

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6782

PETITION OF AMY CHUSED

OPINION OF THE BOARD

(Public Hearing Date: December 14, 2022)
(Effective Date of Opinion: December 29, 2022)

Case No. A-6782 is an application by Petitioner Amy Chused for three variances needed in connection with the proposed construction of an accessory structure (shed) in the Petitioner's side yard. The proposed construction requires a variance of thirty-five (35) feet as it is within twenty-five (25) feet of the front lot line. The required setback is sixty (60) feet, in accordance with Section 59.4.4.9.B of the Montgomery County Zoning Ordinance. In addition, the proposed construction requires a variance to be located forward of the rear building line. Section 59.4.4.9.B of the Zoning Ordinance requires that accessory structures be located behind the rear building line of the principal building. Finally, the proposed construction requires a variance of 3.5 feet as it is within 1.5 feet of the side lot line. The required setback is five (5) feet, in accordance with Section 59.4.4.9.B of the Montgomery County Zoning Ordinance.

The Board of Appeals held a hearing on the application on December 14, 2022. Petitioner Amy Chused appeared and testified in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Block 17, Lot 11, Lt 12 National Chautauqua Subdivision, located at 41 Wellesley Circle in Glen Echo, Maryland, 20812, in the R-60 Zone. It is a four-sided property located on a circle, with arced front and rear lot lines that are parallel to one another, and with converging 70-foot side lot lines. The overall effect, as noted on the Petitioner's variance Application, is that the property is "skinny and shallow." See

Exhibits 1 and 4. Per SDAT, the Petitioner purchased the subject property in 2017. See SDAT Printout.

2. The Petitioner is seeking to add a six (6) foot by ten (10) foot storage shed at the end of her driveway, on the left side of her home, to house items like lawn maintenance equipment, children's bicycles, and scooters, all of which are currently being stored on her front porch. The wall of the shed will be used to "complete" an existing fence. See Exhibits 1 and 3.

3. The Petitioner's Justification Statement ("Statement") states that the Petitioner has a porch on the back of her house, built by a prior owner, that extends to within a few feet of her rear fence, and that this does not leave sufficient room for the construction of a shed in that area on account of the shallowness of the property. See Exhibit 3. The Statement also details the reasons behind the presence of, and need for, other structures (play equipment) currently located in the rear yard that further preclude placement of the proposed shed behind the house. The Statement states that the Petitioner was not responsible for the construction of the existing porch, or for the conditions that precipitated the presence of and need for the other structures in her rear yard. Finally, the Statement notes that the proposed shed location, on the left side of the house, was "not in use for any other purpose, and was where the trash cans, recycling bin and composting bins were kept." See Exhibit 3.

4. The Statement states that the grant of the requested variances is the minimum needed to allow construction of the proposed shed, and to "overcome the practical storage difficulties that full compliance with this Chapter would impose." See Exhibit 3.

5. The Statement states that the proposed shed will substantially conform with the established historic or traditional development pattern in the neighborhood. In support of this, the Statement states that "[s]heds of the type and size proposed are very common in the Glen Echo neighborhood and many of these sheds appear to be within less than 5 feet of a side property line and appear to be within less than 25 feet of a front property line." The Statement later reiterates this when it states that the proposed shed "is entirely in keeping with the character of the street and neighborhood, which both include many other sheds of a similar type and in similar locations." See Exhibit 3.

6. The Statement states that granting the requested variances will not adversely impact the Petitioner's neighbors. It notes that the proposed location "is already surrounded by a chain link fence from the abutting property," and that it will be "partially hidden by the tree at the top of the driveway." The Statement further states that "the aesthetics of [the Petitioner's] property and the neighborhood will only be improved by building this shed." The Statement characterizes the variances sought as "minor," and states that the grant of the requested variances "does not interfere with any other property owners...." Finally, the Statement states that all of the Petitioner's neighbors have expressed support for the proposed location of her shed. See Exhibit 3.

7. At the hearing, the Petitioner testified that she is seeking a shed abutting her fence. She testified that three of her immediate neighbors have sheds along their fences. Referring to the photographs in the record at Exhibit 5, she testified about the existing constraints that preclude construction of the proposed shed in her rear yard; in addition, she pointed out the locations of neighbors' sheds that were visible in several of the pictures. See Exhibits 5(b)-(f). At the hearing, the Petitioner submitted additional photographs of her neighbors' sheds, showing their proximity to the fenceline. See Exhibits 5(i) and (j).

In response to a Board question asking if she had received feedback about the requested variances from any of her neighbors, the Petitioner testified that her across the street, right side, and rear neighbors all support the grant of the requested variances. She testified that she had not spoken with her left side neighbors because that property is currently being renovated; she testified that the Town of Glen Echo had advised those neighbors of her variance request, and that they had apparently expressed their gratitude for the communication but nothing else.

FINDINGS OF THE BOARD

Based on the 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

Based upon the Statement, the photographs at Exhibit 5, and the Petitioner's testimony, the Board finds that the proposed shed substantially conforms with the established pattern for placement of sheds in this neighborhood, 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, who purchased the subject property in 2017, is not responsible for the established pattern for the placement of sheds on other properties in her neighborhood. 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 that the requested variances are the minimum needed to allow the Petitioner to construct the proposed shed on her property, and to comply with the established pattern in the neighborhood for the location of sheds, 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 variances to allow the Petitioner to build the proposed shed will continue the residential use of the home, and therefore can be granted without substantial impairment to the intent and integrity of the applicable 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.*

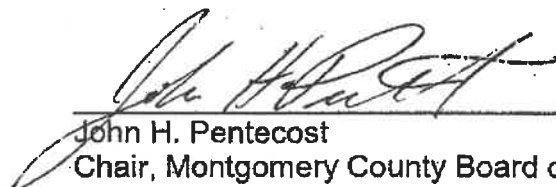
The Board finds that the proposed 6-foot by 10-foot shed will conform with the pattern for the placement of sheds in the neighborhood, and will not infringe on the use and enjoyment of abutting or confronting properties. The Board notes, per the Statement, that the proposed shed will improve the appearance of the property, is somewhat screened by a tree, and is supported by the Petitioner's neighbors. Thus the Board finds that this element of the variance test is satisfied.

Accordingly, the requested variances needed for the construction of a shed in the proposed location 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 the location shown on Exhibit 4, shall not have a footprint larger than six (6) feet by ten (10) feet, and shall be generally similar in massing to the example drawing at Exhibit 5(a).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Laura Seminario-Thornton in agreement, and with Richard Melnick, Vice Chair, necessarily absent, 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 29th day of December, 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.