

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6894

PETITION OF JESSE KOPLOWITZ

OPINION OF THE BOARD

(Hearing Date: December 18, 2024)

(Effective Date of Opinion: January 8, 2025)

Case No. A-6894 is an application for a variance necessary for the proposed construction of a two-story addition to an existing house. The proposed construction requires a variance of seven (7) feet as it is within eighteen (18) feet of the side street 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 December 18, 2024. Petitioner Jesse Koplowitz appeared at the hearing in support of the requested variance, assisted by his architect, Richard Vitullo, AIA.

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

EVIDENCE PRESENTED

1. The subject property is Lot 100, Block 4, Waynes Add Subdivision, located at 7432 Piney Branch Road in Takoma Park, Maryland, 20912, in the R-60 Zone. The subject property is an unusually-shaped, five-sided corner lot with frontage on three streets (82.00 feet of frontage on Piney Branch Road, which borders the east side property, 78.70 feet of frontage along Philadelphia Avenue, which borders the northeast side of the property, and 10.59 feet of frontage along Baltimore Avenue, which borders the northwest side of the property. The property's 59.33 foot side (southern) lot line adjoins its Piney Branch Road frontage at a right angle. The property's 109.74 foot rear (western) lot line adjoins its Baltimore Avenue frontage at a right angle, and the meets the property's side (southern) lot line at an obtuse angle. The elevation of the property falls approximately three (3) feet from north to south. The property contains a house that was built in 1936. It was purchased by the Petitioner in 2015. See Exhibits 3, 4(a), and 9(a).

2. The Petitioner's variance Application indicates that the property's unusual shape and other extraordinary situations or conditions peculiar to the subject property make it unique for the purpose of granting a variance. The Application states that the property's shape and the setbacks from the adjacent streets create a "problematic" situation for the construction of an addition, and notes that other than the proposed location, there are "no other options available on-site for [the proposed] addition." See Exhibit 1.

3. The Petitioner is proposing to construct a two-story addition to his house. The Petitioner's Statement of Justification ("Statement"), submitted by Mr. Vitullo, states that "[t]here is an 8'-0" x 15'-9" covered porch on the north side of the house; **it is in this area that the proposed addition [will] be constructed.**" See Exhibit 3. In the Statement, Mr. Vitullo explains in detail why he believes that a 15 foot side street setback should have been accorded to the subject property along Philadelphia Avenue, in the area of the proposed construction, instead of a 25 foot setback. He indicates in the Statement that if a 15 foot setback had applied, no variance would have been needed for the proposed construction. Mr. Vitullo then acknowledges that while he disagrees with the Department of Permitting Services ("DPS") in their interpretation of the Zoning Ordinance regarding this property, DPS has determined that a 25 foot setback is required along the property's Philadelphia Avenue frontage. See Exhibit 3.

4. The Statement states that the proposed addition has a footprint of 195 square feet. The Statement states that 76 square feet of the addition would encroach into the 25 foot setback that DPS has determined is applicable along Philadelphia Avenue, noting that the extent of the encroachment "would vary[] ... from 1'-6", at its narrowest point to 7'-6" at its widest point" See Exhibit 3. The Site Plan shows an existing three foot by four foot (3' x 4') window well on the northern side of the existing house that presumably caused the existing porch to be located closer to the front (east side) of the house than to its rear (west side). See Exhibit 4(a).

5. For the purposes of satisfying Section 59.7.3.2.E.2.a of the Zoning Ordinance, the Statement states that in addition to the property having a unique shape, and being unusual in the way that the setbacks from the various road frontages have been applied to it, the setback of the proposed construction from Philadelphia Avenue would substantially conform to the established historic or traditional development pattern of the Petitioner's neighborhood. In support of this, the Statement states that "[a]t the time this and other houses were built in Takoma Park in the early part of the 20th century, setbacks along street frontages did not need to be set at the current general setback requirement of 25'-0". As a result, the Statement states that "there are a variety of houses set at other distances, some closer to the front or side property lines than 25'-0", and concludes that "[t]he total of 76 sf of encroachment into a side street setback would not stand out as particularly abnormal or detrimental to the established historic or traditional development pattern of the neighborhood." See Exhibit 3.

6. The Statement states that the "current house shape and size, lot shape, location and configuration existed when the owners purchased this property on 11/25/2015," and

further states that the “current owners have taken no action to this date to increase the size of their house that could have exacerbated the conditions requiring this variance to be pursued.” Accordingly, the Statement states that the circumstances that make the subject property unique for the purposes of granting a variance are not due to any actions of the Petitioner. See Exhibit 3.

7. The Statement states that the subject property is “unique and unusual ... when compared to adjoining properties in this neighborhood in the R-60 zone....” The Statement further states that “this uniqueness causes the Side Street Setback zoning requirements to disproportionately impact on the reasonable use and enjoyment of this property, creating a practical difficulty.” See Exhibit 3.

8. The Statement states that “there is no other potential buildable area on the property to accommodate [the proposed] addition,” and that there is not another area of the first floor that could “accept” the proposed addition “without a major interior renovation that would necessitate a move of the kitchen and stair location.” The Statement then concludes that “the proposed design is the minimum necessary” to permit the proposed addition. See Exhibit 3.

9. The Statement states that the requested variance can be granted without substantial impairment to the intent and integrity of the general or applicable master plan. The Statement states that the purpose of the R-60 Zone is to “preserve a streetscape consistent with the neighborhood context of residential uses of a similar nature.” It states that the extent of the proposed 76 square foot encroachment is minimal and “fits well into the neighborhood of other R-60 properties without harm to the general intent of the master plan’s directive to create uniformity and to direct development within a particular zone.” See Exhibit 3.

