

**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-6489

PETITION OF ANNA-MARIE VOORTHUIS and JOHN O. DRAKE II

OPINION OF THE BOARD

(Opinion Adopted March 9, 2016)

(Effective Date of Opinion: March 22, 2016)

Case No. A-6489 is an application for a variance from the rear lot line setback. The proposed construction of a room addition requires a variance of four (4) feet, as it is within sixteen (16) feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59-4.4.9.B.2.

The subject property is Lot 10, Block 6, Green Acres Subdivision located at 5210 Little Falls Drive, Bethesda, Maryland, 20816, in the R-60 Zone.

As authorized by Section 59-7.3.2.A, the Board of Appeals held a hearing on the application on March 9, 2016. Petitioner Anna-Marie Voorthuis appeared pro se in support of the application. Mr. Mark Badgley, Petitioner's general contractor, also appeared.

Decision of the Board: Requested variance **GRANTED**.

EVIDENCE PRESENTED

1. Mr. Badgley testified that he has been a builder for 38 years. He testified that when Ms. Voorthuis purchased her home, it was very small, less than 1,000 square feet. He testified that Ms. Voorthuis hired him to construct a small kitchen addition, resulting in a 1,064 square foot house. Mr. Badgley testified that the subject Property is a corner lot and that at less than 6,000 square feet (5,681 square feet per Exhibit 3), it is substandard for the zone. He testified that the area on the side of the house where Ms. Voorthuis would like to construct the proposed addition is actually considered the rear yard, and abuts an alley.

2. Mr. Badgley testified that even with the kitchen addition, Ms. Voorthuis' house is tiny, the size of an apartment. He testified that since purchasing her house many years ago, Ms. Voorthuis has married and now has a child. He testified that she is seeking to build a two-story addition, but that she needs to extend 4 feet into the setback in order to make the new space workable. He testified that the addition would add 896 square feet.
3. Ms. Voorthuis testified that at present, her house has two bedrooms and one and a half bathrooms. She testified that she hopes to have a second child, and would like to add a bedroom to make her house a three bedroom house. She testified that the side of the house where she would like to place the proposed addition abuts a public alley, and that her neighbors' driveway is on the side of their property which abuts the other side of the alley. She testified that the height of the proposed addition would be about two feet taller than the existing roofline. See Exhibit 5(a). She testified that she did not want to extend what would traditionally be considered the "rear" of her home because an addition on that side would be "on top of her neighbor" and would impact existing trees; she added that she also did not have enough space there to build. She stated that the proposed addition would not bother anyone because of the way in which it would be situated on her lot.

Ms. Voorthuis testified that most of the houses in her neighborhood have additions, and that multiple variances have been granted for construction in her neighborhood. She testified that her house is one of the smallest in the neighborhood, and that the proposed addition would not make her house stand out. Ms. Voorthuis testified that from a financial standpoint, a 12 foot wide addition is not practical.

4. Mr. Badgley testified that the setback would allow for construction of an addition with a width of 12 feet without the need for a variance, but that 12 feet is too narrow for an addition. He explained that this was not a matter of aesthetics, but rather that this is the way living spaces work for furniture and family. He testified that a 12 foot wide addition would not serve the family properly, and that based on his experience as a builder, a 16 foot wide space is reasonable and justified.

In response to a Board question asking if he had consulted with the neighbors about this proposed addition, Mr. Badgley testified that letters about the project were sent to the neighbors, and no response was received.

FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and 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.i. ...exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

Based upon Exhibit 3 and Mr. Badgley's testimony, the Board finds that the subject property is small and substandard for the zone, which constrains the available area for the placement of any addition.

2. *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;*

Based upon the testimony of Ms. Voorthuis, the Board finds that this is a neighborhood of small houses in which most of the houses have additions, and thus that the proposed addition follows the traditional development pattern in this neighborhood.

3. *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 Petitioner is not responsible for the small size of her lot or for the development pattern in her neighborhood.

4. *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 requested variance is the minimum necessary to allow the Petitioner to construct a workable addition to her home, and thus to comport with the established development pattern in the neighborhood. The Board further finds that although with the grant of a variance, the proposed addition would encroach into the rear setback, the technical "rear" yard of this home is what most observers would term the "side" yard, and that even with the grant of this variance, the addition would be set back more than the required minimum setback from a side lot line.

5. *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 construction of the addition continues the residential use of the property and is entirely consistent with the applicable master plan.

6. *Section 59-7.3.2.E.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that because this property is bordered on two sides by streets, and on one side by an alley, there is only one abutting property, and the proposed addition does not extend in the direction of that property. The Board further finds that the rear property line from which the variance is sought abuts an alley, and that the driveway to

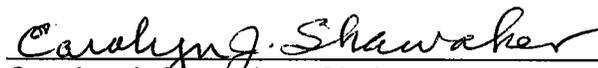
the house that abuts the alley on the other side is on the alley side of that house. Finally, the Board finds that letters were sent to the Petitioner's neighbors, and that none of the neighbors voiced objection to her proposed construction. Thus the Board finds that granting this variance will not be adverse to the use and enjoyment of abutting and confronting properties.

Accordingly, the requested variance of four (4) feet from the required twenty (20) foot setback from the rear lot line is granted subject to the following conditions:

1. The Petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of her witness, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and (b), and 5(a) through (c).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice Chair, seconded by Stanley B. Boyd, with Carolyn J Shawaker, Chair, Edwin S. Rosado, and Bruce Goldensohn 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.



Carolyn J. Shawaker, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
This 22nd day of March, 2016.



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 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.