

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6655
PETITION OF NATHANAL AND SARAH SALNICK**

OPINION OF THE BOARD
(Hearing Date: June 17, 2020)
(Effective Date of Opinion: June 26, 2020)

Case No. A-6655 is an application by Nathanal and Sarah Salnick (the "Petitioners") for a variance from the requirement in Section 59-4.3.4.B.2.d of the Zoning Ordinance that accessory structures be located behind the rear building line of the principal building. The Petitioners are proposing to construct an accessory structure (barn) on their property in a location forward of the rear building line.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on May 20, 2020. All participation was done via Microsoft Teams. Petitioners Nathanal and Sarah Salnick participated in the proceedings, and were represented by Jody S.Kline, Esquire.

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

EVIDENCE PRESENTED

1. The subject property is Lot 10, Block A, Nash Country Estates Subdivision, located at 21033 Georgia Avenue, Brookeville, MD, 20833, in the RC Zone. The subject property is an irregularly shaped, 6.8-acre pipestem lot that is located on the east side of Georgia Avenue. The subject property is improved with a single-family home. See Exhibits 1(a), 4(a) and 7(a).
2. The subdivision plat submitted with the application shows that the property was subdivided in 1981. See Exhibit 7(b). SDAT indicates that the primary structure was built in 1986 and that the Petitioners purchased the subject property in 2018.
3. The Statement of Justification ("Statement") states that the Petitioners plan to use a portion of their property as a tree farm, and are seeking to construct a "1,500 square foot barn to store various agricultural equipment and materials to be used in association with their proposed tree farm." The Statement indicates that the proposed barn will "be a post-frame construction" and will "be built on a permanent foundation." See Exhibit 3.

The Petitioners include elevations for their proposed barn with their submission, as well as a brochure depicting similar structures. See Exhibits 5(a) and (c).

4. The subject property is encumbered with severe slopes and multiple utilities, including a septic system and septic field, a well, and a geothermal well. See Exhibit 9(a). The Statement at Exhibit 3 describes these constraints as follows:

The attached aerial exhibit shows the various impediments to future construction on the site. Looking at the property, starting to the north and working around the site in a clockwise direction, it is clear that the only location for any additional construction, such as the proposed barn, is "in front of" the principal dwelling. The private road / driveway abuts the northern property line and then cuts through the middle of the site. Just to the east of the driveway, the site has steep topography that rises from 396' in the northeastern most corner of the property to 428' just in front of the main dwelling area. Due to the steepness of the slope, and the connection to existing tree cover in the rear of the property, the eastern part of the property is where the applicants would like to plant their future tree farm.

The barn also could not be constructed around the perimeter of the house due to the existing utilities located there. There is a septic line and septic tank to the northeast of the main house that would prohibit any future development or any ingress/egress of some of the machinery to be stored in the barn. There is an existing well for water service behind the main dwelling, to the south of the property, as well as a pool and geothermal well.

The only remaining location on site, is north of the dwelling, or what could be called to the west of the driveway. The topography of the property in that location is fairly flat, there are no existing utilities that would need to be moved. Also, the existing forest cover would not be disturbed. That location, however, is considered to be "in front of" the main dwelling unit.

The Existing Conditions Site Aerial submitted with the application depicts the location of the various utilities, indicating a pad-mounted electrical transformer north of the existing house, a septic line and septic tank immediately northeast of the existing house, a well located due south of the existing house, and a geothermal well located west of the existing house. See Exhibit 9(a). This Exhibit, and Exhibits 4(a) and 7(b), also show the septic field for Lot 7, which is located on the northeast portion of the subject property. Finally, the Petitioners have submitted several topographical maps showing the sloping nature of the property, and aerial photographs showing the existing tree cover. These Exhibits confirm that the proposed location is relatively level compared to the rest of the property, and that construction in that area would not disturb existing forest cover. See Exhibits 7(c)-(e) and 10(a)-(c). The Statement concludes that "the existing improvements on the property prohibit the location of the barn in any location other than what is proposed." See Exhibit 3.

5. The Statement indicates that the Petitioners are not responsible for the peculiar constraints affecting this property, and that they "ha[ve] sited the proposed barn in the only location possible on the site, due to limiting features" of the property, noting that "[t]he barn is moderate in size for its use and is appropriate for the size of lot on which it will be located." See Exhibit 3.

6. The Statement at Exhibit 3 indicates that the requested variance can be granted without substantial impairment to the applicable Olney Master Plan, as follows:

The property is located in the Northern Olney section of the applicable Master Plan, the 2005 Olney Master Plan. The Olney Master Plan is silent about the type of feature that is the subject of this application; however, the Plan generally recommends continued agricultural preservation and protection in the area east of Georgia Avenue, like this site. The property is surrounded by Hawlings River Regional Park on three sides. The Plan indirectly supports agricultural activities on this property to maintain the protection of the area's environmental resources, including the Hawlings Park and Hawlings River watershed.

7. The Statement asserts that the proposed construction will not adversely impact neighboring properties, noting that "[t]he pipestem shape of this property sets the actual use and construction far from the road. The adjoining neighbors will be buffered from the building and use by trees. There will be no adverse repercussions to the neighbors." See Exhibit 3.

