

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6904
PETITION OF CHRISTINE LAO-SCOTT**

OPINION OF THE BOARD
(Hearing Date: February 5, 2025)
(Effective Date of Opinion: February 14, 2025)

Case No. A-6904 is an application by Petitioner Christine Lao-Scott for two variances needed for the proposed construction of a new detached accessory dwelling unit (“ADU”). The proposed construction requires a one (1) foot variance as it is within seven (7) feet of the right side lot line. The required setback is eight (8) feet, in accordance with Sections 59.4.4.9.B.2 and 59.3.3.3.C.2.c of the Zoning Ordinance. In addition, the proposed construction requires a variance to be located on the side of the principal building. Section 59.4.4.9.B.2.a requires that accessory structures be located behind the rear building line of the principal building.

The Board of Appeals held a hearing on the application on February 5, 2025. The Petitioner’s husband, Christopher Lao-Scott, participated in the proceedings in support of the requested variances, assisted by architect Eric Saul.

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

EVIDENCE PRESENTED

1. The subject property is Lot P28, Block J2, Woodside Park Sec 6 Subdivision, located at 1100 Highland Drive, Silver Spring, Maryland, 20910, in the R-60 Zone. It is a four-sided corner property located on the south side of Highland Road and the west side of Alton Parkway. The property contains a house that was built in 1947. It has a driveway from Highland Drive that parallels the property’s right (west) side lot line. The property’s elevation changes abruptly, increasing by about six feet, along the east side of the driveway, such that concrete stairs have been installed to navigate the grade change between the driveway and the portion of the property that contains the house. The property was purchased by the Petitioner in 2014. See Exhibits 3, 4, and 5(c), and SDAT Printout.

2. The Petitioner's variance Application cites the subject property's shallowness and topography as factors that make the subject property unique. The Application states that the Petitioner's rear yard is only 21 feet deep and therefore "unable to accommodate an ADU." The Application further states that "there is a 6 foot drop off next to the driveway where the proposed ADU is planned." See Exhibit 1. The Petitioner includes a photograph showing the steep slope next to her driveway with her submission. See Exhibit 5(c).

3. The Petitioner's Statement of Justification ("Statement") echoes the Application's assertions regarding the uniqueness of the property, describing the "exceptional shallowness" of the property's 21 foot deep back yard, and stating that the property "also has a 6 foot steep drop on the side of the driveway that creates an impractical difficulty of building a structure over a steep hill." See Exhibit 3.

4. The Statement states that the Petitioner is seeking to construct a detached accessory dwelling unit ("ADU") on her property. The Statement states that ADUs are required to be behind the rear building line of the principal structure, and are required, in this Zone, to be sited at least 12 feet from the rear lot line. The Statement states that because there is only a total of 21 feet between the rear façade of the principal structure and the rear property line, an ADU will not fit in this area. As a result, the Statement states that the Petitioner is seeking to put the ADU in her side yard, "at the end of the driveway where an old garage used to be." The Statement states that the proposed ADU would project one foot into the required eight foot side setback "due to a steep 6-foot tall hill." The Statement notes that the "original lot was recorded before 1954, which would have allowed for a 7-foot side setback, but sometime after 1954, the lot was recorded again, and therefore, must now have an 8 foot side setback." The Statement states that the proposed ADU would meet the required setbacks from the other three property lines, as well as the height limit. See Exhibit 3.

5. The Statement states that the Petitioner did not cause the circumstances that make her property unique since "the house was constructed before the property was purchased with the rear yard already defined." See Exhibit 3.

6. The Statement states that the Petitioner's property is unique compared to its neighbors and neighborhood, and that "this uniqueness causes the zoning requirements to disproportionately impact the reasonable use and enjoyment of this property, thus creating a practical difficulty." The Statement further states that the Petitioner "is proposing a practical sized ADU that meets all other zoning regulations except for the rear yard location," and that it "would be a practical difficulty to build an ADU on this property that fits in the rear yard." Thus the Statement concludes that the requested variances are the "minimum necessary to overcome the practical difficulty that would be associated with full compliance with the Zoning Ordinance." See Exhibit 3.

7. The Statement states that the requested variances can be granted without substantial impairment to the applicable general or Master plans. The Statement states that the requested variances "do[] not affect the integrity or intent of the general plan or

applicable master plans,” and notes that “ZTA 19-01 has also established the right to allow property owners to build ADUs on R-60 lots.” See Exhibit 3.

8. The Statement states that “[t]he proposed ADU will not negatively impact the use, enjoyment, character, health, safety, welfare, or security of the neighboring residents.” See Exhibit 3.

9. At the hearing, Mr. Lao-Scott testified that he and his wife are seeking to construct an ADU on their property. He testified that they are planning to have family occupy the ADU. Mr. Lao-Scott testified that the subject property is a corner lot and that the proposed ADU would be located in the right rear (southwestern) portion of the property. He testified that he has spoken to his abutting neighbors at 1108 Highland Drive and 9112 Alton Parkway about the proposed construction, and that neither expressed any concerns or raised any objections.

Mr. Lao-Scott testified that the house on their property was built in 1947, and that he and his wife purchased the property in 2014. He testified that a garage that used to be located at the end of their driveway was removed before they purchased the property.

