BOARD OF APPEALS
for
MONTGOMERY COUNTY

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Case No. A-6727

PETITION OF BRUCE AND BARBARA KEHR

OPINION OF THE BOARD
(Public Hearing Date: January 12, 2022)
(Effective Date of Opinion: January 19, 2022)

Case No. A-6727 is an application by Petitioners Bruce and Barbara Kehr for two variances needed for the expansion of an existing accessory structure (detached garage). The proposed construction requires a variance of eight (8) feet as it is within four (4) feet of the left lot line. The required setback is twelve (12) feet, in accordance with Section 59-4.4.7.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance to be located forward of the rear building line. Section 59-4.4.7.B.2.a of the Montgomery County Zoning Ordinance requires that accessory structures be located in the rear yard only.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, January 12, 2022. All participation was done via Microsoft Teams. Petitioners Bruce and Barbara Kehr participated in support of the requested variances, and were represented by Jody S. Kline, Esquire.

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

EVIDENCE PRESENTED

1. The subject property is Lot 23, Block 2, Timberwood of Potomac Subdivision, located at 9429 Holbrook Lane, Potomac, Maryland, 20854, in the R-200 Zone. The Property is a "five-sided parcel of land having no parallel sides." It has an area of 15,877 square feet. The property's rear lot line is almost three times as long as its front lot line, resulting in "narrowness ... at the garage location" and "limited lot width at the mid-lot setting of the house and the garage." See Exhibits 3 and 4.

2. The Justification Statement ("Statement") submitted by the Petitioners states that their existing, detached garage is 18 feet wide and is "unable to reasonably accommodate two modern vehicles," and that as a result, the Petitioners are seeking to expand the width

of their garage by eight (8) feet to enhance its utility and to allow for improved access to their vehicles. The Statement indicates that the existing garage is "unable to reasonably accommodate two modern vehicles," that the "desired garage expansion has been designed to be as efficient as possible so as to minimize the amount of variance requested," and that the resultant garage will be "compatible in scale and appearance with their adjacent residence." See Exhibit 3.

3. The Statement states that the Petitioners' existing garage was built in 1974, the same time as their house, and that it is located beside their house in a location that is forward of the house's rear building line, making the garage a nonconforming structure. See Exhibits 3 and 4. The building permit denial issued by the County's Department of Permitting Services ("DPS") confirms that the existing garage is nonconforming. See Exhibit 6.

4. The Statement states that having a detached garage that is located forward of the rear building line of the principal structure (house) is a feature common to the properties in this neighborhood, noting that "construction of garages in the 'TIMBERLAWN' subdivision adjacent to residences rather than behind the companion residence is a common design feature within this community." See Exhibit 3. The Zoning Vicinity Map shows that almost all of the homes in the immediate area have detached accessory structures (presumably garages) located forward of the rear building line of the principal structure (house). See Exhibit 8(a).

5. The Statement states that the expanded garage could not be relocated behind the rear building line of the home on the left side "due to the fact that an existing back yard pool and apron would not provide a 12-foot setback from the side or rear lot line in the southeast corner of the subject property." See Exhibit 3. The Statement further states that the garage could not be placed behind the home on the right side, as follows:

> On the right or northern side of the Kehrs' property, the building envelope area is very constrained, and a garage located to the right and to the rear of the house would require substantial grading and disturbance of a well-established front yard and require cutting down numerous mature trees, and directly impinge upon our neighbor's house to create access to a garage to be constructed at the "top of the hill."

6. In addition to there being a pattern in the Timberlawn neighborhood of detached garages being located adjacent to (or forward of) the associated homes, the Statement indicates that there is a pattern of variances having been granted in this neighborhood, and in particular on this cul-de-sac, for construction similar to that proposed by the Petitioners.[1] The Statement goes on to conclude, as a result, that the Petitioners' proposed construction "continues a well-established development pattern within the surrounding neighborhood, with three of these properties sharing the same cul de sac location as the Petitioners' property, and does not introduce an accessory building location that is not already common in the neighborhood." See Exhibit 3.

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[1] The Statement highlights four nearby variances on the Petitioners' street, three of which are for properties located on the cul-de-sac where the Petitioners' property is located, and two of those being for garage/carport additions. See Exhibit 3.

7. The Statement indicates and the Site Plan shows that the existing garage is located 12 feet from the left side lot line, which is the minimum setback in the R-200 Zone for both principal buildings and accessory structures. See Exhibits 3 and 4. With the proposed expansion, the garage will be located four (4) feet from that lot line. The Statement indicates that expanding the existing garage towards the house rather than towards the left side lot line, resulting in the garage being attached rather than detached, would be "inconsistent" with the neighborhood design of having "two separate structures," and "would not totally eliminate the need for a variance." See Exhibit 3.

