

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6464

PETITION OF DEBRA VESS

OPINION OF THE BOARD
(Hearing Date: June 10, 2015)
(Effective Date of Opinion: June 26, 2015)

In case No. A-6464 Debra Vess requests a 3.17-foot variance from the 30-foot front setback required by Section 59-4.4.8, a five-foot variance from the 30-foot side street setback required by Section 59-4.4.8 and a 4.5-foot variance from the 27-foot side street setback required by Section 59.4.1.7.B.5.a.viii, to build a room addition with a bay window.

The Board of Appeals held a hearing on the application on June 10, 2015. Stanley D. Abrams, Esquire appeared on behalf of Debra Vess. Debra Vess and Tom Flanagan, her architect, appeared and testified.

Decision of the Board: Requested Variances Granted.

EVIDENCE PRESENTED

1. The subject property is Lot 5, Block I, Rock Creek Highlands Subdivision, located at 9501 Cable Drive, Kensington, Maryland 20895, in the R-90 Zone. It is a five-sided corner lot, different in shape from any lot in the immediate subdivision neighborhood. [See Exhibit Nos. 3, 3(3) and 4(a)].

2. Debra Vess testified that she wishes to build an addition to her house that would allow one-level living so that she can age in place. Initially she hired a construction company which prepared design plans for her based on a 15-foot side street setback. She stated that subsequently she hired Flanagan Architecture which showed plans to the Department of Permitting Services in June, 2014. She stated that she was told then that the setbacks for her lot along Cable Drive and Carriage Road were twenty five feet

because it had been platted in 1958, and under the 2004 Zoning Ordinance, it was eligible for grandfathering. She stated that when she went back to apply for the building permit this year she discovered that under the current Zoning Ordinance, the setbacks are 30 feet. She stated that application of the current setbacks reduces the size of her proposed addition by 218 square feet, making the space unusable. [Transcript, June 10, 2015, pp. 14-19].

3. Referring to the photographs in Exhibit Nos. 5(i) – 5(t), Ms. Vess explained that due to the location of her house on the corner of Carriage Road and Cable Drive, and its situation vis a vis abutting and confronting properties, together with the proposed location of the addition the addition will have minimal visual impact on those properties. She stated that her abutting neighbor to the rear on Culver Street has tall evergreen screening of her property. She also stated that she intends to extend her fence to further mitigate the view of her addition. [Transcript, pp. 8-13].

4. Ms. Vess testified that her lot is a five-sided corner lot that is the second smallest lot in the neighborhood. She testified that the topography of the lot, which is a full level lower in the back than in the front, constrains the location of an addition that would allow one-level living. [Transcript, pp. 21-24, 27].

5. She stated that she could not locate the proposed addition in any location on her lot without a variance, and that locating it to the side or rear would place it closer to her neighbors' houses. [Transcript, p. 29].

6. Ms. Vess stated that she discussed her construction plans with her neighbors, and her application for variances, at length, and that none of them expressed any objection.

7. Tom Flanagan testified as an expert in architecture. He stated that the addition as proposed conforms with the required setbacks under the 2004 Zoning Ordinance.

8. He stated that the five-sided, irregular geometry of the lot, coupled with application of two, 30-foot setbacks and a 25-foot rear setback, makes it very difficult to find a buildable area on the lot, and that application of the 30-foot setbacks to the proposed addition constrains the space so that it is unusable. [Transcript, p. 43-46].

9. Mr. Flanagan confirmed that there is nowhere on the lot to build an addition without a variance, and that locating the addition more to the side or rear of the property would place the addition much closer to abutting and confronting properties. [Transcript, p. 46-47, 50].

10. Mr. Flanagan testified that the proposed construction is consistent with the Kensington Master Plan and that it would not impair the use and enjoyment of neighboring properties in any way. [Transcript, p. 52].

FINDINGS OF THE BOARD

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 five-sided corner lot is unusually shaped and uniquely constrained by the combination of its shape and the 30-foot front and side street setbacks and 25-foot rear setback. The Board finds that this, together with the lot's small size in relation to lots around it, creates a unique situation that gives rise to a practical difficulty for the Petitioner in locating an addition anywhere on the lot without a variance.

2. *Section 59.7.3.2.E.2.b - the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioner is not responsible for the shape of her lot or for the imposition of the required setbacks to her lot.

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 requested variances are minimal and will allow the 218 square feet needed to construct a usable addition.

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 is entirely consistent with the other residential uses in the neighborhood and will not impair the Master Plan in any way.

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 that the proposed, one-story addition will have little impact on abutting or confronting properties and that it will have less impact on those properties in the location proposed than if it were located further to the side or rear of the property. Ms. Vess testified that her neighbors had no objection to her proposed addition, and Mr. Flanagan testified that the proposed addition will not impair the use and enjoyment of neighboring properties in any way.

Accordingly, the requested variances to allow construction of an addition with a bay window are granted subject to the following conditions:

1. Petitioner shall be bound by her testimony and exhibits of record, the representations of her attorney and the testimony of her witness, to the extent that such testimony and evidence are mentioned in this opinion; and
2. Construction shall be according to Exhibit Nos. 3, 4(a)-(b), and 5(a) – (f).

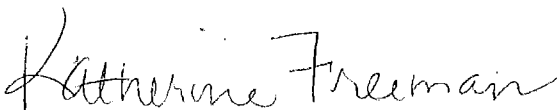
Therefore, based upon the foregoing, on a motion by David K. Perdue, Chair, seconded by Carolyn J. Shawaker, Vice-Chair, with Stanley B. Boyd, John H. Pentecost, and Edwin S. Rosado in agreement, the Board adopted the following Resolution:

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.



David K. Perdue
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 26th day of June, 2015.



Katherine Freeman
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 (See Section 59-A-4.63 of the County Code). 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-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.