

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6901

PETITION OF STUART ZIMMERMAN

OPINION OF THE BOARD

(Public Hearing Date: January 22, 2025)
(Effective Date of Opinion: January 29, 2025)

Case No. A-6901 is an application by Petitioner Stuart Zimmerman for a variance needed for the proposed construction of a shed. The proposed construction requires a variance of four (4) feet as it is within eight (8) feet of the left side lot line. The required setback is twelve (12) feet, in accordance with Section 59.4.4.7.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on January 22, 2025. Petitioner Stuart Zimmerman appeared in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Lot 20, Block EYE, Potomac Chase Subdivision, located at 12456 Falconbridge Drive in North Potomac, Maryland, 20878, in the R-200 Zone. It is an irregularly-shaped, four-sided property situated on the south side of Falconbridge Drive. The property's front (northern) lot line is significantly bowed, following the curvature of the abutting street. The property's side lot lines converge towards the property's rear, causing the property to narrow from front to back (north to south). The property's right (western) side lot line abuts a 10-foot wide right-of-way owned by the homeowners' association, and its left (eastern) side lot line abuts the PEPCO power lines. The property's rear (southern) lot line abuts undeveloped land that is also owned by the homeowners' association and is wooded. The Site Plan contains contour lines that show an elevated berm on the right side of the house, and that otherwise depict a downward slope from front to rear. The Site Plan shows a wall and a steep drop-off at the rear of the property. Finally, per SDAT, the property is 14,108 square feet in size. It contains a house that was constructed in 2003. See Exhibits 4 and 7(a), and SDAT printout.

2. The Petitioner's variance Application indicates that his property is unique due to its narrowness, shallowness, shape, topography, and other extraordinary or peculiar conditions peculiar to the property. The Application specifically notes that the property has an elongated yard and a shallow back yard. The Application states that the unique features of the Petitioner's property foreclose his ability to build a shed anywhere else on the property. See Exhibit 1.

3. The document entitled "Shed Reference Data" that was submitted by the Petitioner states that he cannot place his proposed shed the required twelve (12) feet from the left side lot line because of the need for clearance between the shed and an existing patio wall, and in order to provide adequate space for the construction of the shed, which will be built on site, and for access around the shed to the back yard. The document notes that a minimum of three (3) feet of clearance is needed between the shed and any wall to allow the shed door to open. The Shed Reference Data document states that there is inadequate room to place the proposed shed behind the Petitioner's deck because there are only eleven (11) feet available in that area. Finally, the Shed Reference Data Document states that the proposed shed cannot be located to the right of the Petitioner's house "because there is a steep incline up a bank that would not allow placing it on a level surface." See Exhibit 3(a).

4. The Petitioner's Updated Submission ("Submission") states that the proposed location for the shed will minimize the amount of backfill needed to create a level pad for the shed, noting that the topography slopes down towards the PEPCO property and a retaining wall will be needed. The Submission further states that the shed cannot be placed on the right side of the Petitioner's house "because of the steep berm situated there," and that it cannot be placed behind the house because there is insufficient room and a retaining wall in that area. The Submission also notes the relatively small size of the Petitioner's back yard, and the narrowness of the area between his house and the left side lot line. See Exhibit 3(b).

5. The Submission states that the Petitioner is not responsible for the fact that his house was constructed "with an elongated yard profile without the normal size of the backyard." See Exhibit 3(b).

6. The Submission states that the proposed shed will not have an adverse effect on the use and enjoyment of neighboring properties. In support of this, the Submission states that the properties to the left and behind the subject property are "not populated." It notes that the property behind the Petitioner's property "is covered with trees which extend over a hundred feet downhill and against the power lines." The Submission states that the Petitioner's neighbor to the right "is situated more than 150 feet away from the shed site," across the ten-foot right-of-way, and thus "would not be significantly affected" by the proposed shed. The Submission states that the Petitioner's neighbor across the street would not be able to see the proposed shed from their yard because the view would be blocked by the Petitioner's solarium and trees. See Exhibit 3(b). The Petitioner includes photographs showing the view from the area proposed for the shed towards

neighboring properties. See Exhibits 5(b)-(c). He also includes a map “showing the distance to homes across the power lines and the street down the hill to show separation aspects between homes and other relevant dimensional data.” See Exhibit 7(b).

