

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**100 Maryland Avenue, Suite 217
Rockville, MD 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/boa/>

Case No. A-6907

**PETITION OF HYATTSTOWN VOLUNTEER FIRE DEPARTMENT
c/o JEFFREY GROSS**

OPINION OF THE BOARD

(Hearing Held: March 19, 2025)

(Worksession Held: April 23, 2025)

(Effective Date of Opinion: May 7, 2025)

Case No. A-6907 is an application by Petitioner Hyattstown Volunteer Fire Department c/o Jeffrey Gross for a variance needed for an addition to an existing fire department garage. The proposed addition requires a twenty (20) foot variance as it is within ten (10) feet of the rear lot line. The required setback is thirty (30) 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 Wednesday, March 19, 2025. Jeffrey Gross participated on behalf of the Hyattstown Volunteer Fire Department ("HVFD" or "Department"), which was represented by Elizabeth Rogers, Esquire. Architect Scott Knudson was also present. Due to an oversight with respect to the posting of the property, the Board deferred decision on this matter to its April 23, 2025, Worksession, to allow for proper posting of the variance sign. No opposition to the requested variance was received by the Board before or after the posting of the variance sign.

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

EVIDENCE PRESENTED

1. The subject property is Lot 109, Hyattstown Subdivision, located at 5035 Hyattstown Mill Road in Clarksburg, Maryland, 20871, in the R-200 and NR-0.75 H-45 Zones. It is a split-zoned property, roughly rectangular in shape and

39,282 square feet in size, located on the north side of Hyattstown Mill Road. See Exhibits 3, 4(a), and 7, and SDAT Printout.

2. The Statement of Justification ("Statement") states that the subject property "is part of a larger tract owned by the HVFD, which includes the properties located at 25801 Frederick Road and 15035 Hyattstown Mill Road in Clarksburg, Maryland (the 'Overall Property')." The Overall Property is located in the Hyattstown Historic District. The Statement indicates that the Overall Property is located in the Hyattstown Historic District, and that it is "bounded by Hyattstown Mill Road to the south, Frederick Road to the west, a commercial retail use (including outdoor warehousing) to the immediate north, and a single family home to the east." See Exhibit 3.

3. The Statement states that the Overall Property contains the following structures:

The Overall Property is improved with several structures, including: (1) the original firehouse at the intersection of Hyattstown Mill Road and Frederick Road, constructed between 1940 and 1950¹ (the "Original Firehouse"); (2) the Morton Building, located behind the historic fire station (to the east), which serves as a garage for fire department apparatus, originally constructed in 1996 and expanded in 2008; and (3) an administrative office building (originally used a single-family house, which was converted in 1992) located on the far eastern side of the Overall Property, which was expanded in 2007 (the "Administrative Office Building"). The Morton Building and Administrative Office Building are located on the Subject Property, with the Original Firehouse located on the remainder of the Overall Property.

See Exhibit 3. The Statement further states that the subject property "was subdivided into a separate record lot in 2004," and that it is this subdivision, and a subsequent (2007) addition to the Administrative Office Building, that have triggered the need for variance relief. See Exhibit 3.

4. The Statement explains that the 2004 subdivision caused the Morton Building and Administrative Office Building, which were formerly located on the same property as the Original Firehouse, to now be located on a separate lot, resulting in their no longer being "accessory" to the Original Firehouse and subject to accessory structure setbacks. The Statement goes on to explain that when the subject property portion of the Overall Property is viewed on its own, it appears at first glance that the Administrative Office Building is the principal building on that property and that the Morton Building is accessory, but that because the 2007 addition to the Administrative Office Building extended that building to the north (rear) such that the Morton Building is no longer completely behind it, under the current Zoning Ordinance the Morton Building cannot be considered accessory, and both buildings are now in fact considered "principal" buildings. Accordingly, both buildings are now subject to the setbacks for principal buildings. The existing Morton Building meets the seven (7) foot rear setback for an accessory building

¹ Due to the scarcity of resources during World War II, the building was constructed in phases.

that applied when it was built, but it does not meet the required thirty (30) foot rear setback for a principal building. See Exhibit 3.

