

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6577
PETITION OF LYNN KATHRYN LANING**

OPINION OF THE BOARD

(Hearing Held: September 12, 2018)
(Case Decided at Worksession Held: October 24, 2018)
(Effective Date of Opinion: November 1, 2018)

Case No. A-6577 is an application by Lynn Katherine Laning (the "Petitioner") for two variances. The Petitioner is seeking to construct an accessory building.

The proposed construction requires a variance of nine feet, four inches (9' 4") as it is within four feet, eight inches (4' 8") of the left side lot line. The required setback is fourteen (14) feet, in accordance with Section 59-4.4.9.B.2.c of the Zoning Ordinance. In addition, the proposed construction requires a variance of ten (10) feet as it is within four (4) feet of the right side lot line. The required setback from that lot line is also fourteen (14) feet, in accordance with Section 59-4.4.9.B.2.c of the Zoning Ordinance.¹

The Board of Appeals held a hearing on the application on Wednesday, September 12, 2018. Petitioner Lynn Katherine Laning appeared at the hearing in support of the requested variances with Bill Hutchins, her architect. The neighbor with whom the Petitioner shares her right side lot line was also present in support of the requested variances, both as originally proposed and as revised. The hearing was continued to allow the Petitioner to make minor revisions to her original plans, intended to address the concerns of her neighbor to the left. The Board considered this additional evidence, along with the evidence originally presented at the hearing, in making a decision at its October 24, 2018, Worksession.

¹ When this case was originally filed, the Petitioner was seeking a variance of 10.34 feet from the left side lot line setback of fourteen (14) feet required by Section 59-4.4.9.B.2.c of the Zoning Ordinance, and a variance of nine (9) feet from the fourteen (14) foot right side lot line setback, required by the same Section. At the September 12, 2018, hearing, in response to a request from the Petitioner's neighbor to the left (northwest), Chad Menge, and with the consent of her neighbor to the right (southeast), the Petitioner agreed to move her proposed accessory structure approximately one foot farther away from the side lot line shared with Mr. Menge. While this had the effect of decreasing the necessary variance from the left side lot line setback from 10.34 feet to 9'4", it also had the effect of increasing the extent of the variance needed from the right side setback from nine (9) feet to ten (10) feet, thus triggering a need to continue and re-notice this proceeding.

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

EVIDENCE PRESENTED

1. The subject property is Lot P7, Block 13, Pt Lt 8 Eq 2955 Sq Ft Pine Crest Subdivision, located at 6515 Allegheny Avenue, Takoma Park, MD, 20912, in the R-60 Zone. The property is a long and narrow rectangular lot, approximately 20.7 feet in width by 150 feet in length, with a total size of 3,105 square feet. See Exhibits 3 and 4(b).

2. The Statement of Justification indicates that the subdivision was originally platted in 1909, that the property was created by deed in or around 1920, and that the existing house was constructed at the same time. It explains the origins of the property's narrow dimensions as follows:

The original Pinecrest lots were 42 feet wide, requiring a 5 foot side yard setback. However, the subject property was carved out of an original lot, which was divided into two narrow components. This division was created by deed, apparently in or around 1920, when the existing house was constructed. As a result, the subject lot is 20.7' wide.

See Exhibit 3. In light of this, the Statement notes that "the proposed development uses an existing legal nonconforming property or structure." The subdivision plat shows that the subject property is located in that portion of Takoma Park which was previously located in Prince George's County. See Exhibit 7(b).

3. Insofar as the impact of the proposed construction on the neighbors, the Statement of Justification states that "there will be only 3 small windows facing the adjoining property; this wall will have a 1-hour fire rating; the shed roof slopes away from the adjoining property, and has a green roof, presenting a beautiful garden to the neighbors." See Exhibit 3. The plans in the record at Exhibits 5(a)-(g), and 11(a) and (b), depict the various elevations and views of the proposed structure, and indicate that it is no more than 15 feet in height.

4. The Statement of Justification states that the Petitioner has lived in her home for four (4) years, and that she is not responsible for the special circumstances or conditions pertaining to her property. It explains that the existing home is 720 square feet in size, and that the Petitioner is seeking to construct a 393 square foot, single story accessory building. It states that for the accessory building to be useful, it needs to be at least 12.5 feet wide, causing it to project one (1) foot, four (4) inches into the five (5) foot side setback. See Exhibit 3.

5. The plans submitted in connection with the variance application show that the proposed accessory building will be 12 feet wide and 32 feet, 8 inches long. See Exhibit

5(d). The required fourteen (14) foot side setbacks noted by DPS on the building permit denials, and from which variance relief is sought, were determined under Section 59-4.4.9.B.2.c of the Zoning Ordinance, which states that “[f]or any accessory structure with a length along a rear or side lot line that is longer than 24’, the minimum side or rear setback must be increased at a ratio of 2’ for every 2’ that the dimension exceeds 24 linear feet.”

6. The Statement of Justification states that the variances requested can be granted without substantial impairment to the intent and integrity of the applicable general or master plan, asserting that the project “would be completely in accord with the Takoma Park Master Plan’s primary mandate:

“Community Preservation, Stability and Character: Preserve existing residential character, encourage neighborhood reinvestment, and enhance the quality of life throughout Takoma Park.”

