

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
<http://www.montgomerycountymd.gov/boa/>  
(240) 777-6600

**Case No. A-6903**

**PETITION OF KEVIN GREEN**

OPINION OF THE BOARD

(Hearing Date: March 19, 2025)

(Effective Date of Opinion: March 26, 2025)

Case No. A-6903 is an application by Petitioner Kevin Green for two variances needed for the construction of an addition. The proposed construction requires a 0.75 foot variance from the required 25.00 setback from the rear lot line that is established by Section 59.4.4.8.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of 15% from the lot coverage limitation because it results in a total lot coverage of 45%. The maximum lot coverage is 30%, in accordance with Section 59.4.4.8.B.1 of the Zoning Ordinance

The Board of Appeals held a hearing on the application on February 12, 2025. Petitioner Kevin Green appeared at the hearing in support of the requested variances, along with his contractor, Antonio Victoriano.

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

**EVIDENCE PRESENTED**

1. The subject property is LT500A SEC 4 OF 2K MONTG VILLAGE Subdivision, located at 19168 Roman Way in Montgomery Village, Maryland, 20886, in the R-90 Zone. It is a rectangular lot, 4,050 square feet in size, located on the west side of Roman Way. The property is improved with a house that was built in 1969. It was purchased by the Petitioner and his wife in 2006. See Exhibits 4, 7(c), and 8, and SDAT Printout.

2. The Petitioner's variance Application states that that he is seeking to create a bedroom on the main level of his home. The Application states that because of the Petitioner's mobility restrictions and difficulty climbing steps, he will be forced to leave his home if he is not able to construct a bedroom on the ground level. The Application states

that many of the neighboring properties have received variances because of their limited size. See Exhibit 1.

3. The Petitioner's Statement of Justification ("Statement") states that he is seeking variance relief to allow a 120 square foot ground-level addition to the rear of his home. The Statement indicates that the addition will provide a bedroom and full bath on the main floor of the house, and is needed to address mobility issues and difficulty navigating stairs. The Statement states that if the requested variances are not granted, the Petitioner will have to leave his home because his physical constraints keep him from being able to use the steps. See Exhibit 3. The proposed first floor plan submitted with the Petitioner's request shows that existing first floor space will be converted into a first floor bedroom, and that the proposed addition will house a full bath. See Exhibit 5(b).

4. The Petitioner's supplemental Statement further describes the disabilities experienced not only by the Petitioner, but also by, his wife. The supplemental Statement states that these disabilities impact their mobility, and require them to have a main level bedroom and bath. The supplemental Statement states that with the proposed addition, the Petitioner and his wife hope to be able to live independently in their home as long as possible. See Exhibit 7(c).

5. The Statement states that the exceptional narrowness, shallowness, shape, and topographical conditions of the subject property make it unique for the purposes of satisfying Section 59.7.3.2.E.2.A.i of the Zoning Ordinance. The Statement states that the conditions that make the property unique are not due to any actions of the Petitioner, and that the requested variances are the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would cause the Petitioner because of the unique features of his property. See Exhibit 3.

6. The Petitioner has submitted letters from his abutting neighbor to the west (left),<sup>1</sup> as well as from his confronting neighbor, stating that they are aware of the Petitioner's expansion plans and that they have no objection to the proposed addition. Both letters state that the Petitioner and his wife are good neighbors, that they have disabilities that compromise their current ability to navigate stairs, and that they are seeking to create a single level living situation. See Exhibits 7(a)-(b).

7. The Petitioner submitted a list of three neighboring properties, including the abutting property to the west (left), and the confronting property across the drive aisle from his property, that have similar additions. See Exhibit 12.

8. At the hearing, the Petitioner stated that he and his wife are seeking to construct an addition to the rear of their house to allow them to have a bedroom and a full bathroom on the main level of their house. He testified that the proposed addition is for the bathroom. The Petitioner testified that because of physical disabilities, both he and his wife need single level living. He testified that his wife's disability substantially limits a major life function, namely her mobility, and that the requested variance is the minimum

---

<sup>1</sup> The east side of the subject property borders Roman Way.

needed to afford her afford an equal opportunity to use and enjoy their home. The Petitioner testified that both of his neighbors support his request, and that it has been approved by their HOA.

The Petitioner testified that there is a ten (10) to twelve (12) foot wall around the property. He estimated that on his cul-de-sac, 50% of the homes have additions, including the house next door. The Petitioner provided the Board with photographs showing the additions to three of his neighbors' houses. See Exhibits 13, 14(a)-(b), and 15. In response to a Board observation that the photographs seemed to show a pattern of lot coverage greater than 30% in the neighborhood, and a question asking if the proposed addition would be consistent with this pattern, the Petitioner responded in the affirmative.

9. Mr. Victoriano testified that the subject property is a corner property with a ten (10) foot brick wall around its sides. He testified that the property has very little front yard and that you cannot see the back yard of the property. Mr. Victoriano testified that the Petitioner and his wife need a first floor bedroom and bathroom so that they do not have to go up and down stairs. He testified that they are proposing to construct a small bathroom on the right rear corner of their house, next to the wall. Mr. Victoriano testified that the bathroom is large enough to accommodate a wheelchair.

