BOARD OF APPEALS
for
MONTGOMERY COUNTY

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Case No. A-6753
PETITION OF ELLIOT SCHREUR AND ALISON PARKER

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

Case No. A-6753 is an application for two variances necessary for the proposed construction of a two-story addition on an existing house. The proposed construction requires a variance of six (6) feet as it is within nineteen (19) feet of the front lot line along Dogwood Avenue. The required setback is twenty-five (25) feet, in accordance with Section 59.4.4.9.B.2 of the Montgomery County Zoning Ordinance. In addition, the proposed construction requires a variance of 0.17 feet as it is within 6.83 feet of the side lot line. The required setback is seven (7) 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 June 29, 2022. Petitioner Elliot Schreur appeared at the hearing, in support of the requested variances.

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

EVIDENCE PRESENTED

1. The subject property is Lot P2, Block 85, Petty Estate Subdivision, located at 201 Dogwood Avenue in Takoma Park, Maryland, 20912, in the R-60 Zone. The subject property is a flat corner lot, rectangular in shape, with a width of 50 feet wide and a depth of approximately 141 feet. The property's shorter southeast side is bordered by Cedar Avenue, and its longer southwest side is bordered by Dogwood Avenue. See Exhibits 3, 4, and 8(a).

2. The subject property was originally recorded in the 1923 and then again in 1929, and was subdivided into its current configuration between 1929 and 1933. The property contains an existing house that was built in 1940. The existing house is located 19 feet from Dogwood Avenue, encroaching six (6) feet into the setback from the front lot line

along Dogwood Avenue. It is located 6.8 feet from the side lot line opposite Dogwood Avenue, encroaching 0.17 feet into that setback. See Exhibits 3, 4, and 8(b)-(c).

3. The Petitioners purchased the subject property in 2020, and are seeking to add a two-story addition on the northwest (left) side of their house. The Petitioners "propose to extend the existing building line 11.8' along the existing setback distance." Accordingly, the proposed addition would maintain the planes established by their property's existing southwestern and northeastern facades, and would not extend any further into either of the affected setbacks than the existing house. The Petitioners note in their Justification Statement ("Statement") that the "proposed building length is proportionally short relative to many houses similarly situated on corner lots in the neighborhood and small relative to the length of the petitioners' lot at 141'." Their Statement further states that "the setback distance of 19' [is] great relative to many similarly situated houses nearby." See Exhibits 3 and 4.

4. The Petitioners' Statement observes that while the subject property is 50 feet wide, the "standard [lot] width in the R-60 zone is 60'."[1] The Statement states that the fact that the subject property is a corner lot with a 25-foot setback along Dogwood Avenue, combined with the property's narrow, 50 foot width, results in the property having an extraordinarily constrained, 18-foot wide buildable envelope.[2] The Statement indicates that while the property would have had a similarly narrow buildable envelope when the existing house was constructed in 1940, the house is approximately 24 feet wide. The Statement suggests that this could possibly be traced back to the original plans having been drawn up in accordance with the provisions of the 1928 Zoning Ordinance, which provided for a 24 foot minimum buildable width for corner lots, stating that "[a]t the time the lot was recorded in the 1920s and the construction plans drawn up in the 1930s, the developers may have been referring to the 1928 Montgomery County Zoning Ordinance." The Statement refers to the 1928 Ordinance as "instructive," and suggests that "[s]ince the petitioners' existing house is approximately 24' wide, the 1930s-era developers' original intention may have been to allow a 24' -wide house, such as the petitioners', to be constructed on this property." See Exhibit 3.

5. The Statement states that at 1,116 square feet, the Petitioners' home is significantly smaller than surrounding homes, which are typically closer to 2,000 square feet. The Statement states that the proposed addition will bring the livable area of the Petitioners' house closer to that 2,000 square foot figure, thus "substantially conform[ing] to the development pattern of the street and neighborhood." See Exhibit 3.

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[1] Section 59.4.4.9.B of the 2014 Zoning Ordinance provides that the required lot width at the front building line in the R-60 Zone is 60 feet.

[2] While the Statement acknowledges that a 50 foot lot width is not unusual on this block, it makes clear that the application of a 25 foot setback along the length of this property severely constrains its buildable area because of its 50 foot width. The Statement notes that if the original property that abuts the subject property on Dogwood Avenue had been subdivided in the same manner as the subject property, i.e., along its length, to create narrow but deep lots, no variance would have been needed along the Dogwood Avenue front lot line because the required setback would have been 15 feet, which the existing house and the proposed construction both meet. The Statement indicates that the subdivision of the original lots on the next block of Dogwood Avenue shows this pattern. See Exhibits 3 and 8(a).

6. The Statement at Exhibit 3 states that the requested variances are the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose on the Petitioners, as follows:

> The petitioners request a 6' variance from the 25' side street setback. If constructed, the addition would be 19' from the Dogwood Avenue lot line. This is the same distance as the existing structure. The architectural plan calls for enlarging the existing dining and kitchen rooms into a larger, open-concept area. This plan would be impossible without a 6' variance to allow the existing building line to be extended. The imposition of a full 25' setback would limit the buildable area to a narrow corridor 18' wide and render impossible an open-concept living area that incorporates the existing house. For comparison, the alternative 15' side street setback applicable to properties whose adjacent neighbors do not front the side street exceeds the variance sought by the petitioners. The petitioners propose to construct an addition that remains 19' from, and approaches no nearer to, the side street lot line along Dogwood Avenue.
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> The second variance requested is a 0.17' variance from a 7' side setback. This 0.17' variance is required in order to extend the existing building line along the side lot line. The petitioners do not propose to build an addition that approaches any nearer to the side lot line than the current structure. The petitioners seek to extend the existing building line in order to avoid an unnecessary corner 2 inches deep that would increase construction and maintenance costs and increase the project's complexity.