10. The Statement states that granting the requested variance will not be adverse to the use and enjoyment of neighboring property owners because the proposed addition “would sit at the northern end of the ‘peninsula’ of this block...” and as such, “would not directly affect any abutting or confronting properties....” The Statement notes that at its closest point, the proposed addition “would be 42’-0” away from 7443 Baltimore Ave., the closest neighbor to the addition.” See Exhibit 3. The Petitioner has submitted letters from five of his neighbors indicating that they seen the plans for the proposed addition and support granting the requested variance. See Exhibits 7(a)-(e).

11. At the hearing, Mr. Vitullo testified that the subject property is an unusual corner lot that has frontage on three streets. He explained the various setbacks that are applicable to the property, and why he believes a 15 foot setback should apply along Philadelphia Avenue instead of the 25 foot setback applied by DPS. Mr. Vitullo testified that the southern facade of the house (closest to the garage) contains stairways to the home’s basement and second floor, and contains the basement entry to the home’s basement ADU. Because of this, Mr. Vitullo testified that the proposed addition cannot be put on this side of the house without “very complicated” architectural changes. Mr. Vitullo further testified that the window well on the home’s northern façade serves as the

secondary point of egress from the basement ADU, and that for this reason, the proposed addition cannot be pushed any further west (towards Baltimore Avenue) along the northern façade of the house. Finally, Mr. Vitullo testified that if the proposed addition were to be put on the rear/western façade of the house, a variance would still be needed. Thus he concluded that the proposed location is the only place available for the proposed addition.

In response to a Board question asking if the proposed construction would necessitate the removal of any trees, Mr. Vitullo testified that one "small, unhealthy" pine tree would have to be removed. He testified that the Takoma Park Urban Forest Manager consented to the removal of this tree.

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 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;

Based on the Statement, the Site Plan, and the testimony of Mr. Vitullo, the Board finds that the subject property has an unusual, five-sided shape. The Board further finds that the subject property fronts on three different streets, and is subject to a 25 foot setback from Philadelphia Avenue even though the property does not abut another property that fronts on Philadelphia Avenue. Finally, the Board finds, based on the Zoning Vicinity Map, that most properties in the vicinity of the subject property are much deeper than the subject property is. The Board finds that this combination of circumstances results in an unusually constrained buildable area and constitutes an extraordinary condition that is peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 3, 4(a), and 9(a).

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 Board finds, based on the Statement, that the setback of the proposed addition would substantially conform with the established historic or traditional development pattern of the Petitioner's neighborhood, which contains varying setbacks from street frontages, in satisfaction of this element of the variance test. In support of this, the Statement states that when the Petitioner's house and others in this Takoma Park neighborhood were built, homes did not have to meet a generalized 25 foot setback along their street frontages. The Statement indicates that as a result, some houses are set closer to the street than 25 feet, and some are set farther from the street than 25 feet.

Thus the Statement concludes that the encroachment posed by the proposed addition “would not stand out as particularly abnormal or detrimental to the established historic or traditional development pattern of the neighborhood.” See Exhibit 3.

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 existing house on the subject property was built in 1936, that the “current house shape and size, lot shape, location and configuration existed when the owners purchased this property on 11/25/2015,” and that the “current owners have taken no action to this date to increase the size of their house that could have exacerbated the conditions requiring this variance to be pursued.” See Exhibit 3. Thus the Board finds that the Petitioner took no actions to create the special circumstances or conditions peculiar to this 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, based on the Statement, Site Plan, and Zoning Vicinity Map, that the subject property has a unique shape and is shallow relative to its neighbors. The Board further finds that the subject property abuts three streets, and that when the required setbacks from the abutting roadways are applied to this oddly shaped and shallow property, the resultant buildable envelope is unusually limited, disproportionately impacting the reasonable use and enjoyment of this property and causing the Petitioner a practical difficulty. See Exhibits 3, 4(a), and 9(a). In addition, the Board finds, based on the Application, the Statement, and the testimony of Mr. Vitullo, that there is no other location within the property’s buildable envelope to accommodate the proposed addition. See Exhibits 1 and 3. Finally, the Board finds, based on the Statement and the Site Plan, that the total area of the proposed encroachment is minimal at 76 square feet, and that the extent of the encroachment steadily diminishes from east to west. See Exhibits 3 and 4(c). In light of the foregoing, the Board finds that the requested variance is the minimum necessary to overcome the practical difficulty that would be 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 addition will continue the residential use of this property, consistent with the Takoma Park Master Plan, which recommends preserving the existing residential character, encouraging neighborhood reinvestment, and enhancing 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.*

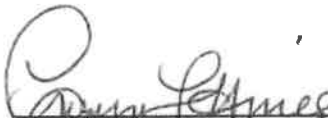
The Board finds, per the Statement, that granting the requested variance to allow the proposed addition will not be adverse to the use and enjoyment of neighboring property owners because the proposed addition is sited away from neighboring properties ("at the northern end of the 'peninsula' of this block"). See Exhibit 3. The Board notes that the Petitioner has submitted five letters of support from his neighbors for the grant of the requested variance. See Exhibits 7(a)-(e). Finally, the Board notes that despite the property having been properly posted and the hearing having been properly noticed, the record contains no opposition to the grant of the requested variances, and no one was present at the hearing in opposition. In light of the foregoing, the Board finds that this element of the variance test is satisfied.

Accordingly, the requested variance, needed for the proposed addition, is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4(c) and 5(b), (d), (f), (h), (j), and (l) (internal layouts excluded).

Therefore, based upon the foregoing, on a motion by Alan Sternstein, seconded by Amit Sharma, with Caryn L. Hines, Chair, and Donald Silverstein in agreement, and with Richard Melnick, Vice Chair, 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.


Caryn L. Hines
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of January, 2025.


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.