BOARD OF APPEALS
for
MONTGOMERY COUNTY

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CASE NO. A-6750

PETITION OF DOUGLAS OWAN

OPINION OF THE BOARD
(Opinion Adopted June 22, 2022)
(Effective Date of Opinion: July 6, 2022)

Case No. A-6750 is an application for two variances necessary for the proposed construction of a screened porch with eaves. The proposed construction of the screened porch requires a variance of nine (9) feet as it is within eleven (11) feet of the rear lot line. The required setback is twenty (20) feet, in accordance with Section 59-4.4.7.C of the Zoning Ordinance. In addition, the proposed construction of eaves requires a variance of ten feet as it is within 7.5 feet of the rear lot line. The required setback is 17.5 feet. Screened porch setbacks for this property are per Certified Site Plan #819970070.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on June 22, 2022, using Microsoft Teams. Petitioner Douglas Owan participated in the hearing in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Lot 195, Block L, Kingsview Village Subdivision, located at 17731 Fairlady Way in Germantown, Maryland, 20874, in the R-200 Zone. It is an 11,348 square foot corner lot, located on the east side of the intersection of Fairlady Way and Bromfield Road. The property is generally square in shape but has a truncated corner that fronts the intersection, resulting in the property having five sides. The subject property is bounded to the southwest by Fairlady Way and to the northwest by Bromfield Road. The Zoning Vicinity Map shows that the property's rear (southeast) lot line abuts a large open space. See Exhibits 4(a) and 9, and SDAT printout.

2. The Petitioner's variance application notes that the house on the subject property is "angled toward the corner," which the Petitioner states "limits the buildable area of an

addition to [the] rear or to the side." His application states that compliance with the Zoning Ordinance causes him a practical difficulty because a screened porch addition to the rear of the house could be only 5.4 feet deep, which the application states "is an unusable area." See Exhibit 1.

3. The Site Plan submitted by the Petitioner, and reproduced in the Petitioner's Statement of Justification ("Statement"), shows the lack of buildable area to the rear of the existing house after application of the setbacks to the subject property. The Petitioner's Statement notes that this precludes construction that is otherwise typical in the community, stating that the setbacks "give no room to build a normally sized screened in porch and deck as measured by comparable houses in the neighborhood." See Exhibits 3 and 4(a).

4. The Petitioner's Statement notes that he purchased the subject property in 2000, and states that he has "made no changes or additions to the backyard," and has not previously requested a variance, thus concluding that he is not responsible for the unique conditions peculiar to his property. See Exhibit 3.

5. The Petitioner's Statement states that the Kingsview HOA has approved his plans, and that the "planned space for the screened in porch and deck is a standard normal size relative to like structures of the community." See Exhibits 3 and 7.

6. The Petitioner includes a signed statement from his abutting neighbors supporting the proposed porch construction. See Exhibit 8. The Statement notes that the Petitioner's confronting neighbors will not be able to see the porch because it will be behind the house. See Exhibit 3.

7. At the hearing, the Petitioner testified that he has received approval for the proposed construction from his neighbors on either side and from his homeowners' association, and that the visibility of the proposed porch from other homes will be very limited because of its placement behind his house. The Petitioner testified that his backyard abuts an open field and parkland.

In response to a Board question, the Petitioner testified that he was the first owner of this house, which he purchased in 2000, and that the current condition of the property is the same as it was at the time of his purchase. Finally, in response to Board questions regarding the size of his proposed porch, the Petitioner testified that if the requested variances were not granted, the porch could only be about five (5) feet deep because of the required setbacks.

FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested 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 with an area of 11,348 square feet, the subject property is substandard in size for the R-200 Zone, which has a 20,000 square foot minimum lot size, resulting in a lot that is both shallow and narrow. See Exhibits 4(a) and 9, and SDAT printout. The Board finds that this significantly constrains the available buildable area on this property, constituting 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 there is nothing in the record to suggest that the Petitioner is responsible for the small size of his property or its shallow and narrow shape. The Petitioner purchased this property in 2000, and per the Statement and his testimony, has not made any changes or additions to his rear yard since that time. See Exhibit 3. Thus the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioner, 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 constrained buildable area that results from the application of the required setbacks to this property, on account of its small size and shape, constitutes a practical difficulty for the Petitioner in that it severely limits the area available for expansion of the home, including construction of a screened porch. See Exhibits 3 and 4(a). Consistent with this finding, and per the Petitioner's variance application and testimony, the Board notes that without the grant of the requested variances, the proposed screened porch could only be 5.4 feet deep, which the Board finds, per the application, would not be usable. The Board further finds, in accordance with the Statement and the testimony of the Petitioner, that the requested variances are the minimum needed to allow a porch of reasonable size, commensurate with the neighborhood. See Exhibits 1 and 3. Thus the Board concludes that the requested variances are the minimum necessary to overcome the practical difficulties created by the unusual or extraordinary situations or conditions on this 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;*

The Board finds that the construction of a screened porch will continue the residential use of the home and thus can be granted without substantial impairment to

the intent and integrity of the applicable master plan, 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 that granting the requested variances to allow the proposed screened porch 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 finds that the abutting property to the rear of the subject property is not developed with a residence, but rather is an open field and parkland. The Board further finds, per the Statement and testimony of the Petitioner, that the abutting neighbors support the proposed construction and have submitted a letter to that effect, and that the proposed construction has been approved by the Kingsview Village Homeowners Association. See Exhibits 3, 7, and 8.

Accordingly, the requested variances necessary to allow the construction of the proposed screened porch are **granted**, subject to the following conditions:

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

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

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 6th day of July, 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.