

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6875

PETITION OF JAMES AND KATHERINE WEAVER

OPINION OF THE BOARD

(Public Hearing Date: September 18, 2024)
(Effective Date of Opinion: September 25, 2024)

Case No. A-6875 is an application by Petitioners James and Katherine Weaver for a variance needed for the proposed construction of an accessory structure (shed). The proposed construction requires a variance of six (6) feet as it is within six (6) feet of the side lot line. The required setback is twelve (12) feet, in accordance with Section 59.4.4.7.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, September 18, 2024. Petitioners James and Katherine Weaver appeared in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Lot 11, Block C, Three Meadows Subdivision, located at 14213 Northwyn Drive in Silver Spring, Maryland, 20904, in the R-200 Zone. It is a four-sided, rectangular property, located on the south side of Northwyn Road. The property has a width of 112 feet and a depth of 180 feet, giving it an area of 20,160 square feet. See Exhibits 4 and 7.
2. The Petitioners purchased the subject property in 2001. The property is improved with a single-family house that was built in 1968. See SDAT Printout. The Petitioners are proposing to locate a 14' x 12' storage shed on the property at a distance of six (6) feet from their right side lot line. See Exhibit 4.

3. The Petitioners' variance Application states that the property's topography and a mature tree limit the area in which the proposed shed can be located, as follows;

This property has a long ridge along its southern boundary that ends in a relatively flat area in the southwestern corner. The slope of this hill precludes placing a shed along the eastern boundary and on the centerline of the south boundary. A mature tree approximately 29 feet from the western boundary further limits the placement of the proposed shed. To meet the storage requirements for the shed, this unique combination of topography and the mature, highly-valued tree, the shed should be placed in the southwestern corner at a distance of 6 feet from the western boundary. This placement will allow proper function of the structure and minimize damage to the tree and its root structure.

See Exhibit 1. In addition, the Application relates the practical difficulties that the Petitioners would experience if they were made to locate the proposed shed on this slope, stating that "[i]f the structure was placed on the ridge that runs along the southern edge of the property, the increased cost in site preparation and potential for future erosion due to the required modifications represent significant problems." Finally, the Application states that "[a]lternative placement of this shed would greatly reduce the functionality" of the Petitioners' back yard. See Exhibit 1. Petitioners' proposed shed location document shows the ridge line and three separate retaining walls in the Petitioners' back yard. See Exhibit 5(b). The photograph at the bottom of that document shows the downward slope of the property from the rear lot line to the Petitioners' house. See Exhibit 5(b).

4. The Petitioners' Statement of Justification ("Statement") states that the subject property is unique for the purposes of meeting Section 59.7.3.2.E.2.a.i of the Zoning Ordinance because of the presence of the ridge and tree near its southern (rear) boundary. The Statement indicates that these factors combine to allow "a single efficient placement of a shed that provides the necessary service while having no impact on the use of the adjoining properties." See Exhibit 3.

5. The Statement states that the placement of the proposed shed would also substantially conform with the established historic or traditional development pattern of the street or neighborhood for the purposes of satisfying Section 59.7.3.2.E.2.a.v of the Zoning Ordinance. In support of this, the Statement states that "the placement of storage sheds in this area have traditionally been behind the main residential structure and at a sufficient distance to maintain functionality of the backyards," and that "[t]he requested variance will result in a placement consistent with all other lots along this street and adjoining the property, without creating a burden for these owners." See Exhibit 3.

6. The Statement states that the topography of the subject property and the presence of the mature tree at issue pre-date the Petitioners' ownership of this property. Thus the Statement asserts that the unique conditions are not due to actions by the Petitioners. See Exhibit 3.

7. The Statement states that the requested variance is the minimum reasonably necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose. See Exhibit 3. As noted previously, the Petitioners' variance Application notes some of the practical difficulties that would be associated with meeting the required side setback, including a need for expensive site preparation to address the property's topography, and the potential for erosion. See Exhibit 1. In addition, the Statement notes that only one variance, not two, are being requested because the proposed shed will meet the required setback from the rear lot line, but cannot meet the required setback from the right side lot line without compromising the health of the tree. See Exhibit 3.

