

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6785-A

PETITION OF TILMON SMITH FOR TDS PROPERTIES, LLC

OPINION OF THE BOARD
(Hearing Held: February 22, 2023)
(Effective Date of Opinion: March 3, 2023)

Case No. A-6785-A is an application by Petitioner Tilmon Smith for TDS Properties, LLC, for a variance needed for the proposed construction of a single family house on an existing foundation. The proposed construction requires a variance of four (4) feet to allow construction on a lot with a width of 56 feet at the front building line. The required width at the front building line is sixty (60) feet, in accordance with Sections 59.4.4.9.B.1 and 59.7.3.2.A of the Zoning Ordinance.¹

The Board of Appeals held a hearing on the application on Wednesday, February 22, 2023. Petitioner Tilmon Smith appeared in support of the requested variance, assisted by his architect, Christopher J. LaMora.

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

EVIDENCE PRESENTED

1. The subject property is Lot P1, Block 8, Pt Aband Highland St Pinecrest Subdivision, located at 6419 Eastern Avenue in Takoma Park, Maryland, 20912, in the R-60 Zone. It is a rectangular property located on the northeast side of Eastern Avenue, with front and rear lot lines measuring 56 feet each, and side lots lines measuring 128.6

¹ On February 3, 2023, in related Case No. A-6785, the Board granted a 4.45 foot variance from the right side lot line in connection with this same construction. The building permit denial for the lot width was issued before the hearing in that case was held, but not in time for it to be included in the Notice for that proceeding. Thus the Board was aware of the need for the lot width variance when it issued the side lot line variance. This proceeding is deemed to incorporate all of the evidence submitted in connection with the original hearing in Case No. A-6785.

feet each, for a total area of 7,202 square feet. Per SDAT, the Petitioner purchased the subject property in 2022. See Exhibits 3, 4(a)-(b), 7, and SDAT printout.

2. The subject property contains an existing one-story house, built in 1931, that is located 3.55 feet from the right side lot line. The Petitioner's Statement of Justification ("Statement") indicates that this house "is nonconforming at the easter[n] side yard setback," and describes the house as being in "poor condition" such that it should be "removed/replaced." The Statement states that the Petitioner intends to remove the existing house and to construct "a two story dwelling on top of the existing foundation wall[s], and within the footprint of the existing 1 story dwelling." See Exhibit 3 and SDAT printout. The nonconforming nature of the existing foundation is confirmed by the County's Department of Permitting Services on the building permit denial. See Exhibit 6.

3. The Statement states that the existing property is 56 feet wide and 128.6 feet deep. See Exhibit 3. The building permit denial indicates that the property is nonconforming. See Exhibit 13.

4. The Statement states that granting the requested variance is the minimum needed to permit the proposed construction on the existing 56-foot wide property, and thus to overcome the practical difficulties that full compliance with the Zoning Ordinance would pose. The Statement notes it would be "difficult and cost prohibitive to purchase an additional 4'-0" of the neighbor's property." See Exhibit 3.

5. The Statement states that with the grant of the requested variance, "[t]here would be no change to the lot dimensions of this or any surrounding lots." Accordingly, the Statement concludes that granting a variance from the required lot width "will not be adverse to the use an enjoyment of abutting and confronting properties." See Exhibit 3.

6. At the hearing, Mr. Smith testified that the variance was needed so that the property could be properly recorded in the land records.

7. Mr. LaMora testified that because of its strange history, this property was never recorded with Montgomery County, and that a variance is needed before that can be done.

FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the requested variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59.7.3.2.E of the Zoning Ordinance, 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.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the proposed development seeks to reuse the foundation of an existing house that is located on an existing rectangular property that is only 56 feet wide. The Board further finds that because the existing property on which this foundation is located does not comply with the required sixty (60) foot lot width at the front building line, it is nonconforming, as confirmed by DPS on the building permit denial. See Exhibits 3, 4(a)-(b), and 13. Because the proposed construction will use this property, the Board finds that this element of the variance test is satisfied.

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 there has been a house on the subject property since 1931, and that the Petitioner purchased the property in 2022. See SDAT printout. Accordingly, the Board finds that the Petitioner 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 previously found, in related Case No. A-6785, that granting a variance from the required side lot line setback was the minimum necessary to allow the proposed construction to proceed on top of the existing foundation. The Board further finds, in the instant case, that the requested lot width variance is the minimum needed to allow the proposed construction to proceed on this existing nonconforming property, and to allow the property to be recorded. The Board notes that the proposed construction will not change the dimensions of the subject property or the abutting properties to either side, both of which are developed. See Case No. A-6785. Thus the Board concludes that compliance with the required lot width at the front building line, which is violated by the existing house and foundation, and which cannot be achieved on this 56-foot wide rectangular property without the purchase of additional land from neighboring properties, poses a practical difficulty for the Petitioner, and that the grant of the requested variance is the minimum necessary to allow the recording of the property and the proposed construction, and therefore to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose, 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 on this existing property will continue the residential use of the property, and that the grant of the requested variance will not impair the intent, purpose, or integrity of the Takoma Park Master Plan (2000) which seeks, among other things, "to support stable residential neighborhoods," 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, per the Statement and the Site Plan, that the proposed variance is needed to maintain the width of the existing property, and thus will not change the size or shape of the existing property. See Exhibits 3 and 4(a)-(b). The Board further finds, as it had in Case No. A-6785, that the Petitioner's abutting neighbors are supportive. Finally, the Board notes, as it had in the predecessor case, that the record contains no letters of opposition to the requested variance relief despite proper posting of the property. On the basis of the foregoing, the Board finds 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 element of the variance test.

Accordingly, the requested variance needed to allow the proposed construction of a new single family house on an existing property with a width of 56 feet is **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)-(b) and 5(a)-(k) (interior layouts excluded).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Laura Seminario-Thornton, and Alan Sternstein 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 3rd day of March, 2023.


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.