

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
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**Case No. A-6878
PETITION OF BRIAN KELLEY AND HEIDI KELLEY**

OPINION OF THE BOARD
(Opinion Adopted October 16, 2024)
(Effective Date of Opinion: October 23, 2024)

Case No. A-6878 is an application for a variance needed for the construction of a room addition. The proposed construction requires a variance of 2.86 feet as it is within 22.14 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.

The Board of Appeals held a hearing on the application on October 16, 2024. Petitioner Heidi Kelley participated in the hearing in support of the requested variance, assisted by architect Sara Conover, AIA.

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

EVIDENCE PRESENTED

1. The subject property is Lot 4, Block 3, Kensington Heights Subdivision, located at 3408 Farragut Avenue in Kensington, Maryland, 20895, in the R-60 Zone. It is an unusually shaped, four-sided corner lot, bordered on the northwest side by Farragut Avenue and on the northeast side by Glenway Drive. The property's front lot lines along these two roads meet at an obtuse angle and are joined with an arc; the property's southeastern (left side) and southwestern (right side) lot lines intersect their respective streets at approximately 90 degrees, and meet each other at a severely acute angle. As a result of these angles, the shape of the property resembles a diamond, and the property narrows from north to south. The property has an area of 9,099 square feet. It contains a house that faces the intersection. The house on the subject property was built in 1945, and the property was purchased by the Petitioners in 2018. See Exhibits 3, 4, and 7.

2. The Petitioners' Statement of Justification ("Statement") states that they are requesting a variance to allow the construction of an addition on the left side of their house. See Exhibit 3.

3. The Statement states that the subject property satisfies the uniqueness tests in both Section 59.7.3.2.E.2.a.i and Section 59.7.3.2.E.2.a.v of the Zoning Ordinance. With respect to Section 59.7.3.2.E.2.a.i ("exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property"), the Statement cites the unusual shape of the property and the siting of the existing house in a manner that is not parallel to any of the property's lot lines as conditions that make that property unique. The Statement states that these conditions cause the property to have an unusually shaped buildable area, which in turn constrains construction. See Exhibit 3. The Site Plan shows that the existing house "faces" the intersection of Farragut Avenue and Glenway Drive. The Site Plan shows that the right front corner of the existing house is on the 25-foot setback line from Farragut Avenue, and that the left front corner of the existing house is very close to the 25-foot setback line from Glenway Drive. See Exhibit 4.

With respect to the Section 59.7.3.2.E.2.a.v ("the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood"), the Statement states that "[t]he proposed addition and front porch shown in the design has a similar condition/character to several surrounding properties in the neighborhood," and that "[t]he proposed design has a front porch with a gable roof centered on the house to retain a similar existing character to many of the front porches within the vicinity." The Statement includes photographs of two nearby houses with front porches and left-side additions, indicating that these homes have a "similar exterior in terms of layout and character" to the exterior proposed for the Petitioners' house. See Exhibit 3.

4. The Statement states that the Petitioners are not responsible for the shape of their property, or for the shape or location of the house on the property, and notes that the property boundaries have not changed since the property was purchased by the Petitioners. Thus the Statement concludes that "the special circumstances or conditions for which the variance is being requested [are] not a result of any actions taken by" the Petitioners. See Exhibit 3.

5. The Statement states that the property's unusual shape creates a practical difficulty for the Petitioners because it prevents them from constructing an addition of usable width without variance relief, as follows:

The challenges that the shape of the lot creates restrict the homeowner from adding more than 7 feet off the front left corner of their existing house, with the addition set back 3' from the front face of the house to retain the existing exterior look. For the homeowners to add a family room to their existing living space on the first floor, 7 feet is not wide enough for an occupiable room.

See Exhibit 3. The Statement proceeds to state that the requested variance is “minimum necessary to overcome the practical difficulties of the irregularly shaped lot,” in satisfaction of Section 59.7.3.2.E.2.a.c of the Zoning Ordinance.

6. With respect to the impact of granting the requested variance on the use and enjoyment of neighboring properties, the Statement states that “the design [of the proposed addition] substantially increases the property’s value and aesthetics, which mutually benefits the property’s neighbors and surrounding community.” The Statement further states that “[a]s seen in the building elevations provided, the character of the proposed addition coincides with the essential character of the house and neighborhood.” Finally, the Statement states that the proposed addition would encroach into the required front setback from Glenway Drive less than three (3) feet, “thus creating a minimal influence to neighboring properties and the street front.” See Exhibit 3. The Petitioners’ Site Plan shows that only a small, triangular corner of the proposed addition encroaches on this setback. See Exhibit 4.

