

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

(240) 777-6600

**Case No. A-6447**

**PETITION OF KELLY TRIPPE**

OPINION OF THE BOARD

(Opinion Adopted January 7, 2015)  
(Effective Date of Opinion: February 5, 2015)

Case A-6447 is an application for a variance of one foot from the seven-foot side yard setback required by Section III(C)3 of the 1928 Zoning Ordinance, made applicable by Section 59-7.7.1.D.3 of the current Zoning Ordinance. The Petitioner proposes an accessory apartment use, and the existing house is six feet from the side lot line.

The subject property is Lot 71 and 72, pt. 6, Block 5, Brookmont Subdivision located at 4107 Maryland Avenue, Bethesda, Maryland, 20816, in the R-60 Zone.

The Board of Appeals held a hearing on the application on January 7, 2015. Kelly Trippe appeared and testified in support of her application.

Decision of the Board: Requested Variance Granted.

**EVIDENCE PRESENTED**

1. Ms. Trippe testified that the subject property was platted in 1925. Record of the State Department of Assessments and Taxation reflect that the house was built in 1933.
2. She stated that the variance requested is for the existing house, in order to meet the zoning requirement that the accessory apartment she requests conform with the development standards for the zone. She emphasized that no construction or change to the house is requested.

2. Ms. Trippe testified that there have been several additions to the house, prior to her ownership, and that she believes it is the most recent addition which brought the house within six feet of the side lot line. No records of a building permit or a variance for that addition are available.
3. Ms. Trippe testified that the lot slopes down toward the back.
4. Ms. Trippe testified that five houses along her block and on Broad Street nearby are located very close to the side lot lines. [Transcript, January 7, 2015, pp. 14-17].

### **FINDINGS OF THE BOARD**

Under Section 59-7.7.1.D.3 of the Zoning Ordinance, the subject property, platted in 1925, "must satisfy the front, rear, and side yard setbacks of the 1928 Zoning Ordinance." Section III(C)3 of the 1928 Zoning Ordinance requires "a side yard of not less than seven (7) feet in width on each side of a dwelling."

Based on the petitioner's binding testimony and 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. 7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:

*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;*

Ms. Trippe testified that there are a number of homes in her neighborhood located as close or closer to the side lot lines as her house. Exhibit 9 (Zoning Vicinity Map) correlates with that testimony. Accordingly, the Board finds that there is a pattern of development in the neighborhood of houses on narrow lots within the seven-foot side setback.

2. *7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

Ms. Trippe testified that the addition to the home that violates the setback was constructed before she purchased the home.

3. *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 notes that the variance requested is for the existing house, so that the proposed accessory apartment will meet zoning requirements, and that no construction or change to the house is proposed.

4. *7.3.2.E.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 the variance continues the single family use of the home and is entirely consistent with the master plan.

5. *7.3.2.E.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that granting the variance to address the non-conformity of the existing house, which will not be changed, will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance of one foot from the required seven-foot side yard setback is granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.

Therefore, based upon the foregoing on a motion by Stanley B. Boyd seconded by John H. Pentecost, with David K. Perdue, Chair, and Carolyn J. Shawaker, Vice-Chair, in agreement, and with Edwin S. Rosado necessarily absent, the Board adopted the following Resolution:

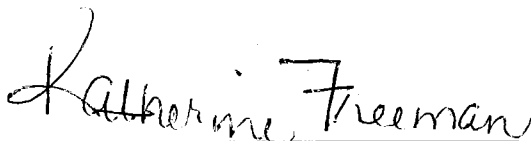
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



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David K. Perdue  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
This 5<sup>th</sup> day of February, 2014.



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Katherine Freeman  
Executive Director

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

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 (See Section 59-A-4.63 of the County Code). 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.