BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
http://www.montgomerycountymd.gov/boa/

(240) 777-6600

Case No. A-6751

PETITION OF GELITZA REYES AND YOLANDA VALDERRAMA-REYES

OPINION OF THE BOARD
(Hearing Date: June 29, 2022)
(Effective Date of Opinion: July 8, 2022)

Case No. A-6751 is an application by Gelitza Reyes and Yolanda Valderrama-Reyes (the "Petitioners") for an existing attached shed that is presently under construction and nearly finished. The existing shed requires a variance of six (6) feet as it is within six (6) feet of the right side lot line. The required setback is twelve (12) feet, in accordance with Section 59.4.4.7.B.2 of the Montgomery County Zoning Ordinance.

The Board of Appeals held a hearing on the application on June 29, 2022. Petitioners Gelitza Reyes and Yolanda Valderrama-Reyes both participated in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Lot 33, Block S, Goshen Estates Subdivision, located at 20605 Bell Bluff Road, Gaithersburg, Maryland 20879 in the R-200 Zone. It is a four-sided property, 14,125 square feet in area, with an existing house that was built in 1986. The property's front lot line is curved inward, towards the house, causing its side lot lines, which are straight and set at approximately 90 degrees to the front lot line, to diverge. This causes the property to be narrower in the front than it is in the rear. In addition, the property's left side lot line is much longer than its right side lot line, which causes the property's rear lot line, which is also straight, to be sharply angled, resulting in the left side of the property being much deeper than the right side. See Exhibits 3 and 4(a).

2. The Statement of Justification ("Statement") submitted by the Petitioners states that the property has an unusual shape, and that the area behind the house is encumbered with a steep slope and uneven terrain, as follows:

> The property is on a 14,125 ft lot and was constructed very close to the lot/property lines, without meeting the 12 ft required setback. The property has a V shape, and the backyard sits on a slope. The flat part of the backyard once you go up the inclined slope, is uneven and has many bumps, making it very challenging for construction.

The Statement concludes that "the shape and topography of the property does not allow easy construction on any other part of the property." In addition, the Statement describes the difficulty that the Petitioners would experience if their shed were located on the flat part of their backyard, noting that they would have to walk up this slope to access the items they intend to store in their shed such as gardening tools, bicycles, and holiday decorations. See Exhibit 3. The Petitioners include a topographical map and photographs showing the slope of their property with their submission. See Exhibits 4(b) and 5(f)-(g).

3. The Statement states that the Petitioners purchased the subject property in 2013, "as is." The Statement indicates that the builder "constructed the [Petitioners'] home at slightly less than 11 ft from the property line," and that the home "didn't comply with the zoning requirements of [a] 12 ft setback." The Statement later notes that this is a common feature of the neighborhood, stating that most of the homes in the community were "constructed with minimal required setbacks from both sides of the houses." The Statement states that the Petitioners requested and received permission from their homeowners' association to construct an attached shed on the right side of their house, and that they began construction of their shed after receiving this approval, not realizing that a building permit from the County was also needed. At this point in time, the shed is nearly complete. See Exhibits 3, 4(a), 5(a)-(e), and 7.

4. The attached shed has an area of 67.5 square feet, and dimensions of 13.5 feet x 5 feet. It extends five (5) feet from the right side of the Petitioners' house. The front right corner of the shed, as viewed from the street, is located six (6) feet from the Petitioners' right side lot line. See Exhibits 3, 4(a), and 5(a)-(c).

5. The Statement asserts that the shed conforms with the established development pattern of the Petitioners' neighborhood. The Statement states that the shed is constructed using the same materials and colors as the Petitioners' house, and that it looks as though it were original to the house, later noting that the shed "is constructed in a way that blends with the original construction of our home and the neighborhood patterns and color palette." Finally, the Statement states that other homes in the neighborhood have sheds that follow the "same architectural pattern." See Exhibit 3.

6. The Statement indicates that the Petitioners' shed will not be adverse to the use and enjoyment of abutting and confronting properties, as follows:

> The shed does not impact any abutting properties since most homes are constructed on large lots and follows same architectural pattern and color palette

from the neighborhood. The shed will not impede property limits and will be on a location where we used to use for planting, and does not extend over that area. It also conforms with the HOA bylaws as approved by the HOA ACC.

