BOARD OF APPEALS
for
MONTGOMERY COUNTY

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Case No. A-6748

PETITION OF SCOTT AND COLLEEN LEE

OPINION OF THE BOARD
(Hearing Held: June 15, 2022)
(Effective Date of Opinion: June 29, 2022)

Case No. A-6748 is an application by Scott and Colleen Lee (the "Petitioners") for a variance needed for the proposed construction of a second floor addition. The proposed construction requires a variance of four (4) feet as it is within twenty-one (21) feet of the front lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, June 15, 2022. Petitioners Scott and Colleen Lee participated in the hearing, assisted by their architect, Eric Saul.

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

EVIDENCE PRESENTED

1. The subject property is Lot P2, Block 11, PT LT 3 Gibbs & Kosacks Subdivision, located at 205 Spring Avenue in Takoma Park, Maryland, 20912, in the R-60 Zone. It is an interior lot located on the south side of Spring Avenue. The property is rectangular in shape and is much deeper than it is wide, with front (north) and rear (south) lot lines measuring 45 feet each, and side lots lines measuring 150 feet each, for a total area of 6,750 square feet. See Exhibits 3 and 4.

2. The subject property contains an existing two-story house, built in 1933, that is located approximately twenty-one (21) feet from the property's front lot line, four (4) feet into the requisite twenty-five (25) foot setback. The Petitioners' Justification Statement states that this setback was not established when the house was originally constructed,

and that the existing house is therefore both legal and nonconforming. See Exhibit 3. The nonconforming nature of the existing house is confirmed by the County's Department of Permitting Services on the building permit denial. See Exhibit 6.

3. The Petitioners purchased the subject property, including the existing house, in 2021. They are seeking to replace the existing second story of their home with a new second story that would be built "over the entire footprint of the existing first floor structure, which is located 4 feet into the front setback." Accordingly, the new second floor would be "no closer to the property line than the existing structure below." The Petitioners' submission further indicates that the proposed construction would comply with the height limitations of the R-60 Zone. See Exhibit 3.

4. The Petitioners' Justification Statement ("Statement") makes clear that the Petitioners did not build the existing house, and are therefore not responsible for its encroachment into the required setback. See Exhibit 3.

5. The Statement states that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would pose for the Petitioner on account of the unusual or extraordinary situations or conditions peculiar to their property. In support of this, the Statement indicates that without the grant of the requested variance, because of the way the existing house is placed on the subject property, the Petitioners will be unable to "match what many neighbors have been able to do, which is to construct a full second floor addition, especially on houses with small footprints compared to modern homes built today." In addition, the Statement states that without variance relief, construction of the proposed second-story addition would be "impractical" because it would result in the Petitioners having to "build new exterior walls not directly over existing bearing walls," going on to note that such construction would require "[a]dditional steel beams, columns, and posts ... through the existing home all the way through the basement to bear the weight of the addition." See Exhibit 3.

6. The Statement notes the following with respect to master plan compliance and the effect of the proposed construction on neighboring properties:

> By keeping within the existing footprint 21 feet from the front lot line, the proposed addition preserves the residential character of the neighborhood while allowing the Petitioner to invest in their home and enhance their quality of life. It is our strong belief that the variance can be granted without impairment to the intent and integrity of the general plan and any applicable master plan in this area.
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> The proposed addition of a new second floor on the existing structure will not extend beyond the existing footprint below, thus it will not negatively impact the adjacent properties. The addition will not negatively impact the character, health, safety, welfare, or security of the neighboring residents. Many of the neighboring houses have built similar additions to what the Petitioner is proposing.

See Exhibit 3. The Petitioners have submitted letters from their abutting left- and right-side neighbors, stating that they have seen the proposed project, and support the grant of the requested variance. See Exhibits 7(a)-(b).

7. At the hearing, Mr. Lee testified that they are seeking to add bedrooms to their second floor, and that their neighbors approve of the proposed addition. He referred the Board to the letters of support in the file. See Exhibits 7(a)-(b).

8. Mr. Saul testified that the subject property contains an old house, dating to 1933, that was built four feet closer to the street than is allowed. He stated that the second floor of the Petitioners' home already has a dormer that encroaches into the front setback, and that the proposed second floor will not extend the footprint of the existing home any closer towards the front lot line than it already is. In response to Board questions, Mr. Saul stated that the existing front porch will remain, and that the property is not historic.

FINDINGS OF THE BOARD

Based on the binding testimony and 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 of the Zoning Ordinance, 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.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the proposed development uses an existing structure (the Petitioners' home) which was built in 1933 and extends approximately four (4) feet into the front setback. Thus the Board finds that the existing home does not comply with the front lot line setback required by the Zoning Ordinance and, as noted in the Statement, and as confirmed by DPS on the building permit denial, is nonconforming. See Exhibits 3, 4, and 6. Accordingly, the Board finds that this element of the variance test is satisfied.

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, based on the Statement and the testimony of Mr. Saul, that the house on the subject property was built in its current location in 1933. See Exhibit 3. The Board further finds, based on the Statement, that the Petitioners purchased the subject property in 2021. Thus the Board finds that the Petitioners took no actions to create the special circumstances or conditions peculiar to this property, 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, that the requested variance is the minimum necessary to allow the proposed construction to proceed on top of the existing exterior walls. The Board finds that the requested variance is minimal in that it would not increase the footprint of the existing house or extend any further into the front setback than the existing house, which has been in place since 1933. The Board further finds that without the grant of the requested variance relief, the Petitioners could not use the existing front bearing wall as support for the proposed second-story addition, which in turn would necessitate the installation of additional beams, columns, and posts through the existing home and down through the basement in order to withstand the weight of the addition. See Exhibit 3. Thus the Board concludes that compliance with the required front lot line setback, which is violated by the existing house, would pose a practical difficulty for the Petitioners, and that the grant of the requested variance is the minimum necessary to allow construction of a second story over the existing structure and therefore to overcome the difficulties that full compliance with the Zoning Ordinance would impose, 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 that the grant of the requested variance will not impair the intent, purpose, or integrity of the Takoma Park Master Plan (2000) which seeks, among other things, "to support stable residential neighborhoods," 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.

The Board finds, per the Statement and the Site Plan, that the proposed second-story addition will maintain the footprint of the existing home, and thus will not encroach any closer on the property's front lot line than the existing house does. See Exhibits 3 and 4. The Board further finds that the record contains letters of support for the grant of the requested variance from Petitioners' abutting left- and right-side neighbors, and no opposition. See Exhibits 7(a)-(b). Finally, the Board finds that the proposed addition would not be out of place in the neighborhood, since the Statement indicates that many of the Petitioner's neighbors have additions similar to that proposed by the Petitioners. On the basis of the foregoing, the Board finds that the grant of the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance needed to allow the proposed construction of a second floor addition 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 4 and 5(a)-(c) (interior layout excluded).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Richard Melnick, Vice Chair, 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 29th day of June, 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.