8. At the hearing, Mr. Kline oriented the Board to the subject property, and using Exhibit 9(d), explained where the Zoning Ordinance would allow an accessory structure like the proposed barn to be located. He then proceeded to explain why everything east of the "rear building line" shown on Exhibits 9(c) and (d) is not appropriate for the proposed construction, noting the septic tank and line for the subject property, and an easement for a septic field serving Lot 7. He stated that these two features preclude location of the proposed barn in about a third to 40 percent of the available area. Mr. Kline then stated that the area immediately north of the house and the lower southeast portion of the property are wooded, with the southeastern portion of the property sloping down to a creek. See Exhibit 7(c)-(e). Mr. Kline stated that the subject property has severe topography, with the house at an elevation of approximately 434 feet, the northeast corner of the property approximately 40 feet lower, at 392-394 feet, and the area south of the house falling another 20-plus feet. See Exhibit 7(e). He asserted that construction of a barn was not feasible in these areas. He acknowledged that the property only drops 8 to 10 feet in the area east of the house, but noted that this part of the property is forested and would take a lot of clearing (presumably in addition to re-contouring), which was contrary to the Petitioner's tree preservation goals. Thus Mr. Kline asserted that there was no good, legal location for the Petitioners to site their proposed accessory structure.

Mr. Kline stated that as shown on the topographical maps and aerial photographs, there is a relatively level area on the subject property, northwest of the house, that would

work well for the proposed barn. He stated that there would be no loss of trees if construction were done in this area. Mr. Kline stated that the proposed construction would be visible from the property to the west, but that it would be at a distance of approximately 400 to 450 linear feet, and would look like a barn, and so be appropriate for the area.

In response to a Board question asking if there was an elevation change between the south side of the subject property and the adjoining parkland, in the area where the Petitioners were seeking to preserve the forest, Mr. Kline stated that there is a 28 to 30 foot drop to the parkland, which then drops towards the creek. He stated that drainage on the south and northeast sides of the property is towards the parkland. In response to a follow-up Board question, asking if cutting trees in that area of the property could affect drainage towards the parkland, Mr. Kline confirmed that it could, and stated that a sediment control permit might be needed, depending on the extent of the disturbance.

9. Petitioner Nathanael Salnick testified that the subject property backs to parkland and that he and his wife want to maintain that quality on their property. In response to a Board question, he testified that they intend to grow Christmas trees on a portion of their property, which they would sell wholesale and deliver themselves. He testified that he had discussed this with the County's Department of Permitting Services, and that it is deemed an agricultural pursuit, which is encouraged in the area.

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 subject property is encumbered by severely sloping topography and numerous utilities, as well as an easement for a septic field to serve neighboring Lot 7, which combine to limit the area available for the construction of the proposed barn. In addition, the Board finds that large portions of the property not only have significant slopes but are also heavily treed and drain towards the adjoining parkland, such that disturbance of these trees could affect the drainage pattern towards and in the park. See Exhibits 3, 7, and 10 (inclusive). The Board finds that the cumulative restrictions imposed on the property by the foregoing circumstances greatly constrain the area available for the construction of a barn on this property in the area that is "behind the rear building line," as required by the Zoning Ordinance. The Board finds that this is an extraordinary condition peculiar to this property, and satisfies 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 the Petitioners, who purchased the subject property in 2018, are not responsible for its sloping topography, the presence of the afore-mentioned utilities, the septic easement serving Lot 7, or the existing forest sloping down to parkland. Thus the Board finds that the special circumstances or conditions pertaining to this property are not the result of actions taken by the Petitioners.

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, site plan, and various aerial photographs and topographical maps, and on the representations of Mr. Kline, that the constraints posed by subject property's severely sloping topography, the locations of the various utilities, the septic easement for Lot 7, and the fact that removal of existing forest would affect drainage towards the adjoining parkland, combine to preclude construction of the proposed accessory structure behind the rear building line of the house, as is required by the Zoning Ordinance. The Board further finds that the requested variance, to allow the placement of the proposed accessory structure on a relatively level, non-forested portion of this property that is forward of instead of behind the rear building line of the house, is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose. Accordingly, the Board finds that this element of the variance test is satisfied.

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, based on the Statement, that the Olney Master Plan generally recommends continued agricultural preservation and protection in the area east of Georgia Avenue, which is where the subject property is located, and indirectly supports agricultural activities on this property in order to maintain the protection of the area's environmental resources, including the Hawlings Park and Hawlings River watershed. Thus the Board finds that the grant of the variance to allow a barn needed for agricultural activity on the subject property can be granted without substantial impairment to the intent and integrity of the Olney Master Plan, in satisfaction of this Section.

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.*

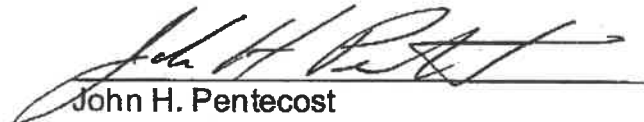
The Board finds, per the Statement and the representations of Mr. Kline, that the grant of the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this Section. In support of this, the Board notes, per the Statement, that the proposed construction will be far from the road and buffered by trees. The Board further notes, per the representations of Mr. Kline, that the proposed construction is a significant distance from the most affected neighbor, and will present as an agricultural barn, appropriate for the area.

Accordingly, the requested variance to allow the construction of an accessory structure (barn) forward of the rear building line 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(a) and 5(a)-(b).

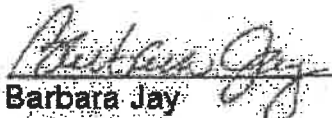
Therefore, based upon the foregoing, on a motion by Bruce Goldensohn, Vice Chair, seconded by Richard Melnick, with John H. Pentecost, Chair, Katherine Freeman, and Mary Gonzales in agreement, the Board adopted the following Resolution:

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 26th day of June, 2020.



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.