

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6474

PETITION OF WENDY KENT

OPINION OF THE BOARD

(Public Hearing Date: October 7, 2015)
(Effective Date of Opinion: November 2, 2015)

Case No. A-6474 is an application by Wendy Kent for an eleven-foot variance from the 20-foot rear lot line setback required by Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance. The Petitioner proposes to construct a one-story addition.

The Board of Appeals held a hearing on the application on October 7, 2015. Wendy Kent, and Eric Saul, her architect, appeared in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Lot 1, Block 38-D, Fletcher's Addition to Takoma Park, located at 7216 Garland Avenue, Takoma Park, Maryland 20912 in the R-60 Zone.
2. The requested variance is for a proposed addition that is partly on the west side, and partly on the south side of the house.
3. The subject property is an unusually shaped corner lot. The rear (western) lot line and northern side lot line intersect at an obtuse angle that significantly constrains the buildable area on the lot. This results in a non-rectilinear lot and reduces the available lot coverage on the R-60 lot to 22.5% or 1,392 square feet, as compared to the 35% lot coverage standard for R-60 lots. [See Exhibit Nos. 3 and 4].
4. The existing house was built in 1948. A portion of the existing house encroaches into the rear setback. A one story addition was constructed on the rear of the house by a prior owner, which encroaches into the rear setback by six feet. In response to a Board

question, Mr. Saul testified that the footprint of the existing house is 880 square feet. Mr. Saul testified that "every house has a side addition...so it's very possible that that north addition was always there, because every single house has that piece." [Transcript, October 7, 2015, p. 8].

5. Mr. Saul testified that there is a 10-foot increase in elevation from the curb to the front door of the house, and a fifteen-foot increase from the intersection of Minter Place and Garland Avenue to the rear corner of the lot. In response to a Board question, he stated that the neighboring houses to the northwest sit two or three feet higher than the subject property.

6. Mr. Saul testified that the subject property's rear lot line is the side lot line of the abutting neighbor on Minter Place. He pointed out that the R-60 zone requires a seven-foot side yard setback and that the requested variance of nine feet for the addition is greater than what would be expected for a side lot line.

7. Ms. Kent testified that the addition is requested to expand the home's existing kitchen, which is extremely narrow, and to add a shower to the current half bath. She also testified that that the addition was designed at one story to minimize its impact on neighboring properties and to "keep the integrity of the house." [Transcript, p. 16]. She stated that she had discussed her plans with her neighbors. The record contains a petition signed by seven households, described as immediate neighbors of the subject property, in support of the proposed construction and the variance.

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. 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 subject property has a unique, non-rectilinear shape because of the angle of the intersection of the northern and western property lines, combined with the angle of the eastern and southern property lines. The application of the required setbacks to the unusual shape of this lot results in a building envelope that allows just 22.5% lot coverage, rather than the 35% ordinarily allowed in the zone. When this is combined with the extreme slope from southeast to northwest on the property, the result is a uniquely and extremely constrained building area.

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

Ms. Kent is not the original owner of the subject property and had nothing to do with the creation of her unusually shaped 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 unusual shape and topography of the corner lot create an extremely constrained buildable area, creating a practical difficulty for the Petitioner. The Board finds that the requested variance of eleven feet, allowing an encroachment of just three feet more than the existing addition, is minimal, and that the structures will be set back more than the structures on the abutting lots along the common property lines because for those properties these are side lot lines. The addition will be only one-story, and will be at a lower elevation than the abutting houses.

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;*

The Board finds that the proposed addition, designed to "keep the integrity of the existing house," and allowing the Petitioner to remain in her home, is entirely consistent with the recommendation of the Takoma Park Master Plan to preserve "the existing residential character, encourage neighborhood reinvestment and enhance the quality of life throughout Takoma Park." [Exhibit No. 3].

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 one-story design of the addition, together with the fact that the structures will be set back more than the structures on the abutting lots along the common property lines because for those properties these are side lot lines, and the location of the addition at a lower elevation than the abutting houses, minimizes its impact on abutting or confronting properties. Thus the Board finds that granting the variance will not be adverse to the use and enjoyment of those properties.

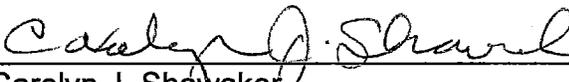
Accordingly, the requested variance to allow an addition within nine feet of the rear lot line is **granted**, subject to the following conditions:

1. Petitioner shall be bound by her testimony, the testimony of her architect and exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion; and

2. Construction shall be according to Exhibit Nos. 4 and 5 (a-c).

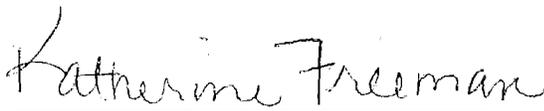
Therefore, based upon the foregoing, on a motion by John H. Pentecost, seconded by Edwin S. Rosado, with Stanley B. Boyd, Carolyn J. Shawaker, then Vice-Chair, and David K. Perdue, then Chair, in agreement, the Board adopted the following Resolution:

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 2nd day of November, 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.