In response to a Board question, Mr. Victoriano agreed that at 4,050 square feet, the Petitioner's property is substandard for the R-90 Zone. He testified that all of the neighbors' additions are larger than the addition the Petitioner is proposing. He and the Petitioner then proceeded to narrate the photographs showing the additions to three nearby homes. See Exhibits 13-15.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and evidence of record, the Board finds that the requested variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59.7.3.2.E of the Zoning Ordinance, 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.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 Petitioner's testimony, that roughly 50% of the homes on his street have additions similar to the addition he is proposing. The Board further finds, based on the list of neighboring properties that have similar additions and the photographs that show that there is not only a pattern of houses with additions on the Petitioner's street, but also a pattern of property's having lot coverage that appears to exceed the 30% limit on this street, that the Petitioner's proposed addition would

substantially conform with the established historic or traditional development pattern on his street. See Exhibits 12-15. Accordingly, the Board finds that this element of the variance test is satisfied.

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 subject property contains a house that was built in 1969, and that it was purchased by the Petitioner in 2006. The Board further finds that there is nothing in the record to suggest that the Petitioner is responsible for the additions to other homes on his street and the resultant established development pattern. 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 at 4,050 square feet, the small size of the subject property results in the property's lot lines to be located closer to the existing house than would be the case on a property of standard size, and causes the 30% lot coverage restriction to have an extraordinarily burdensome impact on the subject property, causing the Petitioner a practical difficulty in that it restricts his ability to construct an addition of reasonable size. See Exhibit 4. The Board further finds that without the grant of the requested variances, the Petitioner would be unable to construct an addition to his home that substantially conforms with additions made to other homes on his street, also causing him a practical difficulty. See Exhibits 12-15. Finally, the Board finds that the requested variances are the minimum necessary to allow the Petitioner to construct an addition to his house that is similar to others on nearby properties, and thus to conform with the established development pattern on his street. In light of the foregoing, the Board finds that the variances requested by the Petitioner are the minimum needed to overcome the practical difficulties posed by the strict application of the Zoning Ordinance to this substandard property and to allow an addition that substantially conforms with the development pattern in the neighborhood, in satisfaction of this element of the Zoning Ordinance.

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 allowing the Petitioner to proceed with the proposed addition will continue the residential use of this home, consistent with the Montgomery Village Master Plan (2016), which seeks to "preserve the character of the Village" and to "help sustain [its] well-established neighborhoods." 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, based on the Statement, Site Plan, and plans of record, that the proposed addition is one story in height and modest in size. See Exhibits 3(a), 4, and

5(c). In addition, the Board finds, based on the photographs submitted by the Petitioner and the testimony of record, that the subject property is surrounded by a tall brick wall. See Exhibit 13. The Board further finds that the Petitioner has submitted letters of support for the proposed construction from his abutting neighbor to the west (left) and from his confronting neighbor. See Exhibits 7(a)-(b). Finally, the Board finds that despite the hearing having been properly noticed and the variance sign having been properly posted, the record contains no opposition to the proposed construction, and no one appeared at the hearing in opposition to the grant of this variance. On the basis of the foregoing, the Board finds that the grant of the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

In addition to finding that the Petitioner's request meets the standards for granting a variance set forth in Section 59.7.3.2.E.2 of the Zoning Ordinance, the Board also finds that this request can be granted as a request for a reasonable accommodation under the Americans With Disabilities Act, as amended by the ADA Amendments Act of 2008, and the Fair Housing Amendments Act of 1988, as explained below.

### **Standards for Evaluation of a Variance on ADA/FHAA Grounds**

A variance can be granted as a reasonable accommodation of a petitioner's disability under Title II of the Americans with Disabilities Act ("ADA"), as amended by the ADA Amendments Act of 2008 ("ADAAA"), and the Fair Housing Amendments Act of 1988 ("FHAA").

The ADAAA and FHAA define a disability or handicap as "a physical or mental impairment that substantially limits one or more of the major life activities of (an) individual." 42 U.S.C.A. §12102(1)(A); 42 U.S.C.A. §3602(h).

Whether an individual has an impairment and whether the impairment substantially limits a major life activity is to be determined on a case-by-case basis. *Dadian v. Village of Wilmette*, 269 F.3d 831, 837 (7th Cir. 2001).

### **Prohibition on Housing Discrimination Based on Disability**

The FHAA and Title II of the ADA prohibit housing discrimination based on an individual's handicap or disability.

The FHAA prohibits discrimination against "any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling" on the basis of that person's handicap. 42 U.S.C.A. §3604(f)(2). The FHAA definition of discrimination includes a refusal to make reasonable accommodation in "rules, policies, practices or services when such accommodation may be necessary to afford" a person with a handicap "equal opportunity to use and enjoy a dwelling." 42 U.S.C.A. §3604(f)(3)(B). A "necessary accommodation" to afford "equal opportunity" under FHAA will be shown where, but for the

accommodation, the disabled person seeking the accommodation “will be denied an equal opportunity to enjoy the housing of their choice.” *Trovato v. City of Manchester, N.H.*, 992 F.Supp. 493, 497 (D.N.H. 1997) (citing *Smith & Lee Assocs. v. City of Taylor*, 102 F.3d 781, 795 (6th Cir. 1996)). The failure to provide reasonable accommodation need not be supported by a showing of discriminatory intent. [See *Trovato*, 992 F. Supp. at 497 (citing *Smith*, 102 F.3d at 794-96).]