8. The Statement states that the narrowness and shape of the subject property make it unique, noting, as described in paragraph 1, that the subject property has five sides, none of which are parallel, and has a rear lot line that is almost three times longer (wider) than its front lot line (165 feet versus 55+/- feet). See Exhibit 3. The Statement furthers states that because of this, "[t]here is therefore limited lot width at the mid-lot setting of the house and the garage," reiterating that "the garage sought to be expanded is already sited at the 12-foot side yard setback required for an accessory structure," and concluding, as a result, that "any widening of the garage will require a side yard setback variance." (emphasis in original) See Exhibit 3.

9. The Statement states that the Petitioners are not responsible for the unique conditions of their property, noting that they "are dealing with development constraints created at the time of the original platting of the lot in 1971, and the construction of the home in 1974," and that "[t]he extraordinary conditions that [they] must deal with are not of their own making." See Exhibit 3.

10. The Statement asserts that the proposed construction will not be adverse to the use and enjoyment of neighboring properties, noting the offset alignment of the Petitioners' garage and the home to the left, and the assistance of those neighbors in developing the plans for the proposed garage expansion, as follows:

> Although the garage is planned to be located with 4 feet of the common property line with the residence located at 9433 Holbrook Lane, this improvement will not adversely encroach on the use and enjoyment of that lot. A review of the enclosed "Neighborhood Map" will show that the residence (and garage) on the lot at 9433 Holbrook Lane, abutting the left side of the Kehrs' lot, are located much deeper on that lot than are the improvements located on the Kehrs' lot. Indeed, the house at 9433 Holbrook Lane is situated adjacent to the Kehrs' back yard and pool. Therefore, the garage expansion on the subject property will not place a structure close to an occupied residence on an adjacent lot and will not in any way interfere with ingress and egress to the residence. The owners of 9433 Holbrook Lane, themselves having obtained a variance to widen their garage by eight feet, have signed a letter of support for the Petitioners' construction, and in fact have helped the Petitioners think through their design for the project, and voluntarily arranged for several site visits of the interior of their garage by Petitioners.

See Exhibit 3. The record contains letters of support for the grant of the requested variances from three of the Petitioners' neighbors, and no letters of opposition. See Exhibits 7(a)-(c).

11. At the hearing, Mr. Kline used Exhibit 8(b) to orient the Board to the property, noting that it is located on the southwest side of the cul-de-sac, across from a property for which the Board had granted a variance in 2019 for a similar purpose. Mr. Kline stated that the existing garage is located 12 feet from the (left) side lot line, and is separated from the house by an outdoor staircase. He stated that the existing garage is 18 feet wide, and that the Petitioners are seeking to increase the width of the garage by eight (8) feet, to allow room for two cars and modest storage. Mr. Kline noted that when the garage was built, there was no requirement that accessory structures be located behind the rear building line of the principal building (house), and thus he stated that the existing garage is nonconforming. He indicated that the Petitioners are seeking to allow their nonconforming garage to remain where it is, and to be expanded.

Mr. Kline stated that at least four other variances have been granted in the immediate area, three of which are on this cul-de-sac and two of those being for garages. Thus he stated that the Petitioners' proposed construction is consistent with the development pattern in the neighborhood.

Mr. Kline stated that the subject property has five sides but is essentially triangular in shape. He stated that it is 55 feet wide at the front and 165 feet wide at the rear. Mr. Kline stated that the property is 105 feet wide at the point where the house and garage are located, and that those structures take up most of that width. He stated that the topography on the east side of the property would make it difficult to put a driveway on that side of the property, and that relocation of the driveway to the opposite side of the property would require lots of land disturbance, noting that the living level of the home is 10 to 12 feet above Holbrook Road.

Mr. Kline stated that the proposed construction is consistent with the established development pattern in the neighborhood, and is the minimum needed to allow the Petitioners adequate room for their cars and modest storage. Mr. Kline stated that the builder who constructed the original garage thought that its width was adequate, but that the 18-foot wide garage does not work today. Finally, Mr. Kline stated that the proposed garage addition would not be adverse to the neighboring property owners. He noted that the record contains three letters of support, including from the neighbors at 9433 Holbrook Lane, who would be most affected. Mr. Kline used Exhibit 8(b) to highlight that the abutting property to the left is a pipestem lot with a house that is set way back on the property. He stated that the Petitioners' garage is next to the pipestem portion of that property, minimizing its impact.

