

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

(240) 777-6600

**Case No. A-6468**

**PETITION OF STEVEN TORGERSON**

OPINION OF THE BOARD  
(Public Hearing Date: July 1, 2015)  
(Effective Date of Opinion: July 30, 2015)

Case No. A-6468 is an application by Steven Torgerson for a 4.50-foot variance from the five-foot side lot line setback required by Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance. The variance is sought for an existing shed.

The Board of Appeals held a public hearing on the application on July 1, 2015. Steven and Caitlyn Torgerson testified in support of the variance. Alan Wu, the neighbor abutting the property line near the shed in question, also testified in support of the application.

Decision of the Board: Requested Variance Denied.

**EVIDENCE PRESENTED**

1. The subject property is Lot 1, Block 66, Conn. Ave. Est. Subdivision located at 3316 Harrell Street, Silver Spring, Maryland, 20906, in the R-60 Zone.
2. Steven Torgerson testified that he reconstructed his shed because the prior shed was in disrepair and sat on a concrete pad that sloped toward his house and created water infiltration and black mold damage. In response to a Board question, Mr. Torgerson stated that he could not find any record of a variance for the prior shed. Mr. Torgerson stated that construction in the backyard is restricted by the critical root zone of an 18-inch Norway Maple tree. In response to a Board question, Mr. Torgerson stated that the dimensions of the 556 square-foot shaded area shown on Exhibit No. 5(a) are approximately 15 feet by 38 feet, and that the 7-foot by 10-foot shed would fit in that area.

3. Caitlyn Torgerson testified that the R-60-zoned subject property contains only 5513 square feet. She stated that it is the smallest lot on the block, and the smallest corner lot at the corner where it is located. She stated that locating the shed in the rear yard, where it would not require a variance, would fundamentally inhibit the Applicants' ability to use their back yard, because it would have to be located in the middle of the backyard to comply with setbacks. Ms. Torgerson introduced photos [Exhibit No. 10] and stated that many other properties in the neighborhood have sheds that violate side setbacks and if the Applicants do not receive the variance, they would suffer an exceptional hardship because theirs would be the only property required to comply with the setback and the only property unable to use their backyard for recreational purposes. In response to a Board question, she agreed that her argument is that without the variance, the Applicants will be disadvantaged vis a vis their neighbors in terms of the flexibility they would have for development of their property.

4. Alan Wu testified that the prior shed was broken down and that homeless people used it overnight. He expressed his support for the re-built shed that the Torgersons installed and said he has no objection to it.

#### **FINDINGS OF THE BOARD**

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 that the subject property is unique because it is the smallest lot on the block and on the corner, and is substandard in size for the R-60 Zone.

2. *Section 59.7.3.2.E.2.a.iii the proposed development contains environmentally sensitive features or buffers;*

The Board finds that the property contains no environmentally sensitive features. The Board understands that the Applicants are concerned about the critical root zone of the Norway Maple tree, but the subject property is not subject to the County forest conservation law or to any other tree protection ordinance, so there is no legal protection for the tree.

3. *Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*

Although there is evidence and testimony that there are many sheds in the neighborhood that violate the side setbacks, there is no evidence of variances having been granted for those sheds, or that these sheds were otherwise legal (i.e. met the setbacks required at the time of their construction). Thus, the Board does not consider this the established or historical development pattern of the street or neighborhood. The Board is wary of using a pattern of development that is potentially illegal as support for a variance.

4. 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;

Testimony establishes that the shed can be located on this lot within the applicable setbacks. The Board recognizes that this is not the most convenient location for the property owners, but does not believe that interference with optimum use of the property's backyard constitutes a practical difficulty that justifies a variance. In *Montgomery County v. Rotwein*, 169 Md. App. 716 906 A.2d 959 (2006), the Maryland Court of Special Appeals upheld the Board of Appeals denial of a variance to Frances Rotwein, saying,

“Rotwein also argues that, as an elderly woman, she needs to have an enclosed garage to protect her from exposure to “the elements.” That may be so, but it does not constitute “peculiar or unusual practical difficulties.” ... the “practical difficulty” standard requires the zoning board to find “more than the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner.” *Kennerly v. Mayor & City Council of Baltimore*, 247 Md. 601,606, 233 A.2d 800; see also *Carney v. City of Baltimore*, 201 Md. 130, 136-37, 93 A.2d 74 (1952).

The Board finds that the Torgersons' desire to have better use of their backyard is, while entirely understandable, a matter of convenience and not a practical difficulty as defined in the law.

5. Because the application does not meet the requirements of Section 59.7.3.2.E.2, the variance must be denied.

On a motion by John H. Pentecost, seconded by Carolyn J. Shawaker, Vice-Chair, with David K. Perdue, Chair, in agreement and Stanley B. Boyd and Edwin S. Rosado not in agreement, the Board adopted the following Resolution:

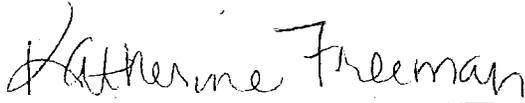
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



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David K. Perdue  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
This 30<sup>th</sup> day of July, 2015.



Katherine Freeman  
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 (See Section 59-A-4.63 of the County Code). 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.