BOARD OF APPEALS
for
MONTGOMERY COUNTY

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Case No. A-6708

PETITION OF SAHEL AND LAILA DADRAS

OPINION OF THE BOARD
(Opinion Adopted July 28, 2021)
(Effective Date of Opinion: August 20, 2021)

Case No. A-6708 is an application for two variances necessary for the proposed construction of a new single family dwelling. The proposed construction requires a variance of 50.62 feet as it is within 45.25 feet of the front lot line (Old Seven Locks Road). The required setback is 95.87 feet, in accordance with Section 59-4.4.7.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of 38.15 feet as it is within 57.50 feet of the front lot line (Shawfield Road). The required setback is 95.65 feet, in accordance with Section 59-4.4.7.B.2 of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, July 28, 2021. All participation was done via Microsoft Teams. Jody S. Kline, Esquire, appeared on behalf of the Petitioners, assisted by Reza Tabriz, the engineer and builder for the proposed residence.

Decision of the Board: Variances **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 6, Seven Locks Hill Subdivision, located 8401 Old Seven Locks Road in Bethesda, Maryland 20817, in the R-200 Zone. It is a multi-sided corner property with a western property line that fronts on Old Seven Locks Road and a southwestern property line that fronts on a different segment of Old Seven Locks Road (also known as Shawfield Road). The subject property was platted in 1948 and is 39,641 square feet in size. It contains a single family home that was built in 1950. The Petitioners purchased the property in 2012, and are now seeking to replace the existing home with a new single family dwelling. See Exhibits 1(b), 3, 7(a), and 7(b).

2. The Statement of Justification ("Statement") states that the Petitioners are seeking to "reconstruct a modern home on the property consistent with the quality of large surrounding houses." See Exhibit 3. The Statement states that because the Petitioners are seeking to replace their existing home, and because there are eligible properties within 300 feet to the north and to the south of the subject property, the proposed construction is subject to an Established Building Line ("EBL") setback along both street frontages instead of the standard 40 foot setback that would otherwise be required in the Zone.[1] The Statement indicates that the shallowness of the subject property relative to the neighboring properties causes the Petitioners a practical difficulty in complying with the EBL, as follows:

> This variance application is driven by the need to comply with the requirements of the "established building line" which are a representation of the"... historic or traditional development pattern of a street or neighborhood."
>
> The lots immediately to the north and south of the subject property are approximately twice as deep as the Applicants' lot and the residences on those lots are set back 150 feet and 125 feet, respectively behind Old Seven Locks Road right-of-way.
>
> Furthermore, the two adjacent lots "wrap around" the subject property and prevent the proposed residence from being located any deeper on the property. The proposed house is sited to be 30 feet from the rear lot line, the minimum setback in this R-200 zone. Therefore, the Applicants are able to reduce the amount of the front yard/ EBL variance required only by seeking a variance from the rear property line setback and, even then, the Applicants could not solve the entire front yard setback problem because a rear yard variance could only provide 30 of the necessary 55.55 linear feet needed to comply with the EBL.

See Exhibit 3. The Zoning Vicinity Map clearly shows the shallow nature of the subject property relative to neighboring properties, and illustrates the "wrap around" of the other properties that is described in the Statement. See Exhibit 7(a). The Statement concludes that the application of the EBL setbacks to this shallow property reduces the buildable envelope available to the Petitioners and severely constrains their ability to redevelop their property. See Exhibit 3.

3. The Statement notes that the Petitioners are not responsible for the development to the north and south of their property. The Statement states that granting the requested variance relief "will allow for construction of a new residence that complies with the

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[1] The Statement further explains the EBL calculation, stating that "Section 59.4.4.1.A of the Zoning Ordinance provides in pertinent part, that if more than 50% of two or more houses within 300 feet of the subject property are set back more than the minimum required in the applicable zone, an 'established building line' is created that must be equal to the average front setbacks of those surrounding houses." Applying this calculation, the Statement states that the subject property is subject to an EBL of 95.87 feet along its western street frontage and 95.65 feet along its southwestern street frontage. The proposed setbacks along those street frontages are 45.25 feet and 57.50 feet respectively. See Exhibit 3.

average pattern of development in the surrounding area and will allow for an upgrading of development to be more consistent with the character of surrounding residences." Finally, the Statement asserts, with respect to the impact that granting the requested variances would have on neighboring properties, that the grant of the requested variances "will have no adverse effect on surrounding properties and will, in fact, improve the appearance and character of this established neighborhood." See Exhibit 3.