8. The Statement states that the requested variance can be granted without substantial impairment to the applicable master plan, and without adverse impact to the use and enjoyment of neighboring properties. The Statement states that granting the requested variance "causes no impairment to adjoining properties, and does not interfere with any future development." It states that granting relief from a single setback "will not impact the master plan for this community." In addition, the Statement states that the proposed shed would be "distant from any structure in the abutting or adjoining properties." The Statement notes that the "land along the southern border [of the subject property] is currently undeveloped brush covering a small upward slope to a tennis court." It states that the proposed shed "will have no impact as the line of sight from the proposed structure to the main residence on the abutting southern property is currently blocked by a tall solar array." Finally, the Statement states that the property that shares the property line from which setback relief is requested "will not be impacted by the structure," and that "the variance will not lead to a blockage of a desirable view for any surrounding property." See Exhibit 3.

9. The Petitioners' proposed shed location document and the picture at the bottom of that document show a solid privacy fence around the entirety of the Petitioners' back yard, and show the proposed shed located inside that fence. See Exhibit 5(a).

10. At the hearing, Mr. Weaver testified that he and his wife are seeking to locate a shed in their fenced backyard. He testified that mature trees and a significant slope in his backyard limit the potential locations for the shed and make his property unique. Mr. Weaver testified that there is a conflict between the right side setback and a mature tree that was on the property when they moved in. He testified that the property's slope and retaining walls shown on Exhibit 5(b) existed when they moved in.

11. Mrs. Weaver testified, in response to a Board question asking why they could not locate the shed on the left side of their back yard, in the area marked "plateau" on Exhibit 5(b), that that area is not deep enough to accommodate a shed without having to back fill the hill or otherwise support the front (downhill) side of the shed. Mr. Weaver testified, in response to further Board questioning, that they had not received any opposition to their variance request from their neighbors.

FINDINGS OF THE BOARD

Based on the binding testimony and 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, based on the Statement and proposed shed location document, and based on the testimony of Mr. Weaver, that the rear of the subject property is encumbered with a ridge and downward sloping topography, currently managed by retaining walls, that limit the area available for the location of the proposed shed without extensive site preparation and the resultant potential for future erosion. See Exhibits 3 and 5(b). The Board finds that these topographical conditions constitute 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 developed in 1968, and was purchased by the Petitioners in 2001. The Board further finds, per the Statement and the testimony of Mr. Weaver, that the topography of the subject property pre-dates its ownership by the Petitioners, and thus that the unique conditions peculiar to this property are not due to any actions by the Petitioners. See Exhibit 3 and SDAT Printout. Accordingly, the Board finds that the special circumstances or conditions peculiar to this property are not the result of actions by the Petitioners, 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 the Petitioners, that the ridge and sloping topography of the area behind the Petitioners' rear building line preclude the location of the proposed shed in that area absent significant site work or variance relief, causing the Petitioners a practical difficulty. The Board further finds that the requested variance is the minimum needed to overcome this practical difficulty, and to allow the Petitioners to locate the proposed shed in their rear yard, in the "relatively flat" area in the southwest corner of their property. Thus the Board finds that the requested variance is the minimum necessary to overcome the practical difficulties posed by full compliance with the Zoning Ordinance on account of the property's ridge and topography, 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 granting the requested variance to allow the Petitioners to locate a storage shed on the subject property, behind their rear building line, is consistent with the continued residential use of this property. Accordingly, the Board finds that this variance can be granted without substantial impairment to the intent and integrity of the applicable Cloverly Master Plan, 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 shed will be "distant" from other structures on abutting properties. The Board further finds that the property to the rear of the subject property "is currently undeveloped brush covering a small upward slope to a tennis court," and that the proposed shed will have no impact on sight lines from the residence on that property because that view is blocked by a "tall solar array." Lastly, the Board finds, based on the Statement, that the abutting property to the right (west) "will not be impacted" by the proposed shed, and that installation of the proposed shed "will not lead to a blockage of a desirable view for any surrounding property." See Exhibit 3. In addition, the Board finds, based on the proposed shed location document, that the Petitioners' rear yard is enclosed by a privacy fence which would further obscure the view of the proposed shed. See Exhibit 5(b). Finally, the Board notes that Mrs. Weaver testified she is unaware of any opposition to the requested variance, and that despite being properly Noticed and posted, the record contains no opposition to the grant of the requested variance, and no one appeared at the hearing in opposition. In light of the foregoing, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance, needed for the construction of the proposed shed, is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 5(a)-(b).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Alan Sternstein, and Amit Sharma 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 25th day of September, 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.