

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
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Rockville, Maryland 20850  
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<http://www.montgomerycountymd.gov/boa/>**

**Case No. A-6805**

**PETITION OF JOSHUA AND LINDSAY FRANKEL**

**OPINION OF THE BOARD  
(Opinion Adopted March 22, 2023)  
(Effective Date of Opinion: March 31, 2023)**

Case No. A-6805 is an application for a variance needed to allow construction of a three-story addition. The proposed construction requires a variance of seven (7) feet as it is within five (5) feet of the left lot line. The required setback is twelve (12) feet, in accordance with Section 59.4.4.7.B.2 of the Montgomery County Zoning Ordinance.<sup>1</sup>

The Board held a hearing on the application on March 15, 2023. Petitioner Joshua Frankel appeared at the hearing in support of the application, assisted by architect Donny Ankri.

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

**EVIDENCE PRESENTED**

1.        The subject property is Lot 85, Block A, Kemp Mill Forest Subdivision, located at 616 Kemp Mill Forest Drive in Silver Spring, Maryland, 20902, in the R-200 Zone. The subject property is a four-sided lot with an area of 10,000 square feet, located on the south side of Kemp Mill Forest Drive. It has a convex front lot line that follows the

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<sup>1</sup> This variance proceeding was noticed as being for a seven (7) foot variance from the required twelve (12) foot side setback, in accordance with the Building Permit Denial. See Exhibits 6 and 10(b). A subsequent email from DPS indicates that the required side setback is only ten (10) feet. See Exhibit 9. The grant of this variance allows the proposed construction at a distance of five (5) feet from the left side lot line, as shown on the Site Plan at Exhibit 4, irrespective of whether the required side setback is ten (10) or twelve (12) feet.

curvature of the road, and side lot lines that converge towards the rear of the property.<sup>2</sup> The property's left side is slightly deeper than its right side, resulting in the property's rear lot line also being angled. The Petitioners purchased the property in 2021. See Exhibits 3, 4, and 7, and SDAT printout).

2. The subject property contains an existing three-story house that was built in 1985. See Exhibit 1. The house is set on the property so that the front of the house would be parallel to the street if the street were not curved. As a result, the sides of the existing house are not parallel to the property's side lot lines, which, as indicated above, converge. The Petitioners' Justification Statement ("Statement") cites this as a condition that makes this property unique for the purpose of granting a variance, stating that "[a]s seen on the submitted site plan, due to [the Petitioners'] property location in the neighborhood and being on a curved street, their side property line is at an angle to the house which creates a 'pinch point' which is unique to the property. This angled property line is creating the need for a side yard setback." See Exhibit 3.

3. The Petitioners are proposing to construct a three-story addition on the left side of their existing house. The Site Plan shows that the proposed side addition is co-planar with the front and rear of the existing house. In addition, the Site Plan shows that while the front corner of the proposed addition complies with the required side lot line setback, the rear corner encroaches into the required setback because of the property's angled side lot line. See Exhibit 4. The Statement states that the "proposed addition is designed to blend seamlessly with the existing house." For this reason, the Statement asserts that the proposed construction substantially conforms with the established historic or traditional development pattern of this street or neighborhood. See Exhibit 3. The Petitioners include plans and elevations for the proposed addition with this submission. See Exhibits 5(a)-(c).

4. The Statement states that the "reason for the variance request is not a result of actions by the applicant," and that the requested variance is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would cause "due to the unusual conditions of the property." In addition, the Statement states that "[t]he requested variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan," and that "[g]ranting the requested variance will not negatively impact the use and enjoyment of abutting confronting properties." See Exhibit 3.

5. At the hearing, Petitioner Joshua Frankel testified that their current one-car garage is too small to accommodate a family car, and that parking on the street in front of their house risks damage to their cars from passing vehicles, due in part to the curvature and slope of the street. He testified that he and his wife are seeking to add a second, slightly larger one-car garage bay next to their existing garage bay. Mr. Frankel testified that they are also seeking to add needed space to their house to accommodate their growing family and visitors, including older relatives who struggle to access their house via the existing

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<sup>2</sup> The Petitioners' variance application describes this succinctly, stating that the "curved street creates angled side property lines." See Exhibit 1.

front steps, which he testified are steep. Mr. Frankel testified that he has spoken with his abutting neighbors to the east, and that they have no concerns about the proposed addition. He noted that there is a fence around his property.

6. The Petitioners' architect, Donny Ankri, testified that the subject property is located along a curved portion of the street, and that it is trapezoidal as opposed to rectangular in shape. He testified that the property's side lot lines are perpendicular to the street, but that because the street is curved, they converge to a pinch point. Mr. Ankri testified that while the subject property is the same size as the abutting property to the east, it is significantly smaller than other neighboring properties. He submitted an annotated copy of the Zoning Vicinity Map which shows the sizes of several of these properties to illustrate this. See Exhibit 10.

In response to a Board question asking if the proposed addition could be located to the rear of the existing house, Mr. Ankri testified that that would block all of the natural light to the house, and that it would not be practical to put a garage addition in that location. In response to a Board question asking if the depth of the garage could be reduced, Mr. Ankri testified that the garage is twenty feet deep, and that this is the bare minimum needed to fit a car. He further testified that the size of the proposed guest bedroom behind the garage is reasonable, explaining why he believed that to be the case, and that without variance relief, it would be too small. Mr. Ankri testified that the size of the proposed addition is the minimum needed, and that if the Petitioners had been able to avoid coming before the Board to seek a variance, they would have.

### **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 unusual shape, with a curved front lot line, convergent side lot lines, and an angled rear lot line. In addition, the Board finds that the subject property is smaller in size than most of its neighbors. The Board finds that these factors combine to constrain the ability to expand this home while still meeting the required setbacks. The Board finds that this constitutes 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, who purchased the subject property in 2021, are not responsible for the unusual shape or size of the subject property, 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 application of the required setbacks to the subject property results in a very constrained buildable envelope, arising from the property's unusual shape and relatively small size, and its angled side and rear lot lines. The Board finds that this limits the Petitioners' ability to expand their home without variance relief, causing them a practical difficulty. The Board further finds that the requested variance from the left side setback, necessary to permit construction of the proposed "seamless" addition, is the minimum necessary to overcome the constraints that would otherwise be imposed on this property by strict adherence to the Zoning Ordinance. The Board notes that the front corner of the proposed addition will comply with the required side setback, and that it is only because the property's left side lot line is angled that a variance is needed. Accordingly, 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; and*

The Board finds that granting the variance to allow the Petitioners to proceed with their proposed addition will continue the residential use of the property and will not substantially impair the intent and integrity of the Kemp Mill Master Plan, in satisfaction of 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.*

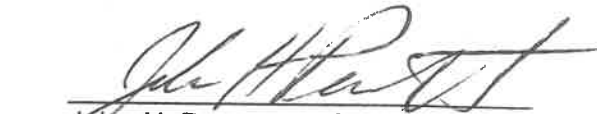
The Board finds, per the Statement, that granting the requested variance to allow construction of the proposed addition will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test. As support for this, the Board notes that while zoning is not a plebiscite, Mr. Frankel has testified that he has spoken with the neighbors who would be most affected by the proposed construction, and that they have no objections. In addition, the Board notes that the property was properly posted, and that the record contains no letters of opposition to the grant of the request variance and the proposed construction.

Accordingly, the requested variance from the left side lot line setback 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) (interior floorplans/layouts excluded).

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 31<sup>st</sup> day of March, 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.