5. The HVFD is seeking a variance to allow construction of a 15 foot by 45 foot addition on the right (eastern) side of the existing Morton Building to “provide weather protection and secure storage for the fire department’s necessary rescue apparatus.” See Exhibit 3. The Statement indicates, and the Site Plan shows, that the rear of the proposed addition would be coplanar with the rear of the existing building. See Exhibits 3 and 4(a). The Statement indicates that the additional indoor storage space provided by the addition would allow a Utility Task Vehicle (“UTV”) that is used for rescue operations to be stored with and connected to the utility truck that pulls it; the Statement notes that the two currently have to be stored separately, one indoors and one outdoors, and that this has the potential to cause unnecessary delays in response time. See Exhibit 3.

6. The Statement states that granting the requested variance will not have adverse effects on the surrounding neighborhood. The Statement notes that the HVFD “has been a fixture in this community since the mid-1900’s,” and that because the Morton Building to which the proposed addition would be affixed is located behind the Original Firehouse building, it has “limited visibility from Frederick Road.” In addition, the Statement states that “[a]s illustrated on the proposed architectural elevations ... the proposed garage addition will blend seamlessly in with the existing building design.” The Statement further states that the existing setback of the Morton Building from the northern (rear) property line will be maintained. Finally, the Statement notes that the abutting property to the north is “currently operated as a hot tub and sauna retailer, with outdoor storage,” and that “[t]he Morton Building will continue to be setback significantly from Hyattstown Mill Road, which is a rural road that provides access to a select few properties.” See Exhibit 3.

7. The Statement at Exhibit 3 states that the 2004 subdivision of the subject property into a separate lot makes it unique for the purposes of satisfying Section 59.7.3.2.E.2.a.i of the Zoning Ordinance, as follows:

This subdivision has created an extraordinary condition for the Petitioner, resulting in the treatment of the Morton Building as a principal building, as opposed to an accessory structure. This classification of the Morton Building effectively precludes any expansion of the existing garage, given that much of the structure currently falls within the required “rear yard” setback. As a result of this extraordinary condition, there is no ability for Petitioner to safely and securely house the necessary fire rescue equipment and apparatus.

8. The Statement states that the proposed addition to the existing Morton Building would also satisfy Section 59.7.3.2.E.2.a.ii of the Zoning Ordinance because the existing structure is nonconforming:

The existing Morton Building is currently a legal non-conforming structure, as it does not comply with the required rear yard setback for a principal building. This effectively precludes any expansion of the garage, as the proposed addition must

align with the front and rear walls to provide necessary structural support and internal circulation within the garage.

See Exhibit 3. The Statement notes that “[i]mportantly, the proposed addition will not exacerbate any of the existing non-conformities, as the expansion will maintain the existing rear setback and will not change the current side yard setback for the Subject Property.”

9. The Statement states that the proposed addition “contains a historically significant property or structure,” in satisfaction of Section 59.7.3.2.E.2.a.iv of the Zoning Ordinance. In support of this, the Statement notes that the property is located in the Hyattstown Historic District, and that “[t]he Historic Preservation Commission reviewed and voted to approve a Historic Area Work Permit for the proposed garage expansion at their regularly scheduled meeting on October 25, 2023.” See Exhibit 3.

10. The Statement states that the circumstances that make the subject property unique are not due to any actions of the HVFD. The Statement states that the location of the Morton Building was reviewed and approved by the County in connection with the issuance of permits for its construction in 1996. The Statement further states that a predecessor in title initiated the 2004 subdivision of the overall property, to allow for an expansion of the Administrative Office Building, which the Statement notes was also reviewed and approved by the County in connection with the issuance of permits for that construction. The Statement thus concludes that “the variance relief is being driven by a change in the zoning requirements since the building’s initial construction,” and that “these special circumstances or conditions are not the result of any actions taken by the Petitioner.” See Exhibit 3.