4. At the hearing, Mr. Kline oriented the Board to the subject property, using the Zoning Vicinity Map in the record at Exhibit 7(a). Referring to the aerial photograph in the record at Exhibit 9(b),[2] Mr. Kline stated that the property contains an existing house that was built in 1950. He explained that a tree fell on the house two years ago, and that the property has been vacant ever since. He stated that when the Petitioners went to the Department of Permitting Services to get building permits, after deciding to tear the existing house down and rebuild, they learned of the EBL setbacks. Mr. Kline stated that the Petitioners cannot push the house further back on the property because the proposed house already extends to the rear setback line. Mr. Kline explained that if the Petitioners had simply renovated their existing home, no variances would have been needed, but that because they are proposing a new build, they must meet the EBL setbacks. He stated that this causes the Petitioners a practical difficulty, since the subject property's buildable envelope, after application of the required setbacks, is "very narrow," stating that it is narrower than that of any other house on this street.

5. Mr. Tabriz testified that he is the engineer and builder for the Petitioners' proposed residence, which he stated will look like the rendering submitted for the record (Exhibit 5(c)). He testified that because of the steep slope on the southern portion of the subject property,[3] there is not much room to move the proposed construction, confirming in response to a Board question that there is no practical alternative to site the house on the property other than the area proposed. Mr. Tabriz testified that the other lots on the street have a different shape than the subject property, and are much deeper than the subject property.

CONCLUSIONS OF LAW

Based on the binding testimony and the evidence of record, the Board finds that the requested variances can be granted. The variances comply 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;*

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[2] This Exhibit was originally marked Exhibit No. 5(b), but was renumbered following the hearing to accommodate the plans and elevations at their usual position on the Exhibit List.

[3] Mr. Kline stated that there is about a 30 foot drop from the area south of the house to the cul de sac.

The Board finds, based on the Statement, the Zoning Vicinity Map, and the testimony of Mr. Tabriz, that the subject property is much shallower than neighboring properties, including those that were used to calculate the EBL. See Exhibits 3 and 7(a). The Board further finds, based on the testimony of Mr. Tabriz, that the south side of the property is encumbered with a steep slope that constrains construction in that area. The Board finds that these factors combine to constitute an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test.

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

The Petitioners purchased this property, which was recorded in 1948 and developed in 1950, in 2012. See Exhibit 3. The subdivision plat in the record at Exhibit 7(b) shows that the properties to the north, and the abutting property to the south, which were included in the EBL calculations, were also recorded in 1948. See Exhibit 7(b). In light of the foregoing, the Board finds that the Petitioners are not responsible for the shallowness of their property relative to surrounding properties. The Board further finds that the Petitioners are not responsible for the depth of or development on other properties along Old Seven Locks Road/Shawfield Road, or for the constraints imposed on their property's buildable envelope by the imposition of the EBL setbacks. Finally, the Board finds that there is nothing in the record to suggest that the Petitioners are responsible for the severe slope of their property, and thus finds that they are not. Accordingly, the Board finds that the special circumstances or conditions are not the result of actions by the Petitioners, in satisfaction of this element of the variance test.

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, based on the subject property's shallowness, that the imposition of EBL setbacks created by properties that are much deeper than the subject property significantly constrains the buildable envelope available on the subject property, causing the Petitioners a practical difficulty. The Board finds that the severe slope on the southern portion of the property further limits development on this property and exacerbates this difficulty. In addition, the Board finds that the requested variances, which would allow development of the subject property with front setbacks that exceed the 40 foot setback that would otherwise be required in the R-200 Zone, but do not comport with the EBL setbacks required in the instant case, are the minimum necessary to overcome the practical difficulty posed by full compliance with the Zoning Ordinance on account of the shallowness and slope of the subject property, in satisfaction of this element of the variance test.

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 construction will continue the residential use of the property and thus can be granted without substantial impairment to the intent and integrity of the Potomac Subregion Master Plan (2002). Accordingly, the Board finds that this element of the variance test is satisfied.

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 granting the requested variances to allow the proposed construction will not be adverse to the use and enjoyment of abutting and confronting properties, in satisfaction of this element of the variance test. In support of this, the Board notes that despite proper posting of the variance sign, no correspondence from neighboring property owners was received, and no one appeared at the variance hearing to oppose the requested variances. The Board further notes that even with the grant of the requested variances, the proposed construction will be set back from the front lot lines more than the 40 feet that would otherwise be required in the R-200 Zone absent the imposition of an EBL. Finally, the Board accepts the assertion made in the Statement that the grant of the requested variances would not have an adverse effect on surrounding properties, but rather would improve the appearance and character of the neighborhood.

Accordingly, the requested variances are **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and

2. Construction shall be in accordance with Exhibits 4 and 5(a)-(c).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, with Bruce Goldensohn, Vice Chair, Mary Gonzales, and Caryn Hines in agreement:

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.

John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 20th day of August, 2021.

Barbara Jay
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. 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 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.