7. At the hearing, Petitioner Heidi Kelley testified that the subject property has an “odd” shape. She testified that the requested variance is minimal, and that the proposed construction will not adversely affect her neighbors. In response to a question asking if she had received any feedback about the variance request and proposed construction from her neighbors, Ms. Kelley testified that her neighbors were all aware of her plans, and that she was unaware of any objections.

8. Ms. Conover testified that the subject property is a corner lot with lot lines (and corresponding setbacks) that are not perpendicular to one another. She testified that the subject property contains a house that is also not set perpendicular to either of the abutting streets, but rather is set at an angle. Ms. Conover testified that the proposed addition will match the character of and materials used in the neighborhood. She testified that only the front corner of the proposed addition would protrude into the required setback, and that the requested variance is the minimum necessary to allow construction of the proposed addition.

CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the 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.i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the subject property has an exceptional diamond shape, with no two sides being parallel. The Board further finds that the shape of the subject property results in it having an unusually shaped and uniquely constrained buildable envelope that

expands briefly before narrowing steadily (and dramatically) from front to rear (north to south). The Board finds that these circumstances, taken together, constitute an extraordinary condition peculiar to this property, in satisfaction of 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 Board finds that the Petitioners purchased this property in 2018, long after it was developed in 1945. Thus the Board finds that the unusual shape of the property is not the result of actions by the Petitioners, 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 due to the property's unusual diamond shape, full compliance with the setbacks imposed by Zoning Ordinance would cause the Petitioners a practical difficulty because adherence to the required setbacks would prevent the Petitioners from being able to construct a room addition of usable width on the left side of their house. See Exhibit 3. The Board further finds, based on the Statement, that many of the houses in the immediate neighborhood are of the same style as the Petitioners' house, and have side additions similar to the addition proposed by the Petitioners. See Exhibit 3. In light of the foregoing and the testimony of Ms. Conover, the Board finds that the requested variance is the minimum needed to allow the Petitioners to construct a side addition of usable width on their house, similar to others in the neighborhood, and thus to overcome the practical difficulty posed by full compliance with the Zoning Ordinance on account of their property's unusual shape, 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 granting this variance to allow the Petitioners to proceed with the proposed construction will continue the residential use of this home, and therefore the Board finds that the variance can be granted without substantial impairment to the intent and integrity of the Kensington-Wheaton Master Plan, which seeks, among other things, to "protect and stabilize the extent, location, and character of existing residential and commercial land uses," and to "maintain the well established low- to medium-density residential character which prevails over most of the planning area." 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 Site Plan, that granting the variance needed to allow the proposed construction would not be adverse to the use and enjoyment of neighboring properties because only a small corner of the proposed addition would encroach on the required front setback, and because that corner, while slightly

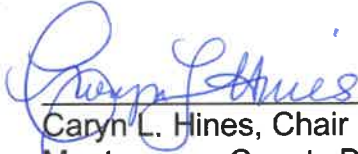
closer to the road than the front left corner of the existing house, is part of an addition that is stepped back from the front of the house, minimizing the perceived encroachment. See Exhibits 3 and 4. The Board further finds, based on the testimony of Ms. Kelley, that her neighbors are aware of the proposed construction and have not voiced any objections. Finally, the Board finds that the property was properly posted, that the record contains no opposition to the requested variance, and that no one appeared at the hearing in opposition to the requested variance. Accordingly, the Board finds that granting this variance, to allow construction of the proposed room addition, 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 variance of 2.86 feet from the front lot line along Glenway Drive 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(a)-(c).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair,¹ seconded by Richard Melnick, Vice Chair, with Caryn Hines, Alan Sternstein, and Amit Sharma 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 23rd day of October, 2024.


Barbara Jay
Executive Director

¹ When this vote was taken, Mr. Pentecost's term as Chair was ending. Between the Board's vote in this case, and the issuance of its written decision, Ms. Hines succeeded Mr. Pentecost as the new Chair of the Montgomery County Board of Appeals.

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.