

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
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(240) 777-6600

**Case No. A-6870**

**PETITION OF JOHN AUDET**

OPINION OF THE BOARD  
(Hearing Date: July 31, 2024)  
(Effective Date of Opinion: August 7, 2024)

Case No. A-6870 is an application by Petitioner John Audet for a variance needed for the proposed construction of a shed. The proposed construction requires a variance of 5.75 feet as it is within 4.25 feet of the rear lot line. The required setback is ten (10) 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 July 31, 2024. Petitioner John Audet appeared in support of the application.

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

**EVIDENCE PRESENTED**

1.     The subject property is Lot 19, Block 15, Indian Spring Village Sec 2 Subdivision, located at 10000 Brookmoor Drive in Silver Spring, Maryland, 20901, in the R-60 Zone. It is a corner lot located on the south side of Brookmoor Drive and the west side of Big Rock Road. The subject property is rectangular in shape except for the arced corner at the intersection. It has an area of 8,414 square feet. The property contains a house that was built in 1946, and an existing eight foot by ten foot (8' x 10') shed that was located on the property when the Petitioner and his wife purchased it in 1991. See Exhibits 3, 4, 7, and SDAT printout.

2. The Petitioner is seeking to construct an eight foot by twelve foot (8' x 12') shed on his property. The Petitioner's variance Application indicates that the Petitioner is "request[ing] a 5'-9" variance into rear setback for an accessory structure to replace an existing shed in the same location," and indicates that the existing shed is nonconforming. The Application cites the property's shallowness, shape, and topography as reasons why the strict application of the Zoning Ordinance would cause him a practical difficulty. In addition, the Application states that "[t]here is an existing natural boulder located behind the house that limits potential shed location even further." See Exhibit 1.

3. The Petitioner's Statement of Justification ("Statement") restates the points made on the Application, namely that the Petitioner is seeking to "[r]eplace the existing, nonconforming, 8'x'10' shed with a new 12'x16' shed in same location," that "[c]onstruction in the existing location would require a 5'-9" variance into the rear accessory structure setback," that "[t]he existing shed is non-conforming at the rear setback," and that "the location in relation to the rear setback would not change." See Exhibit 3.

4. The Statement describes the subject property as a "shallow" corner lot, with only 15'-7" of space behind the rear building line of the house in which to locate a shed without needing a variance from the rear lot line. See Exhibit 3. The Petitioner's Zoning Vicinity Map confirms that the subject property is much shallower than almost every other property on the block. See Exhibit 7. The Statement states that the front of the Petitioner's house "faces" Brookmoor Drive, and its left side faces Big Rock Road. The Statement states that the existing shed "sits in the rear yard at left side of the house, adjacent to Big Rock Road," at a distance of four feet, three inches (4'-3") from the property's rear lot line, and thus encroaches on the required rear setback. See Exhibit 3.

The Statement states that the Petitioner is seeking to locate the right rear corner of the proposed shed in the same location as the right rear corner of the existing shed. The Statement states that because the proposed shed is larger than the existing shed, "the new shed would extend closer to the house, and the side street lot lines, but would still be within those accessory structure setbacks." The Statement notes that any view of the proposed shed would be obscured by an existing privacy fence. See Exhibit 3.

5. The Statement states that the subject property meets the uniqueness factors set forth in Sections 59.7.3.2.E.2.a.i, ii, and v of the Zoning Ordinance. With respect to Section 59.7.3.2.E.2.a.i, the Statement states that the subject property is shallow and that the usable area behind the home is encumbered with a large rock, stating that "[t]he shallow corner lot of the subject property, the existing boulder, and the placement of the house present difficulty in maintaining the required setbacks for any shed to be constructed in the rear yard." See Exhibit 3. The Petitioner's Site Plan shows the location of this "boulder," and confirms its large size. See Exhibit 4. With respect to Section 59.7.3.2.E.2.a.ii, the Statement states that the placement of the existing shed is nonconforming with respect to the rear lot line, and that the proposed shed "would keep

the same location at the rear lot line." Finally, with respect to Section 59.7.3.2.E.2.a.v of the Zoning Ordinance, pertaining to conformity of the proposed construction with the established historic or traditional development pattern of a street or neighborhood, the Statement states that the proposed shed would be in the same location as the existing shed, and thus "would impose minimal adverse effects on any adjacent properties." See Exhibit 3. The Zoning Vicinity Map appears to show a pattern of sheds/accessory structures being located close to the rear property line on this block. See Exhibit 7.