10. Mr. Saul testified that the subject property is a corner property, and that he worked extensively with the County’s Department of Permitting Services to determine which lot lines should be treated as the property’s front, side, and rear. He testified that the lot line abutting Highland Drive was determined to be the “front” of the property for the purposes of establishing where the property’s rear building line and rear lot line were. Mr. Saul testified that the red outline on the Site Plan shows the applicable ADU setbacks as applied to this property. See Exhibit 4. Mr. Saul testified that it would be impossible to fit an ADU in the property’s rear yard because that area is very shallow, with a width of about six feet, and that this causes the Petitioner a practical difficulty. Mr. Saul testified that this is why the Petitioner is requesting to put the ADU in her side yard.

Mr. Saul testified that in addition to needing to place the ADU in her side yard, the Petitioner also needs a one foot variance to allow the proposed ADU to be located seven feet from the side lot line instead of the required eight feet. He testified that the property has an elevated driveway with a steep hill down to the house, as shown by the contour lines on the Site Plan. Mr. Saul testified that the driveway area is generally flat, and that there had previously been a detached garage in this area. See Exhibit 4. Mr. Saul testified that the Petitioner has provided a photograph that shows the severity of the slope on the east side of her driveway and the stairs installed to navigate that slope. See Exhibit 5(c). Mr. Saul testified that the Petitioner is trying to keep the proposed ADU about a foot away from the top of this hill, which would result in a seven foot setback from the side lot line. He testified that the proposed ADU would be farther from the side lot line than the former garage. Mr. Saul testified that because this property was originally recorded before 1954, it would have been eligible for a seven foot side setback, but that a post-1954 adjustment to the lot lines resulted in the currently applicable eight foot setback. Mr. Saul testified that being able to construct the ADU seven feet from the side lot line instead of the required eight feet would be extremely helpful in addressing

construction problems posed by the steep downward slope on the east side of the driveway. He testified that he had worked with an engineer who informed him that if the ADU were placed in accordance with the required eight foot setback, the hill on that side of the driveway would have to be rebuilt.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the variances needed for the construction of the proposed ADU can be granted. The Board finds that 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 Application, Statement, Site Plan, photograph, and the testimony of Mr. Saul, that the subject property has an unusually shallow rear yard, and that the property's side yard is encumbered with a steep downward slope that falls about six (6) feet over a short distance from the elevated driveway towards the house. See Exhibits 1, 3, 4, and 5(c). The Board finds that these factors, taken together, constrain the area available for the construction of an ADU and make the property unique, 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, the SDAT Printout, and the testimony of Mr. Lao-Scott, that the house on the subject property was built in 1947, and that the Petitioner and her husband purchased the property in 2014. See Exhibit 3. Thus the Board finds that the Petitioner is not responsible for the placement of her house or the resultant shallowness of her rear yard. The Board further finds, based on testimony of Mr. Lao-Scott and Mr. Saul, that prior to the Petitioner's purchase of the subject property, there was a detached garage at the end of the property's driveway, which the Board finds is evidence that the property's driveway, and notably the downward slope of the property from that driveway towards the house, also predate the Petitioner's ownership of the property, and are not attributable to any actions taken by her. In light of the foregoing, the Board finds that the special circumstances or conditions pertaining to this property are not the result of actions by the Petitioner, 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, based on the Statement and Site Plan, and the testimony of Mr. Saul, that the shallowness of the Petitioner's rear yard precludes construction of an ADU in that area, and causes the Petitioner a practical difficulty. The Board further finds, based on the Statement, Site Plan, and the testimony of Mr. Saul, that the proximity of the side lot line to the steep downward slope from the Petitioner's elevated driveway towards her house prevents the Petitioner from being able to construct the proposed ADU in accordance with the required side setback, also causing her a practical difficulty. See Exhibits 3 and 4. The Board finds, based on the Statement and the testimony of Mr. Saul, that the requested variances, which would allow the Petitioner to construct the proposed ADU in her side yard at a distance that is one (1) foot closer to the side lot line than would otherwise be allowed, are the minimum needed to overcome these practical difficulties and to allow the proposed construction. The Board notes in further support of this finding that this property would have been subject to a seven (7) foot side setback but for an adjustment to its lot lines and the re-recording of the property sometime after 1954. Accordingly, the Board finds that the variances requested are the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would entail, 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;*

The Board finds that the requested variances, which are needed to allow the Petitioner to construct an ADU on the subject property, can be granted without substantial impairment to the intent and integrity of the applicable North and West Silver Spring Master Plan (2000), which seeks to "preserve the existing residential character and to reinforce the many desirable features of the North and West Silver Spring neighborhoods." Accordingly, the Board finds that this element of the variance test is satisfied.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or fronting properties.*


The Board finds, based on the Statement and the testimony of Mr. Lao-Scott, that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties. See Exhibit 3. In support of this, the Board finds that Mr. Lao-Scott testified that he has spoken to his abutting neighbors and that neither expressed any concerns about or objections to the proposed construction. In addition, the Board notes that despite being properly noticed and posted, the record contains no written opposition to the requested variances, and no one appeared in opposition to the variances at the hearing. On the basis of the foregoing, 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.

Accordingly, the requested variances, needed for construction of the proposed ADU, 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 and 5(a)-(b) (exterior only).

Based upon the foregoing, on a motion by Caryn L. Hines, Chair, seconded by Alan Sternstein, with Richard Melnick, Vice Chair, Amit Sharma, and Donald Silverstein 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.


Caryn L. Hines
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 14th day of February, 2025.


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.