

**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-6843
PETITION OF GEOFFREY IRVING**

OPINION OF THE BOARD
(Public Hearing Date: January 31, 2024)
(Effective Date of Opinion: February 14, 2024)

Case No. A-6843 is an application by Petitioner Geoffrey Irving for variance relief needed for the proposed construction of a shed. The proposed construction requires a variance of three (3) feet as it is within two (2) feet of the right side lot line. The required setback is five (5) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of three (3) feet as it is within two (2) feet of the rear lot line. The required setback is five (5) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on January 31, 2024. Petitioner Geoffrey Irving appeared in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Lot P4, Block 2, Lt 5 Forest Grove Section 1 Subdivision, located at 1815 Sherwood Road in Silver Spring, Maryland, 20902, in the R-60 Zone. It is an interior lot, located on the north side of Sherwood Road. The subject property is generally rectangular in shape, with an approximate width of ninety (90) feet and an approximate depth of one hundred and twenty (120) feet, for a total area of 10,800 square feet. Per SDAT, it contains a house that was built in 1940, and it was purchased by the Petitioner in 2022. See Exhibits 4 and 8(a), and SDAT Printout.

2. The Petitioners' Statement of Justification ("Statement") states that the Petitioner is seeking to construct an 8' x 16' shed in the north east corner of his property, two (2) feet from his property lines. The Statement states that the Petitioner needs the proposed shed to store "tools, bicycles, and other equipment" because his house does not have a garage. See Exhibit 3.

3. The Statement states that the subject property "is blessed with a number of mature and maturing trees in a neighborhood that is otherwise somewhat barren." The Statement states that the Petitioner is requesting to locate the proposed shed two (2) feet from the property line so that he does not have to remove an existing holly tree that "provides shade and year-round greenery and privacy between my house and my northerly neighbors." The Statement states that if the requested relief is not granted, he would have to cut down this tree, which the Statement indicates would not make sense and would not be in the best interest of the neighborhood or the County, noting that such action would further harm an already "decimated" tree canopy and the birds that live there. See Exhibit 3.

4. The Statement states that the proposed location for the Petitioner's shed "substantially conforms with the established historic or traditional development patterns of [the Petitioner's] street and neighborhood." See Exhibit 3. The Statement states that on the Petitioner's block, "one-third of the properties (6 lots of 18) have sheds that are less than 5ft away from their property lines," and that "many" are less than two (2) feet from the property line. The Statement later states that some of the sheds in the Petitioner's neighborhood have "no setback whatsoever." The Petitioner's Statement includes an aerial photograph of his block showing the six sheds he references. The Petitioner concludes in his Statement that "[i]t is the established convention and traditional development pattern of our neighborhood to build sheds less than 5ft from the property line." See Exhibit 3.

5. The Statement states that the northeast corner of the Petitioner's property "is flat and suitable for building, but for the Holly Tree that makes a 5ft setback impossible." The Statement proceeds to state that the holly tree was likely planted by a previous owner, and that regardless, he did not plant it, and thus his actions "did not give rise to the special conditions that necessitate this variance request." See Exhibit 3.

6. The Statement states that the requested variance relief is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would cause the Petitioner. In support of this, the Statement notes that the Petitioner is requesting a two (2) foot setback "because that is the maximum setback possible to allow [him] to still build a practicable shed." The Statement states that at 8' x 16', the proposed shed is already "somewhat narrow by normal standards," and that the Petitioner chose to build a narrow shed in order to "maintain some setback from the property line while also leaving a safe distance between the shed and the Holly tree." Finally, the Statement states that the Petitioner has requested the "minimum variance necessary ... to overcome the practical difficulties of building a shed without felling a tree." See Exhibit 3.

7. The Statement states that granting the request variance relief "will not have any effect on the intent and integrity of the general plan and applicable master plan." In support of this, the Statement states that the proposed shed "will not be visible from any street," and "likely will not be very visible from the sky." In addition, the Statement states that not granting the requested relief "would likely have an adverse effect on the integrity of the general plan in that it would necessitate the avoidable destruction of preexisting

tree canopy, which is counter to the intent of the Montgomery County Forest Conservation Law and the Tree Canopy Law." See Exhibit 3.

