

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**<http://www.montgomerycountymd.gov/boa/>**

**CASE NO. A-6504**

**PETITION OF MANOJ K. SRIVASTAVA**

**OPINION OF THE BOARD**

(Opinion Adopted November 30, 2016)  
(Effective Date of Opinion: December 13, 2016)

Case No. A-6504 is an application for four variances from Section 59-4.4.4.B.2 of the Zoning Ordinance, needed to allow construction of a proposed two-story addition. Two of the variances requested are for the existing structure; two are for the proposed addition. The existing structure requires a variance of 6.80 feet as it is within 10.20 feet of the side lot line. The required setback is seventeen (17) feet, in accordance with Section 59-4.4.4.B.2. The existing structure also requires a variance of twenty (20) feet as it is within fifteen (15) feet of the rear lot line. The required setback is thirty-five (35) feet, in accordance with Section 59-4.4.4.B.2.

The proposed structure, a two-story addition, requires a variance of twelve (12) feet as it is within five (5) feet of the side lot line. The required setback is seventeen (17) feet, in accordance with Section 59-4.4.4.B.2. The proposed addition also requires a variance of twenty (20) feet as it is within fifteen (15) feet of the rear lot line. The required setback is thirty-five (35) feet, in accordance with Section 59-4.4.4.B.2.

The Board held a hearing on the application on November 30, 2016. Petitioner Manoj Srivastava and his wife Shalini appeared at the hearing; Mr. Srivastava testified. The Srivastavas were represented at the hearing by Louis Leibowitz, Esquire. The Petitioners' contractors were also present at the hearing, but did not testify.

Decision of the Board:                      Variances GRANTED.

**EVIDENCE PRESENTED**

1.     The subject property is Parcel P347 Belmont Subdivision, located at 12516 Stony Creek Road, Potomac, Maryland, 20854, in the RE-2 Zone. The Petitioners have owned this property since 2008. See Exhibit 3.

2. Petitioners seek to construct "a two-story addition on the southwest corner of the house where the current 6 x 12 deck is located." See Exhibit 3.
3. The subject property is 31,045 square feet, which is less than half of the two acre minimum for the RE-2 Zone in which it is located.<sup>1</sup> See Exhibit 3. The Zoning Vicinity Map illustrates that in addition to being substandard for the RE-2 Zone, the subject property is much smaller than surrounding properties. See Exhibit 7. The Justification Statement indicates that because of the small size of this lot—less than one-half of the minimum size for the Zone—the required setbacks "are very large for this size lot." See Exhibit 3.
4. The existing house on the subject property is situated in the far southwest corner of the property such that it encroaches on both the side and the rear setbacks. See Exhibits 3, 4(a) and 4(b). Per SDAT, the house was constructed in 1996.
5. The northern portion of the subject property is sloped, and the middle of this property, to the north of the existing home, is encumbered with a large septic field and septic trenches. See Exhibit 3.
6. Mr. Leibowitz stated at the hearing that the septic field and associated trenches take up more than half of this property. He suggested that this, coupled with the sloped terrain on the northern portion of the property, may explain the unusual placement of the house in the southwest corner of the lot. Mr. Leibowitz stated that half of the existing house is in the side or rear setbacks, and that without a variance, the Petitioners are prohibited from making changes to their home. The site plans in the record at Exhibit 4 confirm the encroachment. In response to a Board question, Mr. Leibowitz noted that the subject property appears to be the smallest in the neighborhood, and substantially so.
7. The Justification Statement submitted in connection with this variance application states that:

Granting the variance will have no adverse impact upon abutting or confronting properties. There are numerous trees near the property line which create a vegetative screen between the proposed addition and the neighboring property. ... The neighboring houses are approximately 200 feet apart. The way the homes are situated, the nearest neighbor's rear yard abuts Petitioner's rear and side yards. Consequently, the neighbor is far away and has little, if any, direct view of where the proposed addition will be erected. The abutting neighbor's house is so far from the property line, that there will be no impact on that neighbor's (or any neighbor's) use and enjoyment."

See Exhibit 3. Petitioners' attorney confirmed the distance and buffering during the hearing, and Mr. Srivastava testified that the home behind theirs had been vacant until recently.

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<sup>1</sup> Two acres is 87,120 square feet.

## CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the variance can be granted. The requested variance complies 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 that the subject property is unique in that it is the smallest in the immediate neighborhood, and has less than half of the minimum square footage for the zone in which it is located. In addition, the Board finds that the northern portion of this property is sloped, and that the middle of the property is encumbered by a very large septic field and associated trenches, which take up more than half of the property and preclude construction in that area. This unusual combination of significantly substandard size, slope, and septic field significantly constrains the buildable area on this property. The Board finds that this constitutes an extraordinary condition that is peculiar to this property.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioners purchased this property in 2008, and are not responsible for the size of this lot, the placement of the septic field, or the placement of the house, which was constructed in 1996. See Exhibit 3 and SDAT printout.

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 that two of the requested variances are for the existing house, a significant portion of which was constructed and is located in the side and rear setbacks. Without the grant of these variances, the Petitioners will be unable to undertake any construction to improve their home, which the Board finds to be a practical difficulty. The Board finds that the grant of these variances is the minimum necessary to overcome this difficulty.

The Board further finds that the remaining two variances are for a proposed addition, the location of which is driven by the placement of the septic system and trenches on the property. In addition, the Board finds that the small size of this property for the zone, and the resultant impact of the standard RE-2 setbacks, coupled with the presence of a septic field occupying half of this property, create a practical difficulty for

the Petitioners in locating this addition, and that the requested variances are the minimum necessary to overcome this practical difficulty and allow this construction, which the Board notes is in an area occupied by an existing deck.

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 construct this addition is entirely consistent with the residential uses contemplated for the neighborhood by the 2002 Potomac Subregion Master Plan, which contemplates a "low density residential 'green wedge' for most of the subregion." See Exhibit 3.

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 no evidence that the proposed addition will be adverse to the use and enjoyment of abutting and confronting properties, and accepts the representations set forth in the Justification Statement and made by their attorney that the granting the variances will have no adverse impact upon abutting or confronting properties.

Accordingly, the requested variances needed for the existing house and to allow construction of a two-story addition to that house are **granted**, subject to the following conditions:

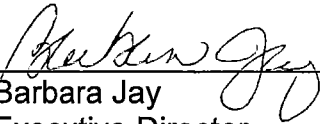
1. Petitioners shall be bound by their testimony and exhibits of record to the extent that such testimony and evidence are mentioned in this opinion; and
2. Construction shall be according to Exhibit Nos. 4 and 5.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice Chair, seconded by Edwin S. Rosado, with Carolyn J. Shawaker, Chair, Stanley B. Boyd, and Bruce Goldensohn 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.

  
Carolyn J. Shawaker  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 13th day of December, 2016.

  
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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.