

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6899

PETITION OF BRIAN SAMET

OPINION OF THE BOARD

(Opinion Adopted March 19, 2025)

(Effective Date of Opinion: March 26, 2025)

Case No. A-6899 is an application for a variance necessary for the proposed construction of an accessory structure. The proposed construction requires a variance of 3.13% from the lot coverage limitation. The proposed new accessory structure (1,200 square feet) coupled with the existing principal structure (2,455 square feet) would result in 13.13% lot coverage. The maximum lot coverage is 10%, in accordance with Section 59.4.3.4.B.1 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on March 19, 2025.¹ Petitioner Brian Samet participated in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Lot 2, Block A, Janwood Subdivision, located at 25605 Jarl Drive in Gaithersburg, Maryland, 20882, in the RC Zone. It is a four-sided property located on the east side of Jarl Drive. The property's side lot lines are perpendicular to its front lot line, but the property's right side lot line is much longer than its left side lot line (272.61 feet versus 191.45 feet), resulting in the property's rear lot line, which is straight and connects its two side lot lines, being sharply angled. The property has an area of 27,844 square feet. See Exhibits 4 and 8.

¹ This hearing was originally scheduled for January 8, 2025, but was cancelled due to snow. It was rescheduled to February 12, 2025, but was again cancelled for weather. The hearing was then rescheduled to March 19, 2025, when the hearing was finally held.

2. The Petitioner's variance Application indicates that the subject property was recorded in 1966, and his Statement of Justification ("Statement") indicates that he purchased the property five years ago. See Exhibits 1 and 3(a). Per SDAT, the subject property contains a house built in 1966. See SDAT Printout.
3. The Application states that the subject property is located in a rural neighborhood. It states that the property is bordered by farmland to the east, and that the back of the property is surrounded by a privacy fence. See Exhibit 1.
4. The Petitioner is proposing to construct an accessory structure with a footprint of 1,200 square feet in his rear yard. The Statement indicates that he originally sought to construct a structure with a larger footprint (just under 2,500 square feet) but was advised by the County's Department of Permitting Services ("DPS") that the footprint of his proposed accessory building could not exceed 50% of the footprint of his house. The Statement states that he was informed by DPS that an accessory building with a footprint of 1,200 square feet "would be accepted by the county." The Petitioner's Statement states that upon re-applying for a building permit for an accessory structure with a footprint of 1,200 square feet, he was told by DPS that the zoning applicable to his property "restricts the total footprint of any structures on a property to 10% of the total acreage of the property," and that with the proposed accessory structure, his lot coverage would be just under 14%, exceeding that limit. See Exhibit 3(a). The Application notes that a second floor was added to the proposed structure to keep its footprint smaller. See Exhibit 1.
5. At the hearing, the Petitioner testified that he is trying to build a garage storage building to provide secure storage for equipment and materials associated with his electrical business. He testified that things have been stolen from his property and that he is seeking to prevent that from happening in the future. The Petitioner testified that he had originally proposed to build an accessory structure with a larger footprint but was told by the County's Department of Permitting Services ("DPS") that such a structure would not be allowed. He testified that DPS told him at that time that they would approve an accessory structure that had a footprint of 1,200 square feet, and that he had the proposed structure redesigned accordingly. The Petitioner testified that when he went to DPS to get approval for the redesigned 1,200 square foot accessory structure, the permit reviewer denied it on grounds that it violated the lot coverage restriction. The Petitioner testified that his property is in the RC Zone, which has a five (5) acre minimum lot size, and that the lot coverage restriction should not be applied to his property, which is about half an acre. He testified that if he were limited to 10% lot coverage, he could not put an addition on his home.

The Petitioner testified that his property has an angled rear lot line and that it backs to a cornfield that he estimated was about 100 acres in size. He testified that if the back of his property were straight across instead of angled, he would have more land and might be able to accommodate the proposed structure without needing a variance. The Petitioner testified that there is a privacy fence around his back yard, and that he has neighbors to his right and to his left. In response to a Board question asking if he had

talked with these neighbors, the Petitioner testified that he had, and he stated that they do not object to the proposed construction.

In response to a Board question asking about the 200 square foot shed referenced in his Statement, the Petitioner testified that he had removed this shed because it was too small to be useful, explaining that in addition to being difficult to get items into that shed, it was difficult to locate, access, and remove items from that shed. In response to a Board question asking if an accessory structure that was smaller than the proposed accessory structure would meet his needs, the Petitioner testified that it would not, citing the size of some of the equipment that needs to be stored as well as the size of the job-related materials that he personally has to receive and store at his property from time to time. The Petitioner testified that the proposed 1,200 square foot structure is the minimum size necessary to meet his need for secure storage. He testified that the materials he orders and installs are custom made and expensive, and that re-orders take a long time. As a result, the Petitioner testified that any theft of his materials not only costs him money, but also results in projects being delayed, which he stated is bad for business.

