

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6887**

**PETITION OF CARLOS DE SOUZA**

**OPINION OF THE BOARD**

(Hearing Date: October 23, 2024)

(Effective Date of Opinion: November 1, 2024)

Case No. A-6887 is an application by Carlos de Souza (the “Petitioner”) for two variances needed for the construction of an accessory structure (carport/detached garage). The construction requires a variance of three (3) feet as it is within twelve (12) feet of the side lot line. The required setback is fifteen (15) feet, in accordance with Section 59.4.4.6.B.2 of the Zoning Ordinance. In addition, the construction requires a variance to be located forward of the rear building line. In accordance with Section 59.4.4.6.B.2.c of the Zoning Ordinance, accessory structures must be located behind the rear building line of the principal building.

The Board of Appeals held a hearing on the application on October 23, 2024. Petitioner Carlos de Souza participated in the proceedings in support of the requested variances.

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

**EVIDENCE PRESENTED**

1.      The subject property is Lot 11, Block B, Foxlair Acres-Section 1 Subdivision, located at 9301 Huntmaster Road in Gaithersburg, Maryland, 20882, in the RE-1 Zone. It is a five-sided corner property, bordered by Huntmaster Road to the south and Goshen School Road to the east. The “fifth” side of the property is a truncated corner that faces the intersection of these two roads. The property is 51,137 square feet (1.17+/- acres) in size. It was purchased by the Petitioner in 2021. See Exhibits 4(a)-(b), 8, and 10, and SDAT Printout.

2. The property contains a house that was built in 1978. See Exhibit 10. The house is set back on the property, away from the abutting streets, in the northwest (back) corner of the property. The right rear corner of the house is approximately 20 feet from the property's northern (side) lot line, and the house's left rear corner is approximately 28 feet from the property's western (rear) lot line. There is a well located behind the house. In addition, the property has a septic tank and septic trenches that are located roughly in the center of the property, between the house and the abutting streets, and east of the Petitioner's driveway. See Exhibits 4(a)-(b).

3. The Petitioner is seeking variance for an accessory structure that was constructed to the right of his home. The structure is nearly finished.<sup>1</sup> The structure encroaches three (3) feet into the side setback and is located forward of the rear building line. The Petitioner's Statement of Justification ("Statement") states that the Petitioner intends to use the structure as "winter storage for a boat, landscaping equipment and other vehicles to make sure the front yard is clean and apparently clean," and that he has no intention "to make the structure a livable space." See Exhibits 4(a)-(b), 6(a)-(b), and 10.

4. The Statement states that the Petitioner "has no space behind [his house], since the builder during construction, used most of the lot to be part of the front yard." See Exhibit 10. The Site Plans confirm this, showing the house wedged in the rear corner of the property. See Exhibits 4(a)-(b).

5. The record contains two letters of opposition to the requested variances. The first letter, which is from the Petitioner's abutting neighbor to the right on Goshen School Road, states that (1) the structure is an eyesore and unlike other structures in the neighborhood; (2) the structure is located too close to, and in fact sits on, the shared property line; and (3) the structure obstructs the view from this neighbor's house and may lower their property value. See Exhibit 7(a). The second letter, which indicates that it is submitted on behalf of an adjacent homeowner but was sent by a person who lives a significant distance away from the subject property, states that the proposed construction is not a carport, as shown on the variance sign,<sup>2</sup> or a porch, as shown on the plans submitted with the variance application,<sup>3</sup> but rather is a two-car garage. The letter states that construction was undertaken without a valid building permit, and recounts various County enforcement actions. The letter takes issue with some of the assertions made in the Statement that appear to be inaccurate.<sup>4</sup> Finally, the letter states that the garage is being

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<sup>1</sup> The building permit denial indicates that this structure is a carport, but at the hearing, the Petitioner made clear that it is really a garage. The Statement of Justification states that the exterior of the structure "was completed only because of the neighbors constantly complaining about the structure being a visual problem in the community," and that the Petitioner is waiting to finish the interior until the Board makes a decision on his variance request. See Exhibit 10.

<sup>2</sup> The Board uses the building permit denial issued by the Department of Permitting Services to describe the construction needing a variance on the variance sign and hearing Notice. In this case, the building permit denial indicates that the proposed construction is a "carport (existing)." See Exhibits 6(a)-(b),

<sup>3</sup> These plans are in the record at Exhibits 5(a)-(b).

<sup>4</sup> The Board notes that the assertions questioned by the author of the second opposition letter appear to mirror statements that are contained in the "Sample" Statement of Justification that Board staff give to Petitioners who need assistance with this aspect of their variance filing. The Board further notes that at the hearing, in response to questions about some of the assertions in his Statement, the Petitioner stated that

use for car repairs, and questions whether there will be a driveway to it and the impact that might have on the Petitioner's septic field. See Exhibit 7(b).