11. The Statement states that the HVFD cannot expand the existing Morton Building to provide the necessary secure storage for their equipment without variance relief, causing them a practical difficulty. The Statement states that “[a]n expansion of the existing garage that maintains the 30-foot rear yard setback would be impracticable, as it would preclude necessary internal circulation within the garage,” and that it is “not feasible to reconfigure the proposed addition due to structural constraints.” Thus the Statement states that “the proposed expansion, which maintains the existing rear yard setback, is the least disruptive method by which the Petitioner can provide this secure, weather protected storage,” noting that the proposed addition to the Morton Building will be “no closer to the commercial use located to the north, than the existing garage is today,” and that “no changes are proposed to the existing side yard setback on the Subject Property.” In light of the foregoing, the Statement concludes that the requested variance relief “is not only the minimum necessary to overcome the practical difficulties, but also will have no adverse impacts on the adjacent properties.” See Exhibit 3.

12. The Statement at Exhibit 3 states that the requested variance can be granted without substantial impairment to the intent and integrity of the general plan and applicable master plan, in satisfaction of Section 59.7.3.2.E.2.d of the Zoning Ordinance, as follows:

The Property is located within the *Approved and Adopted 1994 Clarksburg Master Plan and Hyattstown Special Study Area*. One of the main Land Use objectives for the Hyattstown Special Study Area in the Master Plan is to “[r]ecognize and encourage the preservation of Hyattstown’s significant collection of historic buildings and its intact rural village ambiance.” To accomplish this objective, the Master Plan seeks “...to preserve the integrity of existing residential uses while allowing some non-residential uses (including commercial) to meet the needs of residents...” The Hyattstown Volunteer Fire Department is an essential component of the success of the Hyattstown community and is necessary to support the health, safety and welfare of the existing residential and commercial uses. This proposed garage expansion will not visually impede on the character of this historic rural village, as it is located behind the Original Firehouse and largely screened from view along Frederick Road. As such, the proposed variance relief can be granted without any impairment to the goals and recommendations of the Master Plan.

13. At the hearing, Ms. Rogers explained that the HVFD is seeking a rear lot line variance to permit a single story addition to the existing Morton Building, which she referred to as a garage. She stated that granting the requested variance will not change the existing setback from the rear lot line. Ms. Rogers used an aerial photograph to orient the Board to the Overall Property. See Exhibit 9. She stated that the original fire house was built sometime between 1940 and 1950, that the Morton Building was built in 1996 and expanded in 2008, and that the administrative office building, which was originally constructed as a single family dwelling, was converted to its current use in 1992 and was expanded in 2007. Ms. Rogers stated that in 2004, a predecessor in title subdivided the Overall Property, creating the subject property. She stated that the subject property is split-zoned, with part being in the NR Zone and part being in the R-200 Zone. Ms. Rogers stated that the proposed addition to the Morton Building is located on the portion of the subject property that is in the R-200 Zone.

Ms. Rogers stated that the property is located in an Historic District, and that a Historic Area Work Permit had been issued for the proposed construction. She stated that the proposed construction will have no impact on surrounding properties, and will not bring the existing Morton Building any closer to the property to the rear (north), which she noted is used for a sauna business with outdoor storage. Ms. Rogers stated that the proposed construction respects the viewsheds from Frederick Road and conforms with the applicable master plan by continuing the firehouse use and serving the surrounding community.

14. Mr. Gross testified that the HVFD has been working on this project, for which they needed to secure grant funding, for five years. He testified that they submitted their application for building permits last September, and were informed that they would need a variance.

Mr. Gross testified that the HVFD has a utility truck and UTV that they use to respond to off-road fire and rescue situations. He testified that at present, the utility truck has to be parked outside, in front of the firehouse, while the UTV is stored inside for security reasons. Mr. Gross testified that hooking the UTV to the utility truck takes three to five minutes, causing a delay in response time. He testified that snow and ice in the winter can exacerbate this delay. Mr. Gross testified that the HVFD really needs these vehicles to be ready to go on a moment's notice, and that the best option to accomplish this, for both readiness and security reasons, is to construct an addition to the Morton Building. He testified that the depth of the proposed addition (front to back) is necessary to allow the HVFD to park the connected assemblage of the utility truck and UTV inside.