7. The Statement states that the proposed construction will maintain the setbacks from Dogwood Avenue and the property's side lot line that have existed for over 80 years. The Statement notes that the 19 foot setback of the existing house, which the addition would maintain, exceeds the 15 foot setback that would have been allowed if the abutting property on Dogwood Avenue did not face on that street. The Statement states that the proposed construction will not interfere with the light or air of neighboring properties. As a result of the foregoing, the Statement concludes that the proposed construction will not be adverse to the use and enjoyment of abutting or confronting properties. See Exhibit 3. The Petitioners include letters of support for the grant of the requested variances from several of their neighbors. See Exhibits 7(a)-(d).

8. At the hearing, the Petitioner testified that he and his wife own the subject property. He testified that the property is improved with an existing house that is 24 feet wide and does not meet the required setbacks. The Petitioner testified that his home sits 19 feet from Dogwood Avenue, and that he and his wife intend to extend their home by 11.8 feet along this line. He testified that their proposed addition will not bring the home any closer to Dogwood Avenue than it already is.

The Petitioner testified that the subject property has two "extraordinary" features, namely its "exceptional narrowness" and its smaller-than-average house size. With

respect to the property's narrowness, the Petitioner testified that because the R-60 Zone requires a 60 foot minimum width, by definition the subject property, which is only 50 feet wide, is "exceptionally narrow." He further testified that because his property is a corner lot, this narrowness results in his property being particularly constrained by the required setbacks, stating that the application of the 25 foot front and seven (7) foot side setbacks to the length of his property leaves him with a buildable envelope that is only 18 feet wide. The Petitioner testified that his property is exceptional compared with other corner lots in the immediate vicinity because it is subject to a 25 foot setback along Dogwood Avenue instead of a 15 foot side street setback, since his abutting neighbor's house faces the side street. Finally, the Petitioner testified that his home is smaller than the homes of all his abutting and confronting neighbors, and that even with the proposed addition, that will still be the case.

FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the requested 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;

Based on the Statement, the Site Plan, and the testimony of the Petitioner, the Board finds that at 50 feet wide, the subject property is narrower than the 60 foot minimum width at the front building line in the R-60 Zone. The Board further finds that the application of a 25 foot front setback along the length of this relatively long, narrow property, when coupled with the application of the 7 foot side setback on the opposite side of the property, leaves a buildable envelope that is only 18 feet wide, which is less than the 24 foot width of the current house and is less than that of similarly narrow corner properties that have a side street setback along their length instead of a front setback. The Board observes, per the Statement, that an 18 foot buildable envelope is also less than the 24 foot minimum buildable width that was set out in the 1928 Zoning Ordinance. See Exhibits 3 and 4. Thus the Board finds that the application of the required setbacks to this narrow corner lot results in an unusually constrained buildable area and constitutes an extraordinary condition that is 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, based on the Statement and plats, that this property was originally recorded in the 1920's, and was subdivided sometime between 1929 and 1933 into its current narrow shape. The Board further finds that the Petitioners purchased this property in 2020, and that they are not responsible for the subdivision of the lot that originally

abutted their property to the north, which resulted in the house on that property facing the side street. See Exhibits 3 and 8(b)-(c). 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 that the Petitioners' existing home encroaches on the setbacks from both their front (southwest) lot line along Dogwood Avenue and their side (northeast) lot line. The Board further finds that the application of the required front and side setbacks to the Petitioners' property leaves them with a buildable envelope that is only 18 feet wide, and prevents them from being able to expand their existing home towards their rear (northwest) lot line without having to step the addition in from their home's existing southwest and northeast planes, causing them a practical difficulty. See Exhibits 3 and 4. In addition, the Board finds, based on the Statement, that the requested variances are the minimum necessary to overcome this practical difficulty and to allow the Petitioners to construct their proposed addition in a manner that is coplanar with their existing home. Accordingly, the Board finds that the requested variances are the minimum necessary to overcome the practical difficulty that would be posed by full compliance with the Zoning Ordinance, 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 this property, consistent with the recommendations of the Takoma Park Master Plan, which recommends preserving the existing residential character, encouraging neighborhood reinvestment, and enhancing the quality of life throughout Takoma Park.

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, that the proposed addition will not bring the Petitioners' home any closer to their front lot line along Dogwood Avenue or to their side lot line, opposite their Dogwood Avenue frontage. The Board further finds, per the Statement, that because of the depth of the Petitioners' property, even with the proposed addition, the Petitioners' home will still significantly exceed the required setback from their rear lot line. See Exhibit 3. The Board notes that the Petitioners have submitted letters of support from several abutting and confronting neighbors. See Exhibits 7(a)-(d). In light of the foregoing, the Board finds that the grant of the requested variances 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 variances necessary for the proposed addition 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)-(e) (internal layouts excluded).

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