6. The Statement states that the features that make this property unique are not due to actions by the Petitioner. In support of this, the Statement states that "[t]he size and shape of the lot at 10000 Brookmoor Drive, and the existing house and the placement of the house are all original to the 1946 development of the lot and neighborhood," and notes that "[t]he existing shed was already in its existing location when the owners purchased the property in 1991." See Exhibit 3.

7. The Statement states that the requested variance is the minimum needed to allow for sufficient clearance and daylight between the rear wall of the existing house and the front of the shed. See Exhibit 3.

8. The Statement states that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties. The Statement states that "[t]he proposed shed would be placed in the same location as the existing shed," and would mainly be visible "to the adjacent property at 10002 Big Rock Road," but that "a privacy fence between the two properties blocks most of that view." The Statement further states that "[t]he view of the shed from Big Rock Road would also remain blocked by a privacy fence." Finally, the Statement asserts that because this replacement shed would be located where the existing shed is located, the variance necessary for its construction can be granted without substantial impairment to the applicable master plan. See Exhibit 3.

9. At the hearing, the Petitioner testified that the proposed location of the shed has not changed, but that the orientation of the shed has been rotated. He provided the Board with a revised Site Plan depicting the proposed location and orientation of the shed. See Exhibit 9. He testified that the County's Department of Permitting Services said a new permit denial is not needed, and that the variance that was noticed is the same as the variance that is needed. In response to a Board question asking if the "big rock" was on his property when he purchased it, the Petitioner testified that it was.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and the 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, 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;*

Based on the Statement, Site Plan, and Zoning Vicinity Map, the Board finds that the subject property is relatively shallow compared to other properties on the block. See Exhibits 3, 4, and 7. The Board further finds, based on the Statement and Site Plan, that the Petitioner's rear yard is encumbered with a large boulder that nearly the size of the proposed shed. See Exhibits 3 and 4. The Board finds that these factors, taken together, severely constrain the available buildable area behind the rear building line of the Petitioner's house, and constitute a unique condition peculiar to this property, in satisfaction of this element of the variance test.

*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, that the proposed shed will be in the same location as an existing shed, which encroaches into the rear setback and which was on the property when the Petitioner purchased it in 1991. See Exhibit 3. The Board further finds, based on the Zoning Vicinity Map, that there is a pattern of sheds on this block being located close to the rear property line. See Exhibit 7. In light of the foregoing, the Board finds that the proposed placement of the shed would substantially conform with the established traditional 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, based on the Statement, that the Petitioner purchased the subject property in 1991, long after it was developed, and is thus not responsible for his property's shallowness. See Exhibit 3. The Board further finds, per the testimony of the Petitioner, that the large boulder and existing shed were on his property when he purchased it, and that he is thus not responsible for their presence on his property. Finally, the Board finds that the Petitioner is not responsible for the location of sheds on neighboring 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 presence of the large boulder in the Petitioner's back yard, coupled with the shallowness of his property, limits the area available for the construction of a shed in accordance with the development standards set forth in the Zoning Ordinance, causing the Petitioner a practical difficulty. See Exhibits 1, 3, 4, and

7. The Board further finds, in accordance with the Statement, that the requested variance is the minimum needed to overcome this practical difficulty and to allow replacement of the existing shed, which encroaches on the rear setback, with the proposed shed, consistent with the established development pattern in the neighborhood, and in a manner that allows for adequate space between the existing house and shed. The Board notes, based on the Statement, that the new shed will be built in the same location as the existing shed, which was on the subject property when the Petitioner purchased the property over thirty years ago. 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;*

The Board finds, in accordance with the Statement, that the proposed shed will replace an existing shed, and thus will continue the residential use of this property, consistent with the recommendations of the Four Corners Master Plan, which seeks to "maintain and preserve the character and integrity of the Four Corners residential neighborhoods as the foundation of the community." See Exhibit 3. In light of the foregoing, 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, per the Statement, that the proposed shed, while bigger than its predecessor, will be in the same location as its predecessor, and will be largely screened by an existing privacy fence. See Exhibit 3. In addition, the Board finds that the property was properly posted, that the record contains no opposition to the grant of the request variance, and that no one appeared in opposition at the hearing. In light of the foregoing, the Board finds that granting 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, needed for the proposed construction of a shed, 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 5(a)-(c) and 9.

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.

  
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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 7th day of August, 2024.

  
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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.