

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6800  
PETITION OF KEITH AND LYNN VOIGHT**

**OPINION OF THE BOARD  
(Opinion Adopted March 29, 2023)  
(Effective Date of Opinion: April 12, 2023)**

Case No. A-6800 is an application for a variance needed for the construction of a first floor room addition. The proposed construction requires a variance of 6.25 feet as it is within 13.75 feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance.

The Board held a hearing on the application on March 22, 2023. Petitioners Keith and Lynn Voight (the "Petitioners") appeared at the hearing in support of the application, assisted by Kate Adams and Scott North of CASE Design.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 1, Block E, Maplewood Subdivision, located at 5210 Elsmere Avenue in Bethesda, Maryland, 20814, in the R-60 Zone. It is a 7,914 square foot corner lot, bordered to the north by Elsmere Avenue and to the west by Jesup Lane. The property is generally rectangular in shape, with a rounded northwest "corner" where the two streets intersect. As noted on the Petitioner's Statement of Justification ("Statement"), and confirmed by the Zoning Vicinity Map, the subject property is the shallowest lot on the block. See Exhibits 3(a), 4, and 8.
2. The Petitioners purchased the subject property in 1988. At the time of their purchase, the property contained a two-story, single-family house that was built in 1947 and had 1,248 square feet of above-ground living space. In the 1990s, a rear porch was enclosed to enlarge the kitchen, and a second story was added above that addition. See Exhibit 3(a).
3. The Petitioners' house is oriented so that its "front" faces Elsmere Avenue and its screened porch faces Jesup Lane. See Exhibits 3(a) and 4. The property is subject to

the R-60 setbacks, which the Statement correctly indicates are "25 feet minimum from the street, 8 feet at the side, and 20 feet at the rear." Because the subject property is a corner property, the property owner is permitted to choose which of their interior property lines is the "side" lot line and which is the "rear" lot line, provided the existing development meets the required setback for both of those lot lines. In the instant case, the Statement indicates that the Petitioners' garage is about 19 feet from the property's left (east) lot line, just shy of the 20 feet required for that setback to be a "rear" setback, and thus the east property line is the property's "side" lot line, and the south property line is the property's "rear" lot line, as follows:

The existing house, as originally built, has the smaller side setback at the left side of the house, and the larger rear setback at the rear. The left rear corner is located 19' +/- from the "side" property line, adjacent to their neighbor at Lot 2 on Elsmere Ave. It should be noted that the left side, at almost 19' off the lot line, is only 12" +/- short of meeting the requirements for the rear setback, if we were to flip rear and side setbacks. The front of the house sits 25' +/- from the front setback at Elsmere Ave. The right side of the screen porch sits 33' +/- from the front setback at Jesup Lane.

See Exhibit 3(a). The Petitioners have included a Setback Comparison with their submission showing that but for the minor encroachment of the existing garage, they could have chosen to designate their eastern lot line as their "rear" lot line, and their southern lot line as their "side" lot line, and that if they had been able to do this, no variances would have been needed for the proposed addition. See Exhibit 7 ("Setback Comparison").

4. The Petitioners are proposing to construct a "new first floor addition, to contain a new owner's bedroom and bathroom to allow them to age in place in their current home." The Statement indicates that the Petitioners are also proposing to enclose and extend the existing screened porch to create a new family room. The Statement notes that the existing house, "as one of the smaller, original houses in the neighborhood, is very modest in size," and that "[w]hile the addition is large in scale to the existing footprint, the addition itself is not large in terms of room sizes/scale." It states that the proposed addition "will provide a 'visitable' Design for Life space, that almost qualifies as 'liveable' other than kitchen accessibility." See Exhibit 3(a).

5. The Statement states that the application of the required setbacks to the property does "not provide much buildable area for potential additions." The Statement further explains this, stating that "[t]he shallow corner lot of the subject property and the placement of the 1947 house present difficulty in maintaining the required setbacks for any potential addition to this house." The Statement states that the subject property "is the smallest lot on the block, even when compared to the other corner lots," stating that the subject property "is roughly 75 percent the size of other surrounding lots (12,407 SF average lot size)." Finally, the Statement notes that "the location of the garage at the left side and kitchen at the rear make it difficult to add onto the house without a major reconfiguration of the existing floorplan," and that "[i]t would not be possible to fit the owner's programmatic requirements for a first floor bedroom suite within that buildable

area, while still remaining sympathetic to the original architecture of the home." See Exhibit 3(a).

6. The Statement states that this existing two-story colonial "is one of the original houses in the neighborhood," and that the proposed addition "is a one-story addition that is modest in size when compared to similar additions or infill construction in the neighborhood." The Statement notes that "[t]he existing screen porch footprint is being expanded to provide the additional living space needed for accessible first-floor living," and that "[t]he addition has been designed to be minimal in scale while providing architectural interest to compliment the existing house." Finally, the Statement details the dimensions of the proposed construction, and explains that the proposed improvements will provide for "accessible circulation" and one-story living, allowing the Petitioners to remain in their home as they age. See Exhibit 3(a).

7. The Statement states that the size and shape of the subject property, and the placement of the house on that property, are all original to the property's 1947 development, and are not the result of any actions by the Petitioners. See Exhibit 3(a).

8. The Statement states that the "[t]he proposed 1-story addition is in keeping with both the scale and architectural character of the original house and will be minimally invasive from both street fronts." It states that the property that would be the "most directly impacted" by the proposed construction is the abutting property at 9305 Jesup Lane," and that "[t]he addition would back to the side of their existing garage and create a narrower area than is currently there." The Statement indicates that the owners of this property are aware of the Petitioners' proposed construction, and "have given [the Petitioners] their support, without objection." The Statement notes that "[t]he proposed materials, design, and placement of doorways, windows, and lighting have all been designed to have a minimal effect on these adjoining neighbors." It further states that the view of the addition from confronting properties along Elsmere Avenue "will be minimal," and that "[f]rom Jesup Lane, the addition is more visible, but is complementary to the house, and well within setbacks." See Exhibit 3(a).