6. At the hearing, the Petitioner testified that his property is about 1.17 acres in size, and that the left and right sides of his house are located 25-26 feet from his neighbors' fences. He testified that his back yard is "V-shaped," coming to a point in the rear, and that there is a well in the center of it. The Petitioner testified that because of this, nothing can be built in his back yard.

The Petitioner testified that he built his accessory structure in the only place he could on the property. He testified that he could not build it on the other side of his driveway because of septic trenches, and that if he built on the other side of his property, it would block that neighbor's view because of the orientation of that neighbor's house.

The Petitioner testified that the outside of the structure is finished. He testified that he was out of town when the first stop work order was issued, and that his contractor did not inform him and proceeded with construction. The Petitioner testified that when the second stop work order was issued, he took responsibility for the problem himself, and told the inspector that after he finished painting, he would stop work.

The Petitioner testified that the accessory structure is a two-car garage, not a carport. He testified that it will be used to store a boat and a small trailer, along with equipment like blowers. With respect to the opposition letter at Exhibit 7(a), the Petitioner testified that this is the neighbor who had asked when the construction would be done. He testified that this neighbor wanted him to move his RV, and that moving the RV would address that neighbor's major concerns. The Petitioner testified that he intends to sell the RV, but at a minimum that he will move it. In addition, he noted that there are trees between his property and this neighbor's property that block the view. With respect to the opposition letter at Exhibit 7(b), the Petitioner testified that he believed he knew who that letter was from, and that it really emanated from issues that neighbor had when they used his contractor.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and the evidence of record, the Board finds that the requested 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.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds, based on the Statement, the Site Plan, and the testimony of the Petitioner, that the location of the existing house—which was built in 1978—leaves the

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he had used the Board's "Sample" Statement of Justification as a template for his submission, and that he may have misused some of the words from the Sample in preparing his Statement.

Petitioner with an extraordinarily shallow area behind the rear building line of the principal structure, and that the presence of a well in that area further restricts construction behind the house. In addition, the Board finds that the presence of septic trenches limits the remaining usable area on the property. See Exhibits 4(a)-(b) and 10. The Board finds that these conditions, taken together, severely constrain the buildable area for an accessory structure on the subject property, and 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 existing house on the subject property was built in 1978, and that there is nothing in the record to suggest that the Petitioner, who purchased the property in 2021, is responsible for the placement of the house on the property, for the resultant shallowness of the area behind the rear building line of the house, or for the location of the well and septic trenches. 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 subject property was developed in 1978, and that the shallowness of the property's rear yard and the presence of a well in that yard preclude construction of the proposed accessory structure behind the rear building line of the Petitioner's house, causing the Petitioner a practical difficulty and necessitating variance relief to allow the proposed structure to be located forward of the rear building line. See Exhibits 4(a)-(b) and 10. In addition, the Board finds that the presence of septic trenches on the remainder of the Petitioner's property further constrain the area available for construction, adding to the Petitioner's practical difficulties, and that the requested three (3) foot variance from the side lot line—which would still leave twelve (12) feet between the structure and the shared lot line—is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would impose due to these conditions. See Exhibits 4(a)-(b). Thus 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 that the proposed construction will continue the residential use of the home, and thus can be granted without substantial impairment to the intent and integrity of the applicable general plan and 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.*

Based on the Statement and the testimony of the Petitioner, the Board finds that granting the requested variances will not be adverse to the use and enjoyment of


neighboring properties, in satisfaction of this element of the variance test. See Exhibit 10. The Board notes, in support of this finding, that the Petitioner has testified that he will sell/move his RV in response to concerns voiced by his neighbor to the right, and that there are some trees that obscure the view from that property. With respect to his neighbor to the left, the Petitioner has testified that the location for the accessory structure was selected in part to avoid blocking the view from that neighbor's house.

Accordingly, the requested variances needed for the Petitioner's accessory structure 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 accordance with Exhibits 4(a)-(b) and 5(a)-(b).<sup>5</sup>

Based upon the foregoing, on a motion by Amit Sharma, seconded by Alan Sternstein, with Caryn Hines, Chair, Richard Melnick, Vice Chair, and Donald Silverstein 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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 Caryn L. Hines  
 Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 1st day of November, 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.

<sup>5</sup> The Board recognizes that the plans at Exhibits 5(a)-(b) may not show the entirety of the existing construction, but do show the external dimensions of the structure.

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.