15. Mr. Knudson testified that the variance is needed because of the property's history. He testified that the Morton Building was originally built behind the firehouse as an accessory structure. Mr. Knudson testified that following the 2004 subdivision, the Morton Building was no longer accessory to the firehouse. He testified that as a result of the subdivision, the Morton Building and the Administrative Office Building were now located on a single lot that fronted on Hyattstown Mill Road, and that the Morton Building was accessory to the Administrative Office Building. Mr. Knudson testified that in 2007, the Administrative Office Building was expanded so that its rear wall extended past the front of the Morton Building. He testified that this created the existing nonconforming condition, and resulted in there being two principal structures on the subject property. Mr. Knudson testified that the Morton Building does not meet the required thirty (30) foot rear setback for a principal structure. He testified that the proposed addition to the Morton Building will be the same distance from the rear lot line as the existing structure. Mr. Knudson testified that the proposed addition needs to be the full depth of the existing Morton Building, and that if the structure were made shallower, it would not fit the utility truck connected to the UTV.

16. In response to a Board question asking if at one point in time, the firehouse, Morton Building, and Administrative Office Building were all located on the same lot, Ms. Rogers stated that these structures were originally located on a number of parts of lots. Mr. Gross testified that in the 1980s or 1990s, the HVFD Auxiliary purchased part of the Overall Property under the name Hyatt Recreation Incorporated. He testified that this entity was a separate corporation that has since disbanded, and that the property is now owned by the HVFD.

17. In response to Board suggestions that the need for the variance may have been caused by actions attributable to the HVFD, Ms. Rogers stated that it was the subdivision of the property that changed its front, side, and rear, and that this was not a case of self-created hardship because the actions were taken by the owner of the property at that time. She stated that the Original Property could not have been subdivided into a single lot because it was under two separate ownerships. Ms. Rogers stated that the addition to the Administrative Office Building was undertaken under the old (2004) Zoning Ordinance, with full permits and approval by the County; she noted that it was not flagged as creating a nonconformity. Ms. Rogers stated that under the 2014 Zoning Ordinance, the Morton Building would have had to remain fully behind the Administrative Office

Building. She argued that the County's issuance of permits for the expansion of the Administrative Office Building is prima facie evidence that there was no issue at the time of the expansion (2007), and that the expansion did not create the nonconformity. Ms. Rogers argued that it was the 2014 change to the Zoning Ordinance that created the nonconformity, and not the property owner.

FINDINGS OF THE BOARD

Based on the binding testimony and 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 of the Zoning Ordinance, 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.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds, based on the Statement and architectural elevations, that the proposed addition will be attached to and thus uses the existing Morton Building, which was legally constructed in 1996 in compliance with the setbacks required at that time. The Board further finds that the 2004 subdivision of the Overall Property, the 2007 addition to the Administrative Office Building, which was constructed with lawfully issued permits and in accordance with all laws in effect at that time, and the enactment of the 2014 Zoning Ordinance changed the classification of the existing Morton Building for zoning purposes from accessory structure to principal building. The Board finds that the existing Morton Building does not meet the required rear setback for a principal building, and thus finds that this series of changes, notably the enactment of the 2014 Zoning Ordinance, has rendered the existing Morton Building a legal nonconforming structure. See Exhibits 3, 4(a), and 5(a)-(b). Accordingly, the Board finds that this element of the variance test is satisfied.

Section 59.7.3.2.E.2.a.iv. – the proposed development contains a historically significant property or structure;

The Board finds, based on the Statement and the representations made by Ms. Rogers at the hearing, that the subject property is located in the Hyattstown Historic District and that a Historic Area Work Permit ("HAWP") is needed for the proposed construction. The Board further