

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6785**

**PETITION OF TILMON SMITH FOR TDS PROPERTIES, LLC**

**OPINION OF THE BOARD**

(Hearing Held: January 25, 2023)

(Effective Date of Opinion: February 3, 2023)

Case No. A-6785 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 4.45 feet as it is within 3.55 feet of the right side lot line. The required setback is eight (8) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance.<sup>1</sup>

The Board of Appeals held a hearing on the application on Wednesday, January 25, 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

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<sup>1</sup> The Board is aware that in addition to this variance, the proposed construction will also require a variance to allow the proposed 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 feet, in accordance with Section 59.4.4.9.B.1 of the Zoning Ordinance. The Board is unable to consider the lot width variance at this hearing because it was not identified in time to be included in the Notice for this proceeding. The lot width variance is scheduled to be heard by the Board on February 22, 2023.

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 subject property is "on a steep hill" and that "a number of properties along this row have retaining walls between properties." In this regard, the Statement observes that the roof of the existing house "is already above the adjacent property." See Exhibit 3.

4. The Statement states that it would be "prohibitively expensive to demolish, move, and rebuild the foundation" of the existing house, and accordingly states that the Petitioner is proposing to reuse this nonconforming foundation for the proposed new single family house. The Statement states that the proposed construction will "maintain the existing condition at the 1<sup>st</sup> floor and to extend it to the 2<sup>nd</sup> floor," concluding that the "existing non-conforming side yard would be extended to the second floor and would not adversely affect the adjacent property to the southeast." See Exhibit 3.

5. At the hearing, Mr. LaMora testified that the Petitioner is seeking to renovate an existing structure that was built in 1931 and is in bad shape. He testified that the structure's foundation has been analyzed and has been found to be reusable and in good shape. Thus, Mr. Lamora testified that the Petitioner's plan is to remove the existing framing from the foundation, add two courses of CMU to the foundation (to raise the cellar height to seven (7) feet), and rebuild the house as a two-story home.

Mr. LaMora testified that the house is on a hill. He testified that homes on the Petitioner's side of the street have terrain that generally slopes downhill from north to south, and as a result that there is a series of retaining walls, including between the subject property and 6421 Eastern Avenue (the abutting property to the north); and one on the property at 6417 Eastern Avenue (the abutting property to the south), between the house on that property and the house on the subject property. See Exhibit 4(b).

Mr. LaMora testified that the properties that flank the subject property contain one-story houses, but that the majority of the properties to the north contain two-story homes. He testified that the Petitioner's neighbor to the north is very excited about the proposed improvements to the subject property, but that he had not heard from the neighbor to the south. Mr. Smith testified that the neighbor to the north said the neighbor to the south is also excited.

In response to a Board question asking if the foundation was conforming when it was built, Mr. LaMora testified that to the best of his knowledge, it was. He noted that the

lot lines of the property have changed over the years. In response to a Board question asking about the hardship associated with relocating the existing foundation, Mr. LaMora testified that it would be very difficult to remove, relocate, and rebuild the existing foundation, which is constructed in the earth, and that these difficulties would be further complicated by the property's slope.

## 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 uses an existing structure (foundation) that was built in 1931 and extends approximately 4.45 feet into the required setback from the right side lot line. Thus the Board finds that the existing structure does not comply with the right side setback required by the Zoning Ordinance and, as noted in the Statement, and as confirmed by DPS on the building permit denial, is nonconforming. See Exhibits 3, 4(a)-(b), and 6. Accordingly, 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 the existing house, including its foundation, was built in its current location in 1931. The Board further finds that the Petitioner purchased the subject 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 finds, based on the Statement, that the requested variance is the minimum necessary to allow the proposed construction to proceed on top of the existing foundation. The Board finds that the requested variance is minimal in that it would not increase the footprint of the existing house or extend any further into the side lot line setback than the existing house, which has been in place since 1931. The Board further finds that without the grant of the requested variance relief, the Petitioner could not reuse the existing foundation, which the Statement indicates cannot be moved and rebuilt

without "prohibitive" expense, and would be left with an existing house that is in "poor condition" and "should be removed/rebuilt." See Exhibit 3. The Board further finds that the poor condition of the existing house and the extreme difficulties associated with moving the existing foundation were confirmed in testimony by Mr. LaMora. Thus the Board concludes that compliance with the required right side lot line setback, which is violated by the existing house and foundation, would pose a practical difficulty for the Petitioner, and that the grant of the requested variance is the minimum necessary to allow construction of a new house on the existing foundation and therefore to overcome the 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 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 construction will maintain the footprint of the existing home, and thus will not encroach any closer on the property's right side lot line than the existing house does. See Exhibits 3 and 4(a)-(b). The Board further finds, per the testimony of record, that the Petitioner's neighbor to the north is supportive, and that that neighbor has indicated that the neighbor to the south is supportive as well. Finally, the Board finds that despite proper posting of the property, the record contains no letters of opposition to the requested variance relief. 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 foundation 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 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.

