

**RESOLUTION No. R-09-2018**

**A RESOLUTION OF THE TOWN OF KENSINGTON COUNCIL GRANTING A  
FENCE VARIANCE FOR 3908 BALTIMORE STREET**

**WHEREAS**, an application for a fence variance has been filed by the owners, Jeffrey and Kathleen Buss (“Applicants”), for the certain real property located at 3908 Baltimore Street (“Property”); and

**WHEREAS**, the purpose of the variance is to allow the construction of a six (6) foot fence within the front plane of the property, which would exceed the Town’s four (4’) foot requirement of Section 5-109(b) of the Town Code; and

**WHEREAS**, the proposed fence is to be located within the front plane of the property where a six (6) foot fence was removed in 2017 for preparation of grading and landscaping improvements to the property; and

**WHEREAS**, the Town Council may grant a petition for a variance upon a hearing when the Council finds that:

1. *Strict application of the Town regulations would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property;*
2. *The variance is the minimum reasonable necessary to overcome any exceptional conditions; and*
3. *The variance can be granted without substantial impairment of the intent, purpose, and integrity of this article.*

**WHEREAS**, the Mayor and Council held a hearing on the variance request on May 14, 2018 at a public meeting, after due notice to the public and the adjacent neighbors.

**NOW, THEREFORE, BE IT RESOLVED** that the Council of the Town of Kensington, based on the testimony presented at the hearing on May 14, 2018 and evidence submitted, , adopts the following findings of fact and conclusions of law:

Findings of Fact:

1. Applicants are the owners of 3908 Baltimore Street in Kensington, Maryland, which is zoned single family residential.
2. The Applicants’ Property is adjacent to Connecticut Avenue, which is a busy highway, with a good deal of ambient noise from vehicles.
3. The Property is a corner property with an irregular, non-rectangular shape which locates the house closer to the street.

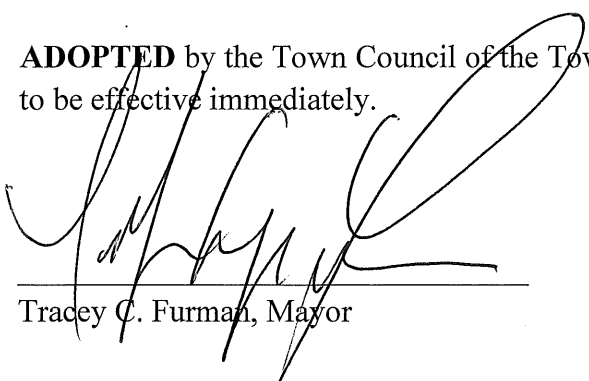
4. Previously, the State Highway Administration (“SHA”) constructed a sidewalk on Connecticut Avenue in this vicinity, and installed a retaining wall.
5. The Applicants’ Property was already improved with a retaining wall, a 6-foot high fence, and a stand of bamboo, all designed to buffer the sound from Connecticut Avenue, when the sidewalk was installed.
6. The Applicants decided to regrade the Property, rebuild the retaining wall to match the wall installed by SHA, and rebuild the fence. The fence was taken down as part of this plan.
7. Between the time that the fence was removed and the Applicants applied for a Town permit to replace it, the Council amended Section 5-109(b) of the Town Code, limiting front yard fences to 4 feet in height.
8. The Applicants are requesting that they be allowed to reinstall the fence as part of the buffer from Connecticut Avenue.

Conclusions of Law:

1. The shape of the lot, and the proximity to Connecticut Avenue, are specific situations or conditions that are peculiar to the Property and justify the variance. The proximity of the Property to Connecticut Avenue, along with the unusual shape of the Property, which requires the house to be located closer to Connecticut Avenue, have created a unique situation which will require a retaining wall, vegetation, and the proposed six (6’) fence to help abate traffic noise and allow the Applicants the enjoyment of their yard
2. The requested variance is the minimum necessary to overcome the exceptional conditions of the property.
3. The requested variance is not detrimental to neighboring properties or the community as a whole, and the variance can be granted without substantial impairment of the intent, purpose, and integrity of this article. The fence merely replaces a fence that was present for many years.

**BE IT FURTHER RESOLVED** by the Town Council that the Owner’s variance request for the placement of a six (6’) fence within the Connecticut Avenue facing front plane of the property located at 3908 Baltimore Street is hereby granted.

**ADOPTED** by the Town Council of the Town of Kensington on this 14th day of May 2018, and to be effective immediately.



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Tracey C. Furman, Mayor

**THIS IS TO CERTIFY** that the foregoing Resolution was adopted by the Town Council in public meeting assembled on the 14th day of May, 2018.

  
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Susan Engels, Clerk- Treasurer