

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-113-16 Love and Betty Russell

Enclosed herewith is a copy of the Board Order setting forth the action taken by the Board of Appeals in your case on the following date: October 26, 2016 .

CERTIFICATE OF SERVICE

This is to certify that on November 16, 2016 , the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

(Original Signed) _____
Anne F. Carter
Administrator

cc: Petitioners
Adjoining Property Owners
M-NCPPC, Permit Review Section
DPIE/Building Code Official, Permitting
City of Mount Rainier
Other Interested Parties

BEFORE THE BOARD OF APPEALS FOR PRINCE GEORGE'S COUNTY, MARYLAND
Sitting as the Board of Zoning Appeals

Petitioners: Love and Betty Russell¹

Appeal No.: V-113-16

Subject Property: Part of Lot 12, Block 6, Mount Rainier Subdivision, being 4119 32nd Street, Mount Rainier, Prince George's County, Maryland

Municipality: City of Mount Rainier

Witnesses: Victoria Ladele, Petitioners' daughter²

Steven Rogers, neighbor

Sally Ann Rogers, neighbor

Robert Sabath, neighbor

Heard: October 5, 2016; Decided: October 26, 2016

Board Members Present and Voting: Bobbie S. Mack, Chairperson

Anastasia T. Johnson, Member

RESOLUTION

This appeal is brought before the Board of Appeals, sitting as the Board of Zoning Appeals for the Maryland-Washington Regional District in Prince George's County, Maryland (the "Board"), requesting variances from the strict application of the provisions of Subtitle 27 of the Prince George's County Code (the "Zoning Ordinance").

In this appeal, a proceeding pursuant to Section 27-229 of the Zoning Ordinance, Petitioners request that the Board approve variances from Section 27-442(e)(Table IV) of the Zoning Ordinance, which prescribes that each lot shall have front and side street yards at least 25 feet in depth, and Section 27-442(c)(Table II), which prescribes that not more than 30% of the net lot area shall be covered by buildings and off-street parking. Petitioners propose to validate existing conditions and construct a second-floor addition, covered front porch and deck. Variances of 17 feet front yard depth, 4 feet side street yard depth and 3.2% net lot coverage are requested.

Evidence Presented

1. The property is made up of part of a lot that was subdivided in 1903, contains 5,500 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling, driveway and shed. Exhibits ("Exhs.") 2, 4, 8(A) thru (D), 11, 12 and 31. The existing dwelling was built in 1923. Exh. 11.

2. The property was created as it exists today in 1945. Exh. 5.

3. The property is located within the municipal boundaries of the City of Mount Rainier and within the Gateway Arts District Development Overlay Zone. Exh. 12.

4. The property is a corner lot with the dwelling facing the legal front street. Exh. 2. An existing driveway extends past the house into the rear yard and a shed sits close to the end of the driveway. Exh. 2.

5. Petitioners would like to construct a 22.3' x 43.8' second floor addition, 5' x 5' covered front porch and 13.9' x 19.6' deck (Exh. 2), but variances are needed to obtain a building permit. Since the new front porch would be located 8 feet from the front street line and the existing dwelling is, and second-floor addition would be, located 21 feet from the side street line, variances of 17 feet front yard depth and 4 feet side street yard depth were requested. Exh. 16.

¹ Love Russell also goes by the last name of Ladele. See Exh. 25.

² Victoria Ladele stated that she is now listed on the deed with her father and resides at the subject property. See Exh. 25.

6. In addition, since the allowed amount of net lot coverage (30%) is already exceeded by existing development on the property and construction of the covered front porch would cause a further overage, a variance of 3.2% net lot coverage was also requested. Exhs. 15 and 16.

7. Victoria Ladele testified that her father has owned the property since 1991. She explained that the basement in the house is not up to the current code requirements and measures only about 6 feet in height. She stated that when they were looking into expanding their living space in the basement, but mold and asbestos were discovered in the basement. She testified that as a result mold remediation and asbestos abatement processes were attempted. *See* Exh. 26. She stated that both their engineers and architects advised not to refurbish the basement for living space but instead build a second level on the house. She explained that the footprint of the house will not change with the second floor addition.