#### Reasonable Accommodation by Local Government of an Individual's Disability

The “reasonable accommodation” provision of the FHAA has been interpreted to require municipalities to “change, waive, or make exceptions in their zoning rules to afford people with disabilities the same opportunity to housing as those who are without disabilities.” *Trovato*, 992 F. Supp. at 497 (citing *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1103 (3rd Cir. 1996)). Similarly, Title II of the ADA (42 U.S.C.A. §12132) has been held to apply to zoning decisions, which constitute an “activity” of a public entity within the meaning of the ADA. [See, *Mastandrea v. North*, 361 Md. 107, 126, 760 A.2d 677, 687, at n. 16 (citing *Trovato*, 992 F.Supp. at 497).]

Under the ADA, a local jurisdiction is required to reasonably modify its policies when necessary to avoid discrimination on the basis of disability, unless it is shown that the modifications “would fundamentally alter the nature of the service, program or activity.” 28 C.F.R. §35.130(b)(7). Therefore, unless the proposed accommodation would “fundamentally alter or subvert the purposes” of the zoning ordinance, the variance must be granted under Title II of the ADA. [See *Trovato*, 992 F.Supp. at 499.]

In connection with the grant of the variance on ADA and FHAA grounds, the Board must make the following findings:

1. Determination of disability: An evaluation of whether a disability exists under the ADAAA or FHAA requires a three-step analysis. The applicant’s medical condition must first be found to constitute a physical impairment. Next, the life activity upon which the applicant relies must be identified (i.e. walking, independent mobility) and the Board must determine whether it constitutes a major life activity under the ADAAA and FHAA. Third, the analysis demands an examination of whether the impairment substantially limits the major life activity. *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998).

2. Non-discrimination in housing: The Board must find that the proposed variance constitutes a reasonable accommodation of existing rules or policies necessary to afford a disabled individual equal opportunity to use and enjoy a dwelling.

3. Reasonable modification of local government policies: Because a zoning ordinance is among the local governmental rules subject to Title II of the ADA and the FHAA, the Board must find that the proposed variance should be granted to the extent necessary to avoid discrimination on the basis of disability

unless the proposed accommodation would fundamentally disrupt the aims of the Zoning Ordinance.

Applying the above analysis to the requested variance, the Board finds as follows:

1. Based upon the testimony of the Petitioner and the evidence of record, including the Statement, supplemental Statement, and the letters of support, the Board finds that the Petitioner and his wife have physical impairments that limit their mobility and that prevent them from being able to safely navigate the stairs to the second floor of their home where their bedroom and bath are currently located. See Exhibits 3(a) and 7(a)-(c). The Board finds that the ability to safely access the entirety of one's home, including the sleeping and bathing quarters in that home, is a basic life activity for the purposes of the ADAAA and FHAA, and that the compromised mobility of the Petitioner and his wife substantially limits this activity. Thus the Board finds that their impairments constitute a disability under the ADAAA and FHAA.

2. The Board further finds that the construction of the proposed addition on the rear of the Petitioner's house, as depicted on Exhibits 4 and 5(a)-(c), will allow the Petitioner and his wife to have a bedroom and full bathroom on the main floor of their home, providing them with one-level living and allowing them to safely access sleeping and bathing quarters despite their disabilities, preserving their independence and allowing them to engage in necessary and normal household activities. Thus the Board finds that the proposed construction is a reasonable accommodation for the mobility impairments of the Petitioner and his wife, and will allow them to continue to enjoy and live in their home. The Board further finds that allowing this construction on the rear of the Petitioner's home would not impose an undue burden or expense on the County, and would not constitute a fundamental disruption or subversion of the County's zoning scheme, which is intended to protect and promote the health, safety, morals, comfort and welfare of the present and future inhabitants of the County. The Board notes that the proposed one-story addition is modest in size and will be partially screened by an existing wall, thus reducing its impact on surrounding properties. See Exhibits 3(a), 4, and 5(c), and 13.


3. In light of the foregoing, the Board finds that the requested variances can be granted so that the strict application of Montgomery County's Zoning Ordinance and development standards do not prevent the Petitioner and his wife from being able to continue to use and enjoy their property on account of their disabilities.

Accordingly, the requested variances, needed to allow the proposed addition, are **granted**, subject to the following conditions:

1. The Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5(a)-(c) (external elevations/dimensions only).

Therefore, based upon the foregoing, on a motion by Amit Sharma, seconded by Richard Melnick, Vice Chair, with Caryn L. Hines, Chair, Alan Sternstein, and Donald Silverstein 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 26th day of March, 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.