3. The Board further finds, based on the testimony of Ms. Haden, that the Petitioners have spoken with their neighbors about the proposed construction. Finally, the Board finds that despite the property being properly posted, the record contains no letters of opposition to the grant of the requested variance, and that no one

appeared in opposition at the hearing. In light of the foregoing, the Board finds that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance from the left side lot line, needed to allow the proposed addition, 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(a)-(b) and 5(a)-(j) (excluding interior floorplans/layouts).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Laura Seminario-Thomton, and Alan Sternstein 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.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 3rd day of May, 2023.



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.