See Exhibit 3.

7. An email received the morning of the hearing from Chad Menge, the Petitioner’s neighbor to the northwest at 6717 Allegheny Avenue, states that he and his wife are concerned that the proximity of the proposed addition to their property creates an unsafe condition with respect to fires, as follows:

... The plans in the proposed variance show a setback of 3’-8” from our shared property line. Our concern is that this is very close as demonstrated by the existing structures. In the existing structures, there is only a separation of the roof overhangs of approximately 2’. There is an easement on the opposite site with a side setback of 5’. For the new structure, we would request that the structure be shifted 1 foot towards the property easement resulting in a 4’-8” setback from the property line between 6517 and 6515 Allegheny. This would create a safer condition between 6517 and 6515 since the existing structures are directly adjacent and there is potential for any fire to leap from one property to another. The property easement on the opposite side creates a sufficient barrier to prevent fire from traveling between those two properties. ...

See Exhibit 10. As noted above, Mr. Menge’s email requests that the Petitioner locate her accessory structure approximately one foot farther away from their shared property line. At the hearing, the Petitioner agreed to make this change, and her neighbor to the southeast indicated that he had no issue with this modification.

8. At the hearing, Ms. Laning testified that her property was originally part of a larger lot, which had been split in two around 1920. She testified that her lot is very narrow, less than 21 feet wide, and that her house is only 720 square feet. Ms. Laning testified that she originally believed that the side setbacks for her proposed accessory structure were five feet on each side, but that because of the length of the proposed structure, additional

setbacks were needed. She testified that she intends to use the proposed accessory structure as studio space.

When asked by the Board if she could accommodate Mr. Menge's concerns by shifting her proposed construction one foot farther away from their shared property line, the Petitioner testified that she could. The neighbor who shares her remaining side property line, who was present in support of the requested variances, had no objection.

9. Following the initial hearing, the Petitioner submitted a letter and revised drawings showing the shift of the proposed accessory structure, and requesting variances of nine feet, four inches (9' 4") from the left side lot line, and ten (10) feet from the right side lot line. See Exhibits 11 and 11(a)-(b). The Board considered this revised request at its Worksession on October 24, 2018.

FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony, and based on the 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 submitted site plan and Statement of Justification, the Board finds that at less than 21 feet wide, the subject property is unusually narrow, and that with only 3,105 square feet in area, the property is markedly substandard for the R-60 Zone, which has a 6,000 square foot minimum lot size. See Exhibits 3 and 5(d). The Board finds that the application of the required setbacks for this exceptionally narrow and small lot results in an unusually constrained buildable area and constitutes an extraordinary condition that is peculiar to this property, in satisfaction of Section 59-7.3.2.E.2.a.i of the Zoning Ordinance.

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 property which was created before any Zoning Ordinances were enacted. The Board notes that because this property was originally located in Prince George's County, the subject property was previously considered conforming by virtue of Section 59-B-6.2 of the 2004 Zoning Ordinance, but that when the new Zoning Ordinance was enacted in 2014, that provision was not retained, and the property became a legal nonconforming property. Thus the Board finds that the application satisfies Sections 59-7.3.2.E.2.a.ii of the Zoning Ordinance.

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 this property was created in or around 1920, and that the Petitioner has only owned this property for four years. Thus the Board finds that the Petitioner took no actions to create the special circumstances or conditions peculiar to this property.

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 testimony of the Petitioner and on the Statement of Justification in the record at Exhibit 3, that the requested variances are the minimum necessary to allow the proposed construction to proceed. The Board finds that with a width of only 20.7 feet, the application of two 14 foot side setbacks to this property would result in no buildable envelope. The Board further finds that even the application of the standard five (5) foot side setbacks to this narrow property would result in an allowable structure which was just over ten (10) feet wide, which, per the Statement of Justification, is less than is necessary "for the accessory building to be useful." Thus the Board concludes that the grant of the requested variances is the minimum necessary to allow construction of the proposed structure on this extraordinarily narrow, legal nonconforming property, and therefore to overcome the difficulties that full compliance with the Zoning Ordinance would impose.

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 of Justification, that the proposed accessory structure will have a shed roof that "slopes away from the adjoining property, and has a green roof, presenting a beautiful garden to the neighbors." See Exhibit 3. The Board notes that the Petitioner has made adjustments to her plans to address concerns raised by her neighbor to the left, and that her neighbor to the right was present at the hearing in support of her proposed construction. 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.

Accordingly, the requested variances necessary for the construction of the proposed accessory structure are **granted**, subject to the following conditions:

1. Petitioner shall be bound by her testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 5(a)-(c) and 11(a) and (b).

Therefore, based upon the foregoing, on a motion by Bruce Goldensohn, seconded by Stanley B. Boyd, with John H. Pentecost, Chair, and Katherine Freeman in agreement, and with Edwin S. Rosado, Vice Chair, 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 1st day of November, 2018.



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.