BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue, Suite 217
Rockville, Maryland 20850
(240) 777-6600
www.montgomerycountymd.gov/boa/

Case No. A-6733
PETITION OF KELLY VAENA

OPINION OF THE BOARD
(Public Hearing Date: February 16, 2022)
(Effective Date of Opinion: February 25, 2022)

Case No. A-6733 is an application by Petitioner Kelly Vaena for two variances needed for the proposed construction of an accessory structure (shed). The proposed construction requires a variance of nineteen (19) feet as it is within forty-one (41) feet of the front lot line. The required setback is sixty (60) feet, in accordance with Section 59-4.4.9.B. of the Montgomery County Zoning Ordinance. In addition, the proposed construction requires a variance to be forward of the rear building line, in accordance with Section 59-4.4.9.B of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, February 16, 2022. All participation was done via Microsoft Teams. Petitioner Kelly Vaena participated in support of the requested variances.

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

EVIDENCE PRESENTED

1. The subject property is Lot 16, Block 6, B.F.G. PT LTS 7 8 15 17 18 Subdivision, located at 7212 Cedar Avenue in Takoma Park, Maryland, 20912, in the R-60 Zone. Per SDAT, the subject property is 37,866 square feet in size, and was purchased by the Petitioner and her husband in 2013. It is a ten (10) sided property located on the west side of Cedar Avenue in the Takoma Park Historic District. Each of the property's ten distinct property line segments intersects the adjoining segment at a 90 degree angle, resulting in a property that has a truly unique shape, as shown on the Site Plan and Zoning Vicinity Map. The rear of the property is traversed by a 30 foot wide WSSC storm drain easement that runs diagonally from north to south. See Exhibits 4(a) and 9.

2. The Site Plan indicates that the property has 126 feet of frontage along Cedar Lane, and is 350 feet deep from Cedar Lane to its rear. The front portion of the property, along Cedar Lane, contains the existing house. See Exhibit 4(a).

3. The Petitioner's variance application cites topography as the justification for seeking variance relief, stating that "[t]he property includes a steep slope starting at the middle of the house structure and continuing for over half of the property depth (see attachments)." See Exhibit 1. The Petitioner's Justification Statement ("Statement") reiterates this, stating that the property's topography makes it unique for the purposes of satisfying Section 59.7.3.2.E.2.a.i of the Zoning Ordinance ("Most notably, as required by 2a(i) above, exceptional topographical conditions are present in a steep downward slope initiating within the house line and continuing to the back of the property (see topographical map, page 2).") See Exhibit 3. The steep downward slope of the property is also called out on the Petitioner's Site Plan, which depicts the slope as extending from the center of the existing house to just before the northern edge of the WSSC easement, and is shown on the topographical map and photographs submitted by the Petitioner, both of which confirm the slope's severity. See Exhibits 3(a), 3(b), and 4(a).

4. The Petitioner is seeking to locate an accessory structure (shed) forward of the house's rear building line and less than 60 feet from the property's front lot line, to the side of the existing house and forward of the property's steeply sloped area. See Exhibits 3 and 4(a). The Statement sets forth the practical difficulties that placement of the proposed shed in compliance with the requirements of the Zoning Ordinance would pose for the Petitioner on account of the property's topography, as follows:

> The slope and degree of decline starting from the house makes the placement of a shed behind the rear building line within any proximity to the house difficult and impractical. The distance that would be required to meet the condition (placement to the far back of the property, down a steep hill) would make storage of garden and recreational equipment (bicycles etc.) impractical as access is needed to the house, utilities and street.

See Exhibit 3. This sentiment is echoed on the Petitioner's variance application, which notes that the Petitioner needs outdoor storage "that is accessible to the house and street," and states that if the requested variances were not granted, "the property would not have storage (for garden equipment, bicycles etc.) as the placement of the shed to the far back of the property, down a steep slope, would not be practical given the difficulty of access to the house/street." See Exhibit 1.

5. The Statement states that the proposed location for the shed would be "the best possible solution as it would be off to the side of the property, abutting the neighbor's back yard and driveway and on a part of the property that would require only minimal leveling before the downslope begins." The Statement notes that the Petitioner's neighbors at 7204 Cedar Avenue, whose property abuts the shared property line closest to the location of the proposed shed, have been consulted about the proposed construction and have no objections. See Exhibit 3. The record contains a letter from these neighbors stating that they "fully support" the Petitioner's request to build a shed in the proposed location. See Exhibit 7.

6. The Petitioner submitted a letter from the Maryland Historical Trust approving the proposed location of the shed. See Exhibit 8(a). In addition, the Petitioner submitted an

email from the County's Historic Preservation Commission advising that the Petitioner's Historic Area Work Permit application would be approved. See Exhibit 8(b).

7. At the hearing, Petitioner Kelly Vaena testified that the subject property is encumbered with a steep slope that extends from the middle of the house to "far back" on the property. She testified that it is not practical to place a shed beyond the slope. In response to a Board question asking if moving the shed 19 feet farther back from the front lot line would place the shed in this area of extreme slope, Ms. Vaena testified that it would. In response to a Board question asking if she needed a tree assessment for the proposed construction, Ms. Vaena testified that she had communicated with the Takoma Park arborist and was advised that an assessment is not needed.

Ms. Vaena testified that she and her husband have talked to their neighbors, and that they have no objections to the proposed construction.

FINDINGS OF THE BOARD

Based on the binding testimony and 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;

The Board finds, based on the Statement, topographical map, photographs, Site Plan, and testimony of Ms. Vaena, that the subject property has a steep downward slope that begins at the midpoint of the house and continues well into the rear of the property. See Exhibits 3, 3(a), 3(b), and 4(a). The Board finds that the severity of this slope constitutes an extraordinary condition unique 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 the Petitioner purchased the subject property in 2013, and is not responsible for its topography, 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 property's steep topography limits the Petitioner's ability to locate the proposed accessory structure in a usable and proximate location that is consistent with the development standards set forth in the Zoning Ordinance, causing the Petitioner a practical difficulty, as explained in her Application, Statement, and testimony. See Exhibits 1 and 3. The Board further finds that the requested variances are the

minimum necessary to overcome this practical difficulty and to allow the Petitioner to locate the proposed structure in an area of the property that is not encumbered with a steep slope and that would facilitate its utility. Thus, 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 that construction of the proposed accessory structure will continue the residential use of the home and has been favorably reviewed by the Maryland Historical Trust and by the County's Historic Preservation Commission. See Exhibits 8(a) and (b). Thus the Board finds that the requested variances can be granted without substantial impairment to the intent and integrity of the applicable general plan and 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.*

Based on the afore-mentioned approvals from the Maryland Historical Trust and the County's Historic Preservation Commission, and in accordance with the representation in the Statement and the testimony of the Petitioner that she has spoken with her neighbors and that they do not object to the proposed construction, the Board finds that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test. See Exhibits 3 and 8(a)-(b). The Board notes, in further support of this finding, that the record contains a letter from the neighbors whose property is closest to the proposed structure indicating their full support. See Exhibit 7.

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

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4(a) and (b) and generally consistent with the representative drawings included in the record at Exhibits 5(a) through (e).

Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Mary Gonzales and Richard Melnick in agreement, and with Bruce Goldensohn, 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 25th day of February, 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.