

**BOARD OF APPEALS**  
for  
**MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
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(240) 777-6600

**Case No. A-6768**

**PETITION OF SCOTT SARGRAD**

OPINION OF THE BOARD

(Public Hearing Date: November 2, 2022)  
(Effective Date of Opinion: November 9, 2022)

Case No. A-6768 is an application for a variance by Petitioner Scott Sargrad to allow the placement of a shed one (1) foot from the side lot line. The proposed construction requires a variance of four (4) feet as it is within one (1) foot 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 Montgomery County Zoning Ordinance.

The Board of Appeals held a hearing on the application on November 2, 2022. Scott Sargrad (the "Petitioner") appeared in support of his application, along with his contractor, James Sarazin.

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

**EVIDENCE PRESENTED**

1. The subject property is Block B, Lot 5, Rosemary Hills Subdivision, located at 2105 Spencer Road, Silver Spring, Maryland, 20910, in the R-60 Zone. The subject property is rectangular in shape and has an area of 5,750 square feet, which is substandard for the R-60 Zone. It is an interior lot located on the north side of Spencer Road. The Petitioner purchased this property in 2016. See Exhibits 1, 3, 4, and 8.
2. The subject property contains an existing shed that is at least 20 years old and is described by the Petitioner as "hardly functional." The Petitioner is seeking to "replace the existing shed, which is located on the side property line, with a new shed in the same location." The new shed will have a "slightly smaller footprint" than the existing shed. See Exhibits 1 and 3.
3. The Petitioner's Justification Statement ("Statement") states that the rear yard of the subject property "is divided into two levels (upper and lower), separated by a 3 foot

retaining wall." The Statement further states that this topographical condition existed when the Petitioner purchased the property, and that it causes the Petitioner a practical difficulty in locating his shed, noting that "[g]iven the multi-level yard, placement of trees, and placement of the existing house, the current shed is in the only possible location within the property without causing undue hardship and practical difficulty related to the current topography." See Exhibit 3.

4. The Statement asserts that the existing shed is nonconforming because it is "located on the side property line," and because it "appears to have been in place for at least 20 years, given the state of the current shed." See Exhibit 3.

5. The Statement states that the proposed shed would substantially conform with the established historic or traditional development pattern of Spencer Road and the Rosemary Hills neighborhood, as follows:

Sheds of the type and size proposed are very common throughout the Rosemary Hills neighborhood, and many of these sheds appear to be within less than 5 feet of a side property line, including sheds on properties on the same street as the subject property. The proposed development is entirely consistent with the development pattern of both Spencer Road and the broader Rosemary Hills neighborhood, and would not be at all unusual compared to sheds on other nearby properties. The use of the current shed for what appears to be at least 20 years reflects that the proposed location and replacement shed is in keeping with the traditional development patterns of the neighborhood.

See Exhibit 3. The Statement later notes that the proposed shed "is entirely in keeping with the character of the street and neighborhood, which both include many sheds of a similar type and in similar locations, including other sheds that appear to be within 5 feet of a side setback." See Exhibit 3.

6. The Statement states that the requested variance is the minimum needed to allow the proposed replacement shed to be located in the same location as the existing shed, which the Statement indicates has been a fixture on the property for at least 20 years. The Statement further states that "there is no other location" on the property to locate the replacement shed "based on the property's unique topography," and that without the grant of the requested variance, "the shed could not be placed in the location of the existing shed." See Exhibit 3.

7. The Statement states that because the requested variance would allow the replacement shed to be built in the location of the existing shed, the grant of the request variance will have "no impact on the use and enjoyment of abutting or confronting properties," noting that there is "no history of complaints related to the existing shed." See Exhibit 3. The record contains letters of support for the requested variance from the Petitioner's abutting neighbors to the left and the right. See Exhibits 7(a) and (b).

8. At the hearing, the Petitioner testified that he purchased the subject property in July, 2016. He testified that his rear yard is divided into an upper area and lower area by a retaining wall that was on his property at the time of his purchase.

The Petitioner testified that he is seeking to replace an existing shed that was located on the subject property at the time of his purchase, one foot from the property line, with a nicer, slightly smaller shed in the same location. The Petitioner testified that the existing shed is not in good condition and is at least 20 years old, probably older. He testified that he has spoken with his abutting neighbors on both sides, and that both support the proposed replacement.

In response to a Board question asking if he had any evidence that the shed was an existing, legal nonconforming structure, the Petitioner said that he did not, but he testified that based on the condition of the shed, which he stated is made of wood, it is "quite old." In response to Board questions asking if the shed could be located elsewhere on the property, the Petitioner testified that the upper level of his back yard was not an ideal location on account of topography, and that if it were to be used, it contained play equipment that was there when he purchased the property and would have to be removed. He testified that there is a row of Leland Cypress trees on the left side of the property, and that there is not really enough space between the left side property line, trees, and retaining wall to locate the proposed shed on the left side of the property in accordance with the setbacks. Finally, in response to a Board question, the Petitioner testified that the proposed shed will not have electricity or water.

## **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 Petitioner's Statement, Site Plan, and testimony, that the rear yard of the subject property is encumbered with exceptional topography and a retaining wall, resulting in a two-level back yard. See Exhibits 3 and 4. The Board finds that this constitutes an unusual or extraordinary condition peculiar to the subject 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 Petitioner purchased the subject property in 2016, and is not responsible for the topography of the property or for the installation of the existing retaining wall, both of which predate his purchase. Thus 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, based on the Statement and the testimony of the Petitioner, that as recounted herein, the unique topography of this substandard property, coupled with other existing conditions which predate the Petitioner's ownership, do not allow for an alternative location in the rear yard for the proposed shed, causing the Petitioner a practical difficulty. The Board further finds, per the Statement, that the requested variance is the minimum necessary to allow the replacement of the existing shed with a new shed, in the same location as the existing shed. See Exhibit 3. Accordingly, 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 the variance continues the residential use of the property, and can be granted without substantial impairment to the intent and integrity of the Greater Lyttonsville Sector Plan, which recommends the preservation of established residential neighborhoods, 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.*

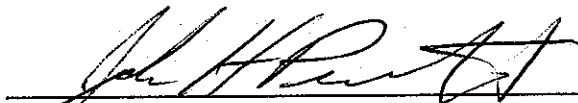
The Board finds, per the Statement and the testimony of the Petitioner, that the proposed new shed will replace an existing shed that has been in place for at least 20 years and is in poor condition. The Board further finds that the proposed new shed will be located in the same place as the existing shed, and is slightly smaller than the existing shed. See Exhibit 3. Finally, the Board finds that the record contains letters of support for the grant of the requested variance, needed to permit construction of the proposed replacement shed, from both of the Petitioner's next door neighbors. See Exhibits 7(a) and (b). Accordingly, the Board finds that the grant of the requested 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 of four (4) feet to allow the placement of the proposed shed one (1) foot from the right side lot line is **granted**, subject to the following conditions:

1. The 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 Richard Melnick, Vice Chair, with Caryn Hines 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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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 9th day of November, 2022.

  
\_\_\_\_\_  
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.