9. The record contains letters of support for the grant of the requested variance from the Petitioners' abutting neighbors to the left on Elsmere Avenue, from their abutting neighbors at 9305 Jesup Lane, and from their neighbors at 9306 Jesup Lane. See Exhibits 9(a)-(c).

10. At the hearing, Petitioner Lynn Voight testified that they have lived in their house since 1988, are attached to their community, and are seeking an addition to allow them to age in place. She stated that they have been dreaming about this for a long time.

In response to a Board question asking about the letters of support in the record, Ms. Voight testified that she was not familiar with the content of those letters, and noted in particular that her abutting neighbors on Jesup Lane were supportive. In response to another Board question, Ms. Voight narrated for the Board what the various pictures submitted with the variance request showed. Finally, in response to a Board question asking how close the abutting neighbors' house was to their proposed bedroom, Ms. Voight testified that the neighbors' garage was closer than their house.

11. Petitioner Keith Voight testified that they would prefer to modify their existing house so that they could stay there than to have to move. He testified that accessing the front door on their house requires going up several stairs, but that using the back entrance only requires navigating one small step, because of the grade of the property. Mr. Voight testified that having their bedroom on the back side of the house would let them traverse the patio to use the more accessible rear door.

In response to a Board question asking if the kitchen expansion that was done in the 1990s enlarged the house, Mr. Voight testified that there was previously a shed roof above the kitchen, and that the expansion raised that wall, but did not increase the footprint of the house.

12. Kate Adams of CASE Design testified that the proposed addition would provide the Petitioners with a first floor bedroom, bathroom, and laundry facilities. She testified that the existing screened porch would be extended and enclosed for use as a family room. Ms. Adams testified that the Petitioners use their kitchen door as the main access to the home, and that they did not want to block that. She testified that the proposed layout was the best they could come up with, and that it would maintain the existing appearance of the house. Ms. Adams testified that with the proposed addition, the Petitioners' home would be considered "visitable" under the County's Design for Life program, but would not be considered "livable" under that program because it doesn't quite satisfy the standards for access to the kitchen. She testified that the proposed bedroom is about 13 feet wide, and that this width is the minimum needed to provide room for a bed and a 36-inch clearance around the bed for wheelchair usage. Ms. Adams testified that the bathroom is five feet, seven inches (5'-7") wide, and that the extra seven inches are needed to make the bathroom accessible. Finally, she testified that the closets were built into the hallway between the family room and bedroom.

Ms. Adams testified that the subject property has a small rear yard. She testified that it is a corner lot that is smaller than other corner lots in the neighborhood and shallower than other lots on the block. She testified that the grade of the property rises towards the rear, and that there is a retaining wall behind the house. Ms. Adams testified that the subject property has an area of 7,914 square feet, whereas the average lot size is over 12,000 square feet.

In response to a Board question asking how much the screened porch was being expanded, Ms. Adams testified that the Petitioners were proposing a seven foot, eleven and one-quarter inch (7'-11 $\frac{1}{4}$ ") expansion of the porch towards Jesup Lane, and noted that even with this expansion, the proposed addition would meet the required front setback along that street.

## **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, based on the Statement, Zoning Vicinity Map, and testimony of Ms. Adams, that the subject property is much smaller and shallower than surrounding properties. The Board further finds that the application of the required setbacks to this relatively small and shallow lot results in the property having a very limited buildable envelope that restricts the ability of the Petitioners to expand their home. The Board finds that these circumstances constitute an extraordinary condition that is peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 3(a) and 8.

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, that the Petitioners, who purchased the property in 1988, are not responsible for the small size or shallow nature of this property, its buildable envelope, or the siting of the original house, which was built in 1947. See Exhibit 3(a). Thus, the Board finds 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 application of the required setbacks to this unusually small and shallow property does not allow for the proposed modest expansion of the existing home, needed to improve its accessibility, without variance relief, posing a practical difficulty for the Petitioners. The Board notes that if the Petitioners' existing garage had been twenty (20) feet instead of approximately nineteen (19) feet away from the property's left (eastern) lot line, the property's left (eastern) lot line could have been treated as a rear lot line for setback purposes, its southern lot line could have been treated as a side lot line, and no variance would have been needed for the proposed construction. In addition, the Board finds, per the testimony of Ms. Adams, that the dimensions of the proposed bedroom and bathroom are needed to provide accessibility. In light of the foregoing, the Board finds that the requested variances are the minimum needed to overcome the practical difficulties imposed 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 construction permitted by this variance will continue the residential use of the home, and accordingly, the Board finds that the requested variance can be granted without substantial impairment to the intent and integrity of the applicable Bethesda-Chevy Chase Master Plan (1990). Thus, 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 that the granting the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties. In support of the finding, the Board finds, per the Statement, that the proposed addition, including its proposed materials and design, and the placement of its doorways, windows, and lighting, was designed to have a minimal effect on neighboring properties. The Board further finds, again per the Statement, that the view of the proposed addition will be minimal from Elsmere Avenue, and that the view from Jesup Lane will be compatible with the existing construction and well within the setback from the street. See Exhibit 3(a). Finally, the Board notes, per the Statement, that the Petitioners' neighbors who would be most affected have no objection to the proposed construction, and that the record contains a letter of support from those neighbors, along with two additional letters of support. See Exhibits 3(a) and 9(a)-(c).

Accordingly, the requested variance 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 5(a)-(t) (exterior dimensions/elevations only).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Laura Seminario-Thornton, 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 12th day of April, 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.