

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building

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Rockville, Maryland 20850

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**Case No. A-6939
PETITION OF KEVIN BROWN**

OPINION OF THE BOARD

(Hearing Held: October 22, 2025)

(Effective Date of Opinion: October 29, 2025)

Case No. A-6939 is an application by Petitioner Kevin Brown for a variance needed for the proposed construction of an addition. The proposed construction requires a variance of 0.47 feet as it is within 14.53 feet of the left lot line. The required setback is fifteen (15) 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 Wednesday, October 22, 2025. Petitioner Kevin Brown appeared at the hearing in support of the requested variance, assisted by his architect, Eric Saul.

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

EVIDENCE PRESENTED

1. The subject property is Lot 10B, Block 78, T P L & T CO 4068/87 2 Subdivision, located at 7329 Baltimore Avenue in Takoma Park, Maryland, 20912, in the R-60 Zone. It is a four-sided property with a width of 50 feet, and a depth that is more than three times its width. The property is bordered by Baltimore Avenue to the west and Brashear Avenue to the north (left); Brashear Avenue is an unbuilt paper street that is only as long as the subject property is deep. The subject property has an area of 8,329 square feet. See Exhibits 4 and 7.

2. The subject property was recorded in 1953 and contains a house that was built in 1958. The existing house is located approximately 14'-6" from the northern (left) lot line, and thus encroaches approximately six (6) inches into the required fifteen (15) foot setback from that lot line. The property was purchased by the Petitioner in 2025. See Exhibits 1 and 3.

3. The Petitioner's Statement of Justification ("Statement") states that the Petitioner is seeking to "construct a second-story addition directly above the footprint of the existing first floor, and a rear addition which would also encroach 5 inches into the north side yard setback." The Statement states that the proposed construction will "match" the distance of the existing structure from the northern/left lot line. The Statement states that the height of the proposed addition would be 25'-6" to the peak of the roof, and is thus below the allowable height of thirty (30) feet to the midpoint of the roof. See Exhibit 3.

4. The Statement states that the fact that the subject property abuts a paper street and is subject to a side street setback from that paper street,¹ and the resultant narrowness of the subject property when the applicable setbacks are applied, make the subject property unique for the purposes of satisfying Section 59.7.3.2.E.2.a.i of the Zoning Ordinance. See Exhibit 3. To this end, the Statement states that:

Exceptional Narrowness and other extraordinary conditions peculiar to this lot

This lot is adjacent to a paper street, which will likely never be built due to its location in the Takoma Park Historic District, and the lack of need for a street connecting houses in this location. The paper street imposes a 15-foot side street setback on a property that is already only 50 feet wide. Combined with the 7' foot setback on the opposite side, the combined 22 feet of setback regulations limits the structure to a 28-foot maximum width, which is considered very narrow compared to the surrounding homes in this neighborhood.

5. The Statement states that the existing house was built in 1958, and that the Petitioner purchased the subject property in 2025. The Statement further states that the existing house was "constructed 14'-6" from the north side lot line." Thus the Statement concludes that the "special circumstances or conditions were not a result of actions by the Petitioner," in satisfaction of Section 59.7.3.2.E.2.b of the Zoning Ordinance. See Exhibit 3.

6. The Statement states that the property's "unique and unusual situation when compared to adjoining properties and the current neighborhood ... causes the zoning requirements to disproportionately impact the reasonable use and enjoyment of this property, thus creating a practical difficulty." The Statement further states that the requested variance is the minimum needed to overcome the practical difficulties caused by full compliance with the setbacks imposed by the Zoning Ordinance because the home's existing exterior wall already encroaches into the required setback. The Statement states that "it would be impractical from a structural standpoint to build an exterior wall not directly over an existing bearing wall," noting that "[s]everal additional beams, columns, and posts would be required down through the existing home all the

¹ The Board notes that in light of the property's recordation date, if the north/left side of the property did not abut a paper street, the setback from the property's north/left side lot line would have been seven (7) feet instead of fifteen (15) feet.

way through the basement to bear the weight of the new second floor addition." See Exhibit 3.