8. The Statement states that the Petitioner has "checked in" with his neighbors on either side. The Statement notes that the Petitioner's neighbor to the west has a shed that is located on the shared property line, and that the Petitioner's proposed shed will not affect this neighbor's property "whatsoever" because it will be located on the eastern side of his property. With respect to his neighbor to the east, the Statement states that the Petitioner has a "cordial" relationship with this neighbor, often raking his leaves, and that the placement of the proposed shed in the setbacks on what the Statement describes as "an unloved corner of land" will not adversely affect that neighbor. Finally, with respect to his neighbors to the north (rear), the Statement states that granting the requested variance relief "is in their interest and would not adversely affect them," noting that "the Holly tree provides greenery and privacy all year round," and that if he were required to remove that tree, "it would remove a natural privacy screen between my back porch and the property to my Northeast." Accordingly, the Statement concludes that "granting this variance and allowing the Holly tree to continue to flourish would be the most ideal outcome in this scenario." See Exhibit 3. The Petitioner has provided emails from his neighbors to the east and north indicating that they have no objection to the proposed shed.

9. The Petitioner's abutting neighbor to the east submitted an email letter stating that he had no objections to the proposed placement of the shed, and noting that "3 owners back had a shed in that general part of the lot," so he was "used to one being in that position." See Exhibit 13(a). In addition, the Petitioner's abutting neighbor to the north (rear) submitted an email stating that he had no problems with the proposed location of the shed. See Exhibit 13(b).

10. At the hearing, the Petitioner testified that there is a 25-foot tall holly tree in the northeast corner of his property, and that cutting it down would be contrary to the County's tree canopy preservation goals. He testified that he has letters from his neighbors to the north and east, neither of whom object to the proposed shed. See Exhibits 13(a)-(b). The Petitioner noted that his neighbor to the east indicated in his letter that a previous neighbor had a shed in this location.

The Petitioner agreed with a Board observation that, as indicated in his Statement, there is a pattern of sheds being located against fences in his neighborhood. See Exhibit 3. In response to a Board question asking if there was any place in his rear yard inside of the allowable building area where he could put a shed, the Petitioner testified that he has a small lot, and that any such placement would put the shed in the middle of his lawn.

FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and the 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.v – the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood

The Board finds, based on the Statement and the aerial photograph therein, and based on the confirmation of the Petitioner at the hearing, that the location for the proposed shed, closer to the property lines than would otherwise be allowed by the Zoning Ordinance, substantially conforms with the established traditional pattern for placement of sheds in this neighborhood, in satisfaction of this element of the variance test. See Exhibit 3.

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 Petitioner, who purchased the subject property in 2022, is not responsible for the established pattern for the placement of sheds in this neighborhood, 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 that placement of the shed in compliance with the setbacks required by the Zoning Ordinance would cause the Petitioner a practical difficulty in that his shed could not be placed in a manner that is consistent with the established pattern in the neighborhood. The Board further finds that the variance relief requested by the Petitioner is the minimum needed to allow him to locate his proposed shed in a manner that comports with the established neighborhood pattern. 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; and*

The Board finds that allowing the Petitioner to proceed with the proposed shed is consistent with the residential uses contemplated by the Forest Glen Section Plan (1996), which envisions, among other things, "a stable single-family residential community" in the Forest Glen East area, where the subject property is located. Thus the Board finds that this element of the variance test is satisfied.

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, the letter of support from Petitioner's easterly neighbor, and the testimony of the Petitioner, that the location of the proposed

shed is similar to the location of a shed that previously existed on the subject property, and conforms with the traditional pattern for the placement of sheds in the neighborhood. See Exhibits 3 and 13(a). The Board further finds, in reaching this conclusion, that granting the variances to allow a shed in this location will allow the Petitioner to protect a large holly tree that provides "a natural privacy screen between [his] back porch and the property to [his] Northeast." See Exhibits 3 and 13(a). In addition, the Board finds that the record contains letters of support from two of the Petitioner's neighbors. See Exhibits 13(a)-(b). Finally, the Board notes that despite being properly Noticed and posted, no one appeared at the hearing in opposition to the grant of the requested variances. 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 shed, 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 and 5.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Alan Sternstein, with Caryn Hines in agreement, and with Richard Melnick, Vice Chair, abstaining, 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 14th day of February, 2024.


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.