See Exhibit 3. The Petitioners include three letters of support for the grant of the requested variance from abutting and confronting property owners. See Exhibits 8(a)-(c).

7. At the hearing, Petitioner Gelitza Reyes testified that since submitting their variance application, they had been able to get in touch with their neighbors to the right, who had not previously submitted a letter of support, to discuss their shed and variance request. She testified that these neighbors asked to have water redirected away from their property, and that this had been taken care of. Ms. Reyes testified other than that, their neighbors to the right were supportive of their request, as were all of their other neighbors.

Ms. Reyes testified that they had received approval for the proposed construction from the architectural committee of their HOA. She testified that their contractor was from out of town, and did not think that a building permit would be needed for such a small shed. She apologized for not having known a building permit was needed.

In response to a Board question asking if their house was in the side setback, Ms. Reyes testified that it was, later indicating that it was 10.8 feet from the side lot line. In response to further Board questioning about alternative locations, Ms. Reyes testified that the other side of their house has a big slope which would be difficult to level in order to accommodate a shed. She testified that the property "goes up" in the back, and is "all bumpy."

10. Petitioner Valderamma-Reyes testified that they thought that they had followed all the correct procedures with respect to the construction of their shed, and she apologized for not having done so. She testified that after receiving notice from the County, they stopped construction until they could get the situation remedied.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the 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 that the narrowness of the subject property in the area of the Petitioners' house limits their ability to place an attached shed on the side of their home

in accordance with the setbacks required by the Zoning Ordinance. The Board notes that the Petitioners' house, as built, does not meet the required right side setback, thus illustrating the narrowness of the property, and that while the left side setback is not called out on the Petitioners' Site Plan, the left side lot line does not appear to be any farther from the house than the right side lot line is, and Petitioner Reyes has testified that there is a big slope on this side of the house. See Exhibit 4(a). The Board further finds, based on the Statement, topographical map, and photographs, that the property's sloped backyard would complicate construction behind the house and constrains the ability of the Petitioners to locate their shed there. See Exhibits 3, 4(b), and 5(f)-(g). The Board finds that these circumstances, taken together, constitute an exceptional condition peculiar to the subject 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 no evidence that the Petitioners, who purchased the subject property in 2013, are responsible for the narrowness of their property in the area near their home, or for its slope. Thus the Board finds that the Petitioners are not responsible for the unique 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 that the narrowness of this property does not afford the Petitioners adequate space to construct an attached shed on the right side of their house without variance relief, and that the property's slope precludes construction of an attached shed on the left side or to the rear of the home. The Board further finds that these conditions cause the Petitioners a practical difficulty by constraining their ability to add this needed outdoor storage space, already present on other properties in the neighborhood, and that the requested variance is the minimum needed to overcome this practical difficulty and to permit the Petitioners to complete their modest shed. Accordingly, the Board finds that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose due to this property's narrowness and slope, 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 Petitioners' attached shed will further the residential use of this property, and thus the Board finds that the requested variance can be granted without substantial impairment to the intent and integrity of the general plan and 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, based on the Statement and photographs in the record, that the Petitioners' shed was designed using the same materials and colors as the Petitioners' home, such that it looks like it was original to the house, and further finds that it follows the architectural pattern and color palette from the neighborhood. See Exhibits 3 and 5(a)-(c). In addition, the Board finds that the proposed shed was approved by the Petitioners' homeowners' association, and that the record contains three letters of support for the grant of the requested variance and no letters of opposition. See Exhibits 7 and 8(a)-(c). Finally, the Board finds, based on the testimony of Ms. Reyes, that the neighbors who would be most affected do not object to the proposed construction. In light of the foregoing, the Board finds that granting this 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 of six (6) feet from the right side lot line, to allow the Petitioners' attached shed, is **granted**, subject to the following condition:

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

2. Construction shall be in the location shown on Exhibit 4(a), and shall be of the dimensions shown on Exhibits 5(a)-(c).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Richard Melnick, Vice Chair, in agreement, and with Roberto Pinero necessarily absent, 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 8th 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.