In response to a Board question asking if there were any other properties near his with similar structures, the Petitioner testified that there were, and he provided the Board with photographs of similarly large accessory structures on four nearby properties. The Petitioner narrated the photographs and submitted them to the Board for inclusion in the record. See Exhibits 12(a)-(j). In response to a Board question asking what percentage of homes in his community have accessory structures like the structure he is proposing, the Petitioner estimated about 50% of the homes have similar structures.

FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the requested variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59.7.3.2.E of the Zoning Ordinance, 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 at 27,844 square feet, the subject property is significantly substandard for the RC Zone, which has a five (5) acre minimum lot size for standard development and a 40,000 square foot minimum lot size for optional method (cluster) development. In addition, the Board finds that the property's angled rear lot line gives it an unusual shape. See Exhibit 4. The Board finds that the property's unusually small size for the Zone and its unusual shape combine to constitute an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test.

Section 59.7.3.2.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 Petitioner's testimony that roughly 50% of the homes in his community have accessory structures similar to his, and based on the photographs of nearby accessory structures that he submitted and described for the Board at the hearing, that the Petitioner's proposed accessory structure substantially conforms with the established pattern of similar structures in his neighborhood, in satisfaction of this element of the variance test. See Exhibits 12(a)-(j).

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 1966, and was purchased by the Petitioner five years ago. See Exhibit 3(a). Thus the Board finds that the Petitioner is not responsible for the small size and unusual shape of the subject property. In addition, the Board finds that there is nothing in the record to suggest that the Petitioner is responsible for the development pattern of accessory structures on surrounding properties. Accordingly, the Board finds that this element of the variance test is satisfied.

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 the substandard size of the subject property causes the lot coverage restriction in the Zoning Ordinance to have an extraordinarily burdensome impact on the subject property, posing a practical difficulty for the Petitioner by restricting his ability to construct an accessory structure large enough to meet his needs and commensurate with others in his neighborhood. By way of example, the Board notes that if the subject property met the 40,000 square foot minimum lot size for optional development in the RC Zone, this restriction would allow up to 4,000 square feet of lot coverage—which would have accommodated the Petitioner's 2,455 square foot house and 1,200 square foot accessory building ($2,455 + 1,200 = 3,655$ square feet)—but that because the lot is only 27,844 square feet in size, coverage on the subject property is limited to 2,784 square feet.² The Board finds that with the additional 871+/- square feet of lot coverage requested by the Petitioner, his property would still have less lot coverage than would have been allowed if his property met the minimum size for the Zone.³ The

² The Board further notes that if the subject property had met the five (5) acre minimum for standard development in the RC Zone, the allowable lot coverage would have been half an acre, or 21,780 square feet.

³ In addition, by way of comparison, the Board notes that like optional method development in the RC Zone, the minimum lot size in the RE-1 Zone is also 40,000 square feet, but the lot coverage allowed in the RE-1 Zone is 15%, whereas the lot coverage allowed in the RC Zone is only 10%. See Sections 59.4.3.4.D and 59.4.4.6.B of the Zoning Ordinance. The Board further notes that the R-200 Zone, which has a minimum lot size of 20,000 square feet and thus could potentially be used to develop properties that are similar in size to the subject property, has a lot coverage limitation of 25%. See Section 59.4.4.7.B of the Zoning Ordinance. The Board mentions these sections not because they are applicable to the subject

Board further finds, based on the Statement, that the additional 3.13% of coverage being sought by the Petitioner is the minimum needed to allow the Petitioner to construct the proposed accessory structure, and thus to overcome the difficulty posed by the strict application of the lot coverage limitation in the Zoning Ordinance to this substandard property. Finally, the Board finds that granting the requested variance is the minimum needed to allow the Petitioner to have an accessory structure that comports with others on nearby properties. On the basis of the foregoing, 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 construction of the proposed accessory structure on the subject property is not inconsistent with the property's residential use, and thus finds that the requested variance can be granted without substantial impairment to the intent and integrity of the Damascus 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 that the location of the proposed accessory structure meets the required setbacks from the side and rear lot lines, and that its size does not trigger the need for a variance from the requirement that the cumulative footprint of all accessory buildings on the property not exceed 50% of the footprint of the house. The Board further finds, based on the testimony of the Petitioner, that he has spoken with his neighbors to the left and right, and that none expressed concerns about the proposed construction. Finally, the Board notes that despite the variance sign being posted and the hearing having been properly Noticed, the record contains no opposition to the proposed construction, and that no one appeared at the hearing in opposition to the grant of this variance. On the basis of the foregoing, the Board finds that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.


Accordingly, the requested variance from the lot coverage limitation, needed to allow the proposed construction of an accessory structure, is **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(a)-(k) (external elevations only).

Therefore, based upon the foregoing, on a motion by Donald Silverstein, seconded by Alan Sternstein, with Caryn L. Hines, Chair, Richard Melnick, Vice Chair, and Amit Sharma in agreement, the Board adopted the following Resolution:

property—they are not—but because they help to illustrate how restrictive a 10% lot coverage limitation is on a lot the size of the subject property.

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.


Caryn L. Hines
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 26th day of March, 2025.


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.