7. At the hearing, the Petitioner testified that his property has an elongated shape and does not have a “regular” back yard. He testified that he cannot put the proposed shed to the rear of his house because his property drops off in that area. The Petitioner testified that he cannot put his shed on the right side of his house because the elevation of his property increases quickly on that side, and he would have to “dig out” what he described as a “steep berm” to install a shed in that area. The Petitioner testified that siting the shed as proposed will provide the necessary space around the shed for its construction and will preserve access to his back yard, while at the same time allowing the shed to be constructed on an area of his property that is “as flat as possible.” He testified that if the shed were moved farther back on his property, it would be more difficult to build up the area under the shed in order to make it flat.

In response to a Board question, the Petitioner testified that because of his angled side lot line, the extent of the proposed encroachment would diminish from front to back, with the front of the proposed shed being eight (8) feet from the left side lot line and the rear being ten (10) feet from that lot line. In response to another Board question asking if he had received any feedback from his neighbors, the Petitioner testified that his neighbor across the street had signed a document that was required by the homeowners’ association regarding the proposed shed.

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 that the subject property has an unusual shape and topography which combine to create an extraordinary condition unique to this property that severely constrains the area available for the construction of the proposed shed in accordance with the required setbacks, in satisfaction of this element of the variance test. In support of this, the Board finds, based on the Submission and Site Plan, and the testimony of the Petitioner, that the subject property is elongated and narrows from front to back, constraining the area available for the proposed structure. The Board further finds that the subject property generally slopes in a downward direction from front to rear (north to south) except on the right (west) side, where there is a significant elevated berm. The Board notes, based on the Site Plan, that the severity of the property’s slope increases near the left side (east) and rear (south) property lines. The Board further finds, based

on the Submission, the Site Plan, and the testimony of the Petitioner, that the proposed location minimizes the amount of backfill needed to address the property's slope, and that moving the proposed structure further back on the property would increase the extent of retaining walls and fill that would be needed for the proposed construction, again on account of the property's topography. See Exhibits 3(b) and 4.

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 there is nothing in the record to indicate that the Petitioner is responsible for the shape or topography of his property, in satisfaction of this element of the variance test.

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 Application, Submission, Site Plan, and the testimony of the Petitioner, that as recounted above, the property's unusual shape and challenging topography combine to limit the Petitioner's ability to locate a shed on his property in any location on his property other than the location proposed, causing the Petitioner a practical difficulty. See Exhibits 1, 3(b), and 4. The Board further finds, in accordance with the Submission and the testimony of the Petitioner, that the requested variance is the minimum needed to overcome this practical difficulty and to allow the proposed construction to proceed on the side of property that has available space, in a location that minimizes site work. 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 construction of the proposed shed will continue the residential use of the property and that the requested variance can thus be granted without substantial impairment to the intent and integrity of the Potomac Subregion Master Plan (2002). Accordingly, 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, based on the Submission, the Site Plan, and the Zoning Vicinity Map, that the property to the left of the subject property, which shares the lot line from which variance relief is being requested, contains the PEPCO power lines, and that the property to the rear of the subject property is treed open space owned by the homeowners' association. See Exhibits 3(b), 4, and 7(a). The Board further finds, based on the Submission and the photographs provided by the Petitioner, that the proposed shed will not be visible to the confronting property owner, and will be a significant distance from the residence of the Petitioner's neighbor to the right, minimizing any impact on that neighbor. See Exhibits 3(b) and 5(b)-(c). Finally, the Board notes that despite being properly Noticed and posted, the record contains no opposition to the grant of the

requested variance, and no one appeared at the hearing in opposition. In light of the foregoing, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance needed to allow construction of the proposed shed 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, 5(a), and 5(d).

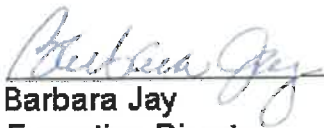
Based upon the foregoing, on a motion by Caryn L. Hines, Chair, seconded by Alan Sternstein, with Richard Melnick, Vice Chair, Amit Sharma, and Donald Silverstein in agreement, the Board adopted the following Resolution:

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.



Caryn L. Hines
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 29th day of January, 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.