12. Bruce Kehr testified that he and his wife have lived in their home for 42 years. He testified that the existing garage was built in 1974, and is too narrow for modern cars, noting that the space between the cars, and between the cars and the garage walls, is so limited that he and his wife have to turn sideways to get in and out of their vehicles. Dr. Kehr testified that the design of the garage will stay the same, although the garage will be wider. He testified that his abutting neighbor to the left is supportive of the proposed construction, and that he has letters of support from other neighbors as well.

FINDINGS OF THE BOARD

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;

The Board finds that the subject property has an exceptional five-sided shape that widens from front to rear, and contains no parallel sides. The Board further finds that the area of the subject property containing the existing garage is relatively narrow, and that the topography on the north/east side of the property further constrains development. The Board finds that these conditions, taken together, serve to constrain the Petitioners' ability to locate the proposed construction in compliance with the development standards of the Zoning Ordinance, and constitute unusual or extraordinary circumstances peculiar to the subject property, in satisfaction of this element of the variance test.

Section 59.7.3.2.E.2.a.ii the proposed development uses an existing legal nonconforming property or structure;

The Board finds, based on the Statement and the representations of Mr. Kline, that the existing detached garage, due to its siting forward of the rear building line at a time when accessory structures were not required to be located behind the rear building line, is a legal nonconforming structure. See Exhibit 3. The Board further finds that the Petitioners are proposing to add to this existing structure. Thus the Board finds that the proposed development uses an existing legal nonconforming structure, in satisfaction of this element of the variance test.

Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the Statement, the Zoning Vicinity Map, and the representations of counsel, that the proposed location of this accessory structure is not only consistent with the general location of the existing garage, but also is consistent with the established development pattern around this cul-de-sac, in which six of the seven homes on the cul-de-sac have accessory structures located forward of the rear building line. See Exhibits 3 and 7(a). The Zoning Vicinity Map also shows that the neighboring cul-de-sac has a similar development pattern. Thus the Board finds that the grant of the requested variances would substantially conform with the established historic or traditional development pattern of this street or neighborhood.

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

The subject property was subdivided in 1971, and the existing nonconforming garage was constructed in 1974. Dr. Kehr testified that the Petitioners have lived in their home for 42 years, which dates their involvement with the property to approximately 1980.

There is no evidence in the record to suggest that the Petitioners are responsible for their property's unusual shape and narrow nature at the location of the existing garage, nor is there evidence to show that they are responsible for the construction of the existing nonconforming garage or for the development pattern of the other properties around their cul-de-sac and the neighboring cul-de-sac. Thus the Board finds that the special circumstances or conditions pertaining to this property 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 Statement and the Zoning Vicinity Map, that the subject property and neighboring homes on this cul-de-sac have garages or other accessory structures located forward of the rear building line, and that the requested variance from the requirement that accessory structures be located behind the rear building line is the minimum needed to allow for expansion of the existing nonconforming garage in its current location and in a manner consistent with the historic development of this property and the development pattern of the street or neighborhood, and thus to overcome the practical difficulty that would be imposed by full compliance with the Zoning Ordinance. With respect to the requested side lot line variance, the Board finds that the requested variance is the minimum needed to expand the existing garage in its present location, consistent with the neighborhood pattern and variances previously granted for other properties, and to overcome the unusual narrowness of the subject property at that location due to the property's shape, and is therefore the minimum necessary to overcome the practical difficulties that would otherwise be imposed by compliance with the restrictions of the Zoning Ordinance. Thus the Board finds that this element of the variance test is satisfied.

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 construction of the proposed structure continues the residential use of the home, consistent with the recommendations 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, per the Statement and the statements by Mr. Kline, that granting the requested variances to allow the proposed construction would not have adverse effects on the abutting property to the left, which would arguably be most impacted by the proposed construction, because the improvements on the abutting property are located much farther back on that property than are the improvements on the subject property, and thus the proposed garage expansion "will not place a structure close to an occupied residence on an adjacent lot and will not in any way interfere with ingress and egress to the residence." See Exhibit 3. The Board further notes, again per the Statement, that the

owners of the abutting property to the left assisted the Petitioners with the development of their garage plans, and have submitted a letter of support for the grant of the variance. See Exhibit 7(b). Finally, the Board notes that the record contains letters of support from two other neighbors. See Exhibits 7(a) and (c). In light of the foregoing, the Board finds that the granting of the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variances to allow the proposed expansion of the Petitioners' garage in a location forward of the rear building line and four feet from the left side lot line 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 Richard Melnick, seconded by Caryn Hines, with John H. Pentecost, Chair, Bruce Goldensohn, Vice Chair, and Mary Gonzales 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.

John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 19th day of January, 2022.

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.