

Resolution No. R-05-2023

Adopted: March 13, 2023

A Resolution of the Mayor and Town Council of Kensington Approving a Variance to encroach one foot, five inches (1' 5") into the ten-foot (10') side yard setback for a dwelling on land zoned for single-family use at 3418 Oberon Street, in accordance with Section 5-104 (b) of the Town Code.

WHEREAS, the Town received a permit application for new construction by Jacqueline Baur and Daniel Lonnerdal, ("the Applicants"), for certain real property located at 3418 Oberon Street, ("the Property"); and

WHEREAS, the application for new construction was determined following a review by the Department of Permitting Services, ("DPS"), which concluded that the originally proposed addition for a second story would require the existing dwelling to comply with Montgomery County's minimum front setback requirement of twenty-five feet (25'); and

WHEREAS, the Applicants proposed site plan to expand the footprint of the existing foundation for the new build requires compliance with the Town of Kensington's minimum side yard setback of ten feet (10'), as regulated within Section 5-104, "Building Lines", of the Town Code; and

WHEREAS, the Applicants have filed a Variance request before the Town Council to encroach one foot, five inches (1' 5") into the ten-foot (10') side yard setback for a dwelling on land zoned for single-family use; and

WHEREAS, the Town Council may grant a petition for a Variance after a hearing when the Council finds that:

1. There are specific situations or conditions that are peculiar to the property that makes it unique from neighboring properties, including, but not limited to: (i) shape (narrowness/shalowness); (ii) topography; (iii) historic significance; (iv) environmental features; or (v) other extraordinary conditions unique to that property. The conditions must result from the application of building or zoning standards and not from the action, inaction or the personal circumstances of the property owner or the owner's predecessor(s); and
2. The requested variance is the minimum necessary to overcome the unique condition of the property; and
3. The requested variance is not detrimental to neighboring properties or the community as a whole.

WHEREAS, the Mayor and Council conducted a Public Hearing on the Variance request at the February 13, 2023, Council meeting, after due notice to the public and to the adjacent neighbors, and received testimony on the requested Variance. The Council closed the record following the Public Hearing.

NOW, THEREFORE, BE IT RESOLVED that the Council of the Town of Kensington, based on the testimony presented at the Public Hearing on February 13, 2023, and evidence submitted, adopts the following findings of fact and conclusions of law:

Findings of Fact:

1. Jacqueline Baur and Daniel Lonnerdal (“the Applicants”), are the owners of 3418 Oberon Street in Kensington, Maryland, which is zoned single-family residential (“the Property”).
2. The existing dwelling at 3418 Oberon Street is a split-foyer, single-family, home built in 1963.
3. The existing dwelling has an encroachment of one-foot, four inches (1’ 4”) and the Variance is requesting the new build to have a maximum encroachment of one-foot, five-inches (1’ 5”).
4. The proposed new build would expand the footprint from the existing dwelling roughly 200 square feet with a 5’ x 40’ rear addition beyond the existing foundation.
 - a. The plans also propose a 230 square foot porch within the front plane.
5. The adjacent lot to the east, 3416 Oberon Street, is owned by Virginia Sparrow, and the Town was advised by a local realtor that the property will be on the market soon.
6. The adjacent lot to the west, 10537 Wheatley Street, is owned by Scott Goode and Leslie Olson.
7. The proposed encroachment would not bring the dwelling unit within fifteen (15) of any other dwelling.

Conclusions of Law:

1. The strict application of Town regulations would result in undue hardship due to the existing encroachment (1’ 4”) into the side yard setback, where the Applicants are requesting to expand the footprint to an encroachment of one foot, five inches (1’ 5”).
2. The proposed Variance is the minimum necessary to overcome the unique condition of the new build requirement in what would have been a modest addition to the existing dwelling.
3. The Variance can be granted without impairment of the intent, purpose, and integrity of this article.

BE IT FURTHER RESOLVED THAT the Variance request to encroach one foot, five inches (1’ 5”) into the required ten-foot (10’) side yard setback at the Property located at 3418 Oberon Street be and it is hereby granted.

ADOPTED by the Town Council of Kensington, Maryland at the regular public meeting assembled on the 13th day of March, 2023.

EFFECTIVE the 13th day of March, 2023.

ATTEST: TOWN OF KENSINGTON, MARYLAND

By: *Susan C. Engels*
Susan C. Engels, Clerk – Treasurer

Tracey C. Furman
Tracey C. Furman, Mayor