In addition, the Statement states that "[t]he existing house is situated on the lot in such a way that eliminates the opportunity to match what neighbors have done, which is to construct a full second floor addition on their houses." The Statement states that construction of a "new second floor over the original footprint of the house would provide much needed space to create a home that fits Petitioner's family's needs." Finally, with respect to the proposed rear addition, the Statement states that the addition would be aligned with the north side of the existing house, and that "[d]ue to the narrow 28-foot maximum width of the house stated above, Petitioner needs every inch of width possible, which he is only requesting 6 additional inches to suit his needs." See Exhibit 3.

7. The Statement states that because the proposed construction adheres to the left side setback of the existing house, and keeps the overall height within the allowable limit, "the proposed addition preserves the residential character of the neighborhood and allows the Petitioner to reinvest in their home and enhance their quality of life." The Statement states that in light of this, the requested variance can be granted without impairment to the intent and integrity of the general plan and any applicable master plan. See Exhibit 3.

8. The Statement further states that the subject property is located in the Takoma Park Historic District. The Statement states that because of this, the "Petitioner worked diligently with the Historic Preservation Commission (HPC) to design the second floor addition to fit into the traditional style of the neighborhood," and states that "[a] shift of the second floor would create a unique, contemporary massing that would not fit the character of the historic neighborhood." See Exhibit 3.

9. The Statement states that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties. In support of this, the Statement states that the proposed addition "will not extend beyond the existing footprint below, thus will not negatively impact the adjoining side yard." The Statement further states that the proposed addition "will not negatively impact the character, health, safety, welfare, or security of the neighboring residents." Finally, the Statement notes that "[m]any of the neighboring houses are larger and taller than the Petitioner is proposing, especially the adjacent property." See Exhibit 3.

10. At the hearing, the Petitioner testified that he owns the subject property with his wife. He testified that they are seeking a variance to allow them to construct a second floor and rear addition that align with the exterior of the existing house. The Petitioner testified that the existing house was constructed 14'-6" from the left property line. He testified that the required setback is 15 feet because the property abuts a paper street. The Petitioner testified that he had confirmed with the appropriate County agencies that the adjacent paper street is not in use.

The Petitioner testified that the proposed addition is modest and that it maintains the character of the existing house. Thus he testified that the proposed addition would

not adversely impact the neighborhood. In addition, the Petitioner testified that they had reached out to their left side neighbor, whose property abuts the other side of the paper street, and that neighbor provided written support for the proposed construction. See Exhibit 9.

In response to a Board question asking how many of his neighbors had second story additions, the Petitioner testified that the houses to both sides and across the street have second stories. He testified that his house is a one-story home with a basement. Finally, the Petitioner testified that the proposed addition has been approved by the Historic Preservation Commission.

10. Mr. Saul testified that the subject property is fifty (50) feet wide, which he testified is narrow for the R-60 Zone.² He testified that the subject property was recorded in 1953. Mr. Saul testified that the usable width of this narrow property is diminished by the application of a fifteen foot (15') side street setback along the left property line instead of the typical seven foot side (7') setback, the larger setback made applicable by the abutting paper street. Mr. Saul testified that as a result, the property's buildable envelope is "super narrow," and the existing house is very confined.

Mr. Saul testified that adhering to the required fifteen (15) foot setback from the left property line would result in offset exterior walls that would pose a practical difficulty for the Petitioner as a structural matter. He testified that the requested variance is the minimum needed to overcome this practical difficulty and to allow for the alignment of the walls.

Mr. Saul testified that the subject property is located in the Historic District, and that he worked with the Historic Preservation Commission on this project. Mr. Saul testified that the proposed construction has been approved by the Historic Preservation Commission.³

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:*

² In response to a Board question, Mr. Saul later testified that under the current Zoning Ordinance, the minimum width of an R-60 lot is sixty (60) feet.

³ Pursuant to a Board request, Mr. Saul submitted evidence of this approval following the close of the proceedings.

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, the Zoning Vicinity Map, and the testimony of the Petitioner and Mr. Saul, that with a width of fifty (50) feet, the subject property is narrow for the R-60 Zone. The Board further finds that the north (left) side of the subject property abuts a one-block long, unbuilt paper street. The Board finds that this results in the imposition of a fifteen (15) foot setback from the property line shared with that paper street, narrowing the buildable area of this already narrow property to twenty-eight (28) feet, which per the Statement is "very narrow compared to the surrounding homes in this neighborhood." See Exhibits 3 and 7. The Board finds that these circumstances, taken together, make the subject property unique for the purposes of satisfying this element of the variance test.

Section 59.7.3.2.E.2.a.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds, based on the Statement and Site Plan, that the Petitioner's existing house was built in 1958, and encroaches approximately six (6) inches into the required fifteen (15) foot setback imposed from the property's left lot line because a paper street abuts that lot line. In addition, the Board finds that there is nothing in the record to indicate that the original construction of the house was done without permits or is not legal. In light of the foregoing, the Board finds that the Petitioner's existing house is nonconforming. The Board further finds that because the proposed construction includes a second story addition to be built on top of the Petitioner's existing house, and a rear extension that would maintain the setback of the existing house from the left lot line, that the proposed development uses an existing legal nonconforming structure, 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, based on the Application and the Statement, that the property was recorded in 1953, that the original house was built on the subject property in its current nonconforming location in 1958, and that the Petitioner did not purchase the subject property until 2025. See Exhibits 1 and 3. Thus the Board finds that the Petitioner took no actions to create the special circumstances or conditions peculiar to this property.

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 and the testimony of Mr. Saul, that the requested variance is the minimum necessary to allow the proposed construction to proceed. The Board finds at the outset that at six (6) inches, the requested variance is minimal in size. In addition, the Board finds that the requested variance is minimal in that it would allow the construction of a second-story addition directly over the footprint of the existing home, as well as an extension of the existing house towards the rear of the

property in a manner that does not extend any further into the setbacks than the original house has encroached since it was built in 1958. See Exhibit 3. The Board further finds, based on the Statement and the testimony of the Petitioner, that without the grant of the requested variance, the Petitioner could not expand his house in a way commensurate with others in the neighborhood. In addition, the Board finds, based on the Statement, that without the grant of the requested variance, the proposed construction would not fit with the traditional style of the Takoma Park Historic District. Finally, the Board finds, based on the Statement and the testimony of Mr. Saul, that without the grant of the requested variance, the proposed second floor could not be located directly over an existing exterior bearing wall, which would render the proposed construction impractical because it would require the installation of “[s]everal additional beams, columns, and posts ... down through the existing home all the way through the basement to bear the weight of the new second floor addition.” See Exhibit 3. In light of the foregoing, the Board concludes that the grant of the requested variance is the minimum necessary to allow the proposed construction and to overcome the difficulties that full compliance with the Zoning Ordinance would impose, 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 construction will continue the residential use of this property, consistent with the recommendations of the Takoma Park Master Plan, which recommends “preserving the existing residential character, encouraging neighborhood reinvestment and enhancing the quality of life throughout Takoma Park.” The Board further finds, based on the Statement and testimony of the Petitioner and Mr. Saul, that the Petitioner has worked with the Historic Preservation Commission to design an addition that matches the style of the Takoma Park Historic District, and that the proposed construction has in fact been approved by the Historic Preservation Commission. 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.

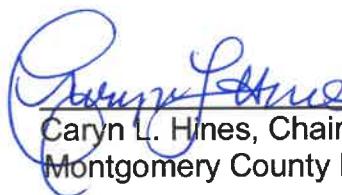
The Board finds, based on the Statement, that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties because the proposed addition will not extend any closer to the left lot line than the existing house, and thus will not “negatively impact the adjoining side yard.” In addition, the Board finds, per the Statement, that the proposed addition fits with the traditional style of the Historic District, and will result in a house that is not as large or tall as some of the neighboring houses. See Exhibit 3. The Board further finds, in accordance with the testimony of the Petitioner, that the Petitioner’s neighbors to the left have submitted an email indicating that they no objection to the proposed construction. See Exhibit 9. Finally, the Board finds that the property was properly posted, that the record contains no opposition to the proposed construction, and that no one appeared at the hearing in opposition to the requested variance. Accordingly, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance, needed for the construction of 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 and 5(a)-(d) (exterior elevations/dimensions only).

Therefore, based upon the foregoing, on a motion by Alan Sternstein, seconded by Richard Melnick, Vice Chair, with Caryn L. Hines, Chair, 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 29th day of October, 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.

