BOARD OF APPEALS
for
MONTGOMERY COUNTY

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Case No. A-6736

PETITION OF BRIAN AND KATHERINE LEWIS

OPINION OF THE BOARD
(Public Hearing Date: February 23, 2022)
(Effective Date of Opinion: March 4, 2022)

Case No. A-6736 is an application by Petitioners Brian and Katherine Lewis for a variance needed for the proposed construction of an accessory structure. The proposed construction requires a variance of seven (7) feet as it is within five (5) feet of the left side lot line. The required setback is twelve (12) feet, in accordance with Section 59-4.4.7.B.2.a of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, February 23, 2022. All participation was done via Microsoft Teams. Petitioner Katherine Lewis's father, Bruce Reynolds, participated in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Lot 25, Block 3, Windsor Hills Subdivision, located at 8532 Scarboro Court in Potomac, Maryland, 20854, in the R-200 Zone. It is a four-sided, 0.35 acre property located on the south side of Scarboro Court. See Exhibits 3 and 5.

2. The subject property is bordered on the rear (south) by County-owned woodlands that descend to Cabin John Creek. In addition, the County owns a 30 foot wide strip of land along the left (east) side of the subject property, and a 20 foot wide strip of land along the property's right (west) side, to provide access to the parkland behind the subject property. See Exhibits 3, 3(d), and 5.

3. The subject property slopes severely from front to rear, down to the woodland area and creek, as noted in the Petitioner's Justification Statement ("Statement") and as shown in the photographs submitted with that Statement. See Exhibits 3 and 3(b).

4. The Petitioners purchased the subject property in 2009. At the time of their purchase, there was a 12' x 12' playhouse on the property, located flush against the driveway and five (5) feet from the left (east) property line. The Petitioners are seeking to replace this pre-existing playhouse, which their children enjoyed but have since outgrown, with a more useful structure, described in the submission as a prefabricated 10' x 16' garden shed from Stoltzfus Structures. The replacement structure will be placed in the same location relative to the property's left (east) lot line as the playhouse. See Exhibits 3 and 3(c).

5. The Statement indicates that the proposed replacement structure will not be adverse to the use and enjoyment of neighboring properties, as follows:

> The shed will not impact any abutting properties. Seven huge Norway pines, planted in the 1970s, run down the middle of the 30-foot strip of County land immediately east of the site. Their branches fill that strip. Our driveway drops sharply from the roadway to the site. The trees and the drop shield the site from view. We have included a petition signed by four immediate neighbors asking the Board to grant the variance. This is a close-knit neighborhood. Everyone we've spoken with is agreeable to our plan.

See Exhibit 3. The Petitioners' submission includes a Petition with signatures from four of their neighbors evidencing their support for the grant of the requested variance. See Exhibit 3(a).

6. At the hearing, Mr. Reynolds testified that he lives at the subject property as part of a three-generational family, and that the new structure is a gift for his grandchildren. He testified that because of the County-owned property, the proposed shed will be more than 30 feet from the property line of the neighbor to the left (east). Mr. Reynolds testified that the trees and the dip in the land will shield the view of proposed shed and make it as unobtrusive as the original playhouse. In response to a Board question asking if the shed would be in the same location as the playhouse, Mr. Reynolds testified that it would be in exactly the same spot because there was no other place to locate it.

Mr. Reynolds testified that his neighbors have signed a Petition supporting the grant of the requested variance, explaining that they sought support from those neighbors who might be able to see the structure from their back yards. When asked by the Board about the lack of signature from the neighbor to the left (east), Mr. Reynolds testified that that neighbor is elderly and spends the winters with her son, preventing him from being able to get her signature, but that he was sure she would support the request.

Mr. Reynolds testified that at 10' x 16' x 9.5', the proposed shed will be slightly narrower and shorter than the 12' x 12' x 13' playhouse, but that it will be slightly longer. He testified that the proposed shed will sit on a gravel base, and that it will be trucked to the property already assembled. He testified that it will not have running water.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variance can be granted. The requested variance complies 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, based on the Statement and photographs submitted with the variance application, that the subject property slopes downward from front to rear, and that this slope is particularly severe behind the existing house. See Exhibits 3 and 3(b). The Board finds that the severity of this slope constitutes 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 Board finds that the Petitioners purchased the subject property in 2009, and are not responsible for its topography, 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 that the Petitioners are seeking to replace a pre-existing playhouse with a slightly narrower but longer shed, in the same location as the playhouse and at the same distance from the property's left (east) property line. The Board finds that this property's steep topography limits the Petitioners' ability to locate the proposed shed elsewhere on the property, causing the Petitioners a practical difficulty. See Exhibits 3 and 3(b). The Board further finds that the requested variance is the minimum necessary to overcome this practical difficulty and to allow the Petitioners to site the proposed structure in the location of the pre-existing playhouse. 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 construction of the proposed shed will continue the residential use of the home, and thus can be granted without substantial impairment to the intent and integrity of the Potomac Subregion Master Plan (2002), in satisfaction of this element of the variance test.

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.*

Based on the Statement, the photographs, the Petition signed by the neighbors, and the testimony of Mr. Reynolds, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test. See Exhibits 3, 3(a), and 3(b). The Board notes, in support of this finding, that there is a 30 foot wide treed strip of land along the left (east) side of the subject property that serves as a buffer for and minimizes the impact of the encroachment of the proposed structure into the setback along that side. In addition, the Board notes that the property's falling topography also helps to mitigate the view of the proposed structure, and that the location of the proposed structure is consistent with the location of the pre-existing playhouse.

Accordingly, the requested variance of seven (7) feet from the property's left side lot line, needed to allow construction of the proposed accessory structure, is **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 3(a) and (c).

Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, with Caryn Hines and Roberto Pinero 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 4th day of March, 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.