8. She further testified that there are a number of two-story houses in the neighborhood, including the house next door, and similar renovations have occurred or are occurring on nearby properties. Exhs. 9(A) thru (C), 27(A) thru (G), 29(A) thru (C). *Also see* Exhs. 13(B) thru (F). She stated that their property is at the bottom of a hill and will not be taller than any of the other neighborhood two-story houses.

9. She also submitted a petition signed by neighbors in support of Petitioners' request. Exh. 28.

10. Petitioner Love Russell testified that he does not currently live at the property, but his daughter does live there and is managing the plans for the work at the property.

11. Sally Ann Rogers (3201 Taylor Street) testified that she had concerns about the proposed design and height of Petitioners' house, but as long as Petitioners work with the Mount Rainier Design Review Board to ensure that the construction is compatible with the rest of the neighborhood, she does not have a real strong objection.

11. Steven Rogers (3201 Taylor Street) testified that he shares his wife's concerns and also stated that his own house is two stories.

12. Robert Sabath, a neighbor who lives across the street from the subject property (4110 32nd Street), supported the request.

13. The City of Mount Rainier requested that the request be approved. Exh. 33.

14. The Subdivision Section of The Maryland-National Capital Park and Planning Commission ("M-NCPPC") commented that the site plan (Exh. 2) correctly reflects the lot as described in the deed recorded on December 18, 1945, in Liber 799 at folio 471 (Exh. 5) and the property was legally subdivided pursuant to County Code Section 24-107(c)(7)(A). Exh. 21.

15. The Historic Preservation Section of M-NCPPC commented that the subject property is located within the Mount Rainier National Register Historic District (68-13-00) and that the variance request will have no effect on Historic Sites, Historic Resources or Historic Districts. Exh. 32.

Applicable Code Section and Authority

Section 27-230 of the Zoning Ordinance authorizes the Board to grant variances when, by reason of exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition of specific parcels of property, the strict application of the Zoning Ordinance would result in peculiar and unusual practical difficulties or an exceptional or undue hardship upon the owner of the property, provided such relief can be granted without substantial impairment of the intent, purpose and integrity of the General Plan or Master Plan.

Findings of the Board

After hearing all the testimony and reviewing the evidence of record, the Board finds that the requested variances comply with the applicable standards set forth in Section 27-230, more specifically:

Due to the property being created in 1945, the house being built many years ago, the location of the house on the property, other existing conditions on the property, the existing driveway covering a significant amount of the net lot area, the need for additional living space, the basement being deemed unsuitable for living space, the proposed second-story construction not changing the footprint of the house and the character of the neighborhood, granting the relief requested would not substantially impair the intent, purpose and integrity of the General Plan or Master Plan, and denying the request would result in a peculiar and unusual practical difficulty upon the owners of the property.

BE IT THEREFORE RESOLVED, unanimously, that variances of 17 feet front yard depth, 4 feet side street yard depth and 3.2% net lot coverage in order to validate existing conditions and construct a 22.3' x 43.8' second floor addition, 5' x 5' covered front porch with steps, and 13.9' x 19.6' deck on the property located at Part of Lot 12, Block 6, Mount Rainier Subdivision, being 4119 32nd Street, Mount Rainier, Prince George's County, Maryland, be and are hereby APPROVED. Approval of the variances is contingent upon development in compliance with the approved site plan, Exhibit 2, and the approved elevation plan, Exhibit 3.

BOARD OF ZONING APPEALS

By: (Original Signed)
Bobbie S. Mack, Chairperson

NOTICE

Within thirty (30) days from the date of this decision, any person, firm, corporation, or governmental agency who was a party to the Board's proceedings and is aggrieved by its decision may file an appeal to the Circuit Court of Prince George's County.

Further, Section 27-233(a) of the Prince George's County Code states:

A decision of the Board, permitting the erection of a building or structure, shall not be valid for more than two (2) years, unless a building permit for the erection is obtained within this period and the construction is started and proceeds to completion in accordance with the terms of the decision and the permit.