

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6784
PETITION OF JESSICA CRONIN**

OPINION OF THE BOARD

(Hearings Held: January 25, 2023, and February 1, 2023)
(Effective Date of Opinion: February 10, 2023)

Case No. A-6784 is an application by Petitioner Jessica Cronin for a variance needed in connection with the proposed construction of a shed. The proposed construction requires a variance to be located forward of the rear building line. Section 59.4.4.8.B.2 of the Montgomery County Zoning Ordinance requires that accessory structures be located behind the rear building line of the principal building.

The Board of Appeals convened a hearing on the application on Wednesday, January 25, 2023, and pursuant to a request from the Petitioner, continued the matter on the record until February 1, 2023, at 9:30 a.m. The Board then held a hearing on the application on Wednesday, February 1, 2023. Petitioner Jessica Cronin appeared in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Lot 49, Block D, Dunlop Hills Subdivision, located at 3205 Woodbine Street in Chevy Chase, Maryland 20815, in the R-60 Zone. The subject property is an interior lot, located on the north side of Woodbine Street. It is improved with an existing house that was built in 1960. The property is triangular in shape, with a slightly curved front lot line and two side lot lines that converge behind the house at an acute angle. As shown on the Site Plan, the subject property has an area of 13,146 square feet. See Exhibits 3, 4, and 7, and SDAT printout.

2. The Petitioner's variance application states that the Petitioner's backyard is "small and exposed," and that "most of the backyard is a large hill which will be very difficult to build on." See Exhibit 1. The Petitioner's Statement of Justification ("Statement") echoes this sentiment, stating that the subject property has "a large hill in the backyard," such

that "there is not a good location for the proposed shed in the back of the house given the unique topological conditions of the lot (small backyard due to triangular shape of lot and large hill in backyard)." In addition, the Statement states that "the large hill in the backyard would make it very difficult to provide an appropriate foundation for the proposed shed." See Exhibit 3.

3. The Statement states that the next-door neighbor's view of the proposed shed would be shielded by "multiple well-developed trees, which line the property line between our neighbors and our property." Similarly, the Statement notes that the proposed shed "would not be significantly visible from the front of the house due to large trees that are already present in the front yard." Finally, the Statement states that the proposed shed "will be visually appealing" and will be "shielded from view of our neighbors and passers-by." In light of the foregoing, the Statement asserts that granting the variance would not be adverse to the use and enjoyment of abutting and confronting properties. See Exhibit 3.

In addition to explaining why locating the proposed shed in the side yard would not be harmful to the Petitioner's neighbors, the Statement also indicates that locating the shed in the backyard, as would otherwise be required by the Zoning Ordinance, would increase its visibility to neighbors, stating that "[i]f the shed were positioned in the back of the property away from the house, it would be an eye sore to our neighbors and to ourselves as there is not sufficient space for appropriate landscaping to incorporate the shed given the triangular shape of the property." See Exhibit 3.

4. The Statement states that the Petitioner purchased the subject property in 2016. See Exhibit 3.

5. The Statement states that placement of the shed on the opposite side of the house would also require variance relief, that placement in the rear yard is precluded by the property's topography and is generally not desirable from a visibility standpoint, and that construction of a larger garage in lieu of a shed would likely also require variance relief because of the shape of the property. See Exhibit 3.

6. The record contains a letter of support from one of the Petitioner's abutting neighbors to the west which notes that the proposed shed "could not present a more benign impact on the surroundings." The letter further indicates that the proposed shed would not be visible from his house, and that the proposed location "really is the only location on the neighbor's property where this would be the case." Finally, the letter states that "[b]ecause of the location of trees and the juxtaposition of the petitioner's house on its lot, the shed would be also be unnoticeable from the street and from the neighbor's below the petitioner's lot." See Exhibit 9.

7. At the hearing, the Petitioner testified that she is seeking permission to have a shed in her side yard, on the right side of her house. She testified that her rear yard is triangular in shape and small. She testified that it is encumbered with a continuous hill to the top. When asked to quantify the degree of the slope behind her house, the Petitioner testified that it was "pretty steep," and said that her small child cannot walk up it because

of its incline. She testified that there are several older trees in her back yard that hold the slope in place. The Petitioner testified that they had inquired into constructing the shed in the rear yard, but that to do so, they would have to dig into the slope to create a level platform, and that this would cut and likely compromise the roots of the trees that hold the slope in place.

The Petitioner testified that the proposed location of the shed is screened by mature vegetation from the road and from the neighbors. She testified that her neighbors support the granting of the variance, specifically noting that she had received verbal support from her right side neighbor, and that the record contains a letter of support from another neighbor.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variance can be granted. The variance complies with the applicable standards and requirements set forth in Section 59.7.3.2.E.2, 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, per the Application, Statement and Site Plan, and as confirmed in testimony, that the subject property is triangular in shape, and that the area behind the rear building line of the existing house is similarly shaped and is encumbered with a steep hill. The Board finds that these circumstances limit the area available behind the rear building line of the house for the construction of the proposed shed, and constitute an extraordinary condition that is peculiar 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 Statement and testimony of record indicate that the Petitioner purchased the subject property in 2016, and that she is not responsible for the property's steep slope or triangular shape. See Exhibit 3. Thus the Board finds that the special circumstances or conditions applicable 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, Site Plan, and testimony of record, that the proposed shed cannot be located behind the rear building line of the Petitioner's house because of the constraints placed on that area by the property's steep slope and

unusual shape. The Board further finds that allowing the Petitioner to locate the proposed shed in the side yard is the minimum necessary to overcome the practical difficulty that is posed for the Petitioner by these constraints. See Exhibits 3 and 4. 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 the proposed construction will continue the residential use of the subject property. Accordingly, the Board finds that the requested variance can be granted without substantial impairment to the intent and integrity of the Bethesda-Chevy Chase Master Plan, which seeks to "[p]rotect the high quality residential communities throughout the Planning Area" and to "[r]econfirm the zoning for the extensive single-family detached residential areas," 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.*

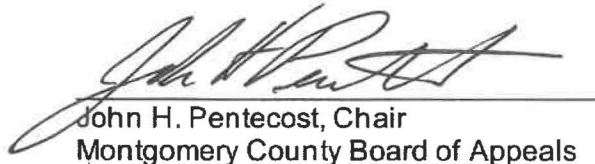
The Board finds, in accordance with the Statement and testimony of record, that granting a variance to allow the proposed shed will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test. In support of this finding, the Board notes that the Statement and testimony of the Petitioner both indicate that the view of the proposed shed will be well-shielded by existing vegetation. See Exhibit 3. In addition, the Board notes that the Petitioner has testified that her neighbors support the grant of the variance. Finally, the Board notes that the record contains a letter of support which confirms the lack of visibility if the shed is located as proposed. See Exhibit 9.

Accordingly, the requested variance to allow the proposed construction of a shed forward of the rear building line is **granted**, subject to the following conditions:

1. The Petitioner shall be bound by the testimony and exhibits of record.
2. Construction shall be in accordance with Exhibits 4 and 5(a).

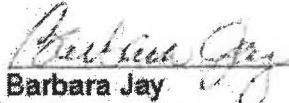
Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Laura Seminario-Thornton, and Alan Sternstein in agreement, the Board adopted the following Resolution:

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 10th day of February, 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.

