

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
<http://www.montgomerycountymd.gov/boa/>

(240) 777-6600

Case No. A-6823

PETITION OF PATRICIA LYNN DONHAM

OPINION OF THE BOARD

(Public Hearing Date: October 4, 2023)
(Effective Date of Opinion: October 18, 2023)

Case No. A-6823 is an application by Petitioner Patricia Lynn Donham for two variances needed for the proposed construction of a prefabricated greenhouse on her property ("Petition" or "Application"). The proposed construction requires a variance of 40.92 feet as it is within 24.08 of the front lot line. The required setback is sixty-five (65) feet, in accordance with Section 59.4.4.7.B.2 of the Zoning Ordinance ("Code"). In addition, the proposed construction requires a variance to be located in front of the principal building. Section 59.4.4.7.B.2.a of the Zoning Ordinance requires that an accessory building be located behind the rear building line of the principal building.

The Board of Appeals held a hearing on the Application on October 4, 2023. Ms. Donham, who owns and lives at the subject property, appeared at the hearing in support of the Application with her husband Victor, and with James Slack, AIA, who also lives at the subject property.

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

EVIDENCE PRESENTED

1. The subject property is Block 1, Lot 10, Parkside Estates Subdivision, located at 16620 Bethayres Road in Derwood, Maryland, 20855, in a R-200 Zone. It is a five-sided corner lot, located on the north side of Bethayres Road and the west side of Baederwood Lane. The property is basically rectangular in shape, except for a short, truncated corner that faces the intersection of these two streets and forms the property's fifth side. The

property has an area of 15,489 square feet, and was recorded in 1968. Per SDAT, it contains a house that was constructed in 1968, and was purchased by the Petitioner in 2021. See Exhibits 1, 4(a)-(b), and 8, and SDAT printout.

2. The Petitioner's variance Application cites the property's narrowness, shallowness, shape, and topography as conditions related to this property that cause strict compliance with the Zoning Ordinance to cause the Petitioner a practical difficulty. The Application states that the subject property is a corner lot with no rear yard. It states that the property has a steep grade on both its north and west sides, and that there are also woods on the west side. The Application states that if the requested variances are not granted, it will be "impossible to site [the proposed] greenhouse." See Exhibit 1.

3. The Petitioner's Statement of Justification ("Statement") states that the Petitioner is seeking to install a prefabricated 8' x 12' hobby greenhouse in her side yard. See Exhibit 3. Like her variance Application, the Petitioner's Statement cites the subject property's "exceptional narrowness, shallowness, [and] topographical conditions" as factors that make the property unique for the purpose of meeting the first element of the variance test. See Exhibit 3. The Statement describes the subject property as "an unusually shaped, steeply graded corner lot at the northwest corner of Baederwood Lane and Bethayres Road." The Statement states that based on the Site Plans and supplementary photographs provided, "it is clear" that neither the rear of the Petitioner's property nor the property's "western, wooded side" offer "useable space" for a greenhouse, noting that "[t]he topography of this lot changes almost 40 feet from one end to the other." See Exhibits 3, 4(a)-(b), and 5(b)-(h). The Statement further states that the Petitioner's side yard is "heavily wooded," and that "[t]he grade is so steep that [the Petitioner] cannot safely walk through that part of the property." Thus, the Statement asserts that "there is no location other than the site [the Petitioner] propose[s] to accommodate this greenhouse." See Exhibit 3.

4. The Statement states that the special circumstances pertaining to the subject property are not the result of any action the Petitioner has taken. It further states that "[f]ull compliance with the code would make construction of a hobby greenhouse impossible." The Statement states that the requested variances can be granted "without substantial impairment to the integrity of the general plan and the applicable master plan." Finally, the Statement states that "[g]ranted the variance[s] will not be adverse to the use and enjoyment of abutting or confronting properties," noting that "[t]he proposed hobby greenhouse is part of [the Petitioner's] plan to continue to improve the landscape of the property to promote healthy growth of native plants, bulbs, shrubs, and trees that provide habitat and food for pollinators and to create a lovely visual experience for neighbors and passers-by." See Exhibit 3.

5. The Petitioner has included a photograph showing what the proposed greenhouse will look like. See Exhibit 5(a). In addition, she has included photographs of the subject property from various angles, showing its trees and depicting its slope. See Exhibits 5(b)-(h).

6. In 1995, in Case No. A-4364, the Board granted a variance from the front lot line setback along Bethayres Road to permit the construction of a two-story addition to the existing house on the subject property. In that case, in addition to noting that the property was subject to "two large front lot line setback requirements" and that the existing house was sited on the property at an angle, the Board found that "there was a steep uphill incline adjacent to the west side and the rear of the dwelling." The Board found that these factors "create difficulties in the siting of any new construction," and that the strict application of the setback requirements in the Zoning Ordinance caused the applicants in that case a practical difficulty. See Exhibit 10.

7. At the hearing, Ms. Donham testified that, as was the custom when her house was built, the house is pushed towards the back of the property to provide a "sweeping" front yard for this corner property. She testified that a variance had been granted to previous owners to expand the home. Ms. Donham testified that she is proposing to install an 8' x 12' hobby greenhouse in what, for practical purposes, is her "side" yard. She testified that the proposed greenhouse will be screened by two Japanese maple trees, and that its door will face her home. Ms. Donham testified that the proposed greenhouse will have concrete footings, but a permeable gravel bed underneath.

In response to a Board question asking if she had spoken with her neighbors about the proposed greenhouse, Ms. Donham testified that as she and her family have been working in their garden, they have spoken with many neighbors who were walking by and asked how the greenhouse was coming. She testified that these communications have been positive. In response to a specific question asking if she had spoken with her neighbor to the north, who would be most affected by the proposed construction, Ms. Donham testified that she has not received any negative communications from that neighbor. She noted that neighbor has two greenhouses, one of which is an extension to her neighbor's home. Ms. Donham testified that her house and her neighbor's house both have solid brick first floor walls, and the proposed greenhouse would be located on that side of her neighbor's house. She noted that her neighbor's HVAC is also on that side of that house. See Exhibit 5(b).

8. Mr. Slack testified that the topography of the subject property precludes location of the proposed greenhouse in the areas that would be allowed by the Zoning Ordinance. He testified that the property is steeply graded, estimating that there is a 15- to 20-foot height difference between the rear corner of the house and the property line. Mr. Slack testified that the property is also heavily forested and thus shaded. He testified that the Petitioner is seeking to locate the proposed greenhouse forward of the rear building line in what, for zoning purposes, is her front yard, and he described the proposed placement as "useful." He testified that the proposed greenhouse would not be out of character with the architecture of the existing homes in the neighborhood, noting that at least two homes just down the block on Baederwood Lane have attached greenhouses.

In response to a Board question asking if there was room immediately behind the home to place the proposed greenhouse, Mr. Slack testified that there was not ... at least not without disrupting the existing landscaping and removing a number of trees. He

proceeded to testify that the rear yard has a waterfall feature, shown as “stones” on Exhibit 4(a), that is located seven-to-eight feet above the rear of the house. He testified that there is a retaining wall on the northwest side of the house and landscaping installed that allows people to walk all the way around the house. Mr. Slack narrated the photographs in the record at Exhibit 5(b)-(h). He testified that the slope of the property is quite steep, and he noted how close the property line is to the rear of the house.

9. Mr. Donham testified that they purchased the subject property in January, 2021. He testified that the patio and other exterior improvements were in place at the time he and the Petitioner purchased the property. Mr. Donham testified that the terrain to the right of the patio rises at about a 45-degree angle.

FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the 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, photographs, and the Board’s earlier decision in Case No. A-4364, and based on the testimony of record, particularly that of Mr. Slack and Mr. Donham, that the western and northern sides of the subject property, including the area behind the rear building line of the house, are encumbered with a very steep slope that effectively precludes construction in those areas. See Exhibits 3, 5(b)-(h), and 10. The Board finds that this circumstance constitutes an extraordinary condition 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 Board finds that the subject property was recorded in 1968, and that its severe slope is not the result of any actions by the Petitioner, who purchased the property in 2021. Accordingly, the Board finds that the special circumstances or conditions peculiar 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 the testimony of Mr. Slack, that full compliance with the setback and locational requirements in the Zoning Ordinance would not allow the Petitioner to install the proposed greenhouse because of the severity of the topography in the area where the Zoning Ordinance would allow this type of structure. See Exhibit 3. The Board finds that this causes the Petitioner a practical difficulty. The Board further finds, based on the Statement and the testimony of Mr. Slack, that the requested variances are the minimum necessary to allow placement of the proposed greenhouse on her property, and thus the Board finds that the requested variances are the minimum necessary to overcome the practical difficulties posed by full compliance with the Zoning Ordinance on account of the property's severe slope, 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 allowing the Petitioner to proceed with construction of the proposed structure will continue the residential use of this home, and that the requested variances can thus be granted without substantial impairment to the intent and integrity of the applicable Shady Grove Minor Master Plan Amendment, 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, based on the Statement, that the proposed greenhouse is intended to help improve the landscaping of the property and to "create a lovely visual experience for neighbors and passers-by." See Exhibit 3. In addition, the Board finds, based on the testimony of the Petitioner, that none of the neighbors with whom she has spoken have voiced objections about the proposed greenhouse. The Board further finds, based on the photograph at Exhibit 5(b) and the testimony of the Petitioner, that the view of the proposed greenhouse from the street will be somewhat screened by two Japanese maple trees, and that the greenhouse is to be placed on the brick-wall side of the neighbor's home. Finally, the Board notes that despite being properly "Noticed" and posted, the record contains no opposition to the grant of the requested variances, and no one appeared at the hearing in opposition. In light 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 the construction of the proposed accessory structure (greenhouse), 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(b) and 5(a).

Therefore, based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by Caryn Hines, with Laura Seminario-Thornton and Alan Sternstein in

agreement, and with John H. Pentecost, 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.



Richard Melnick, Vice Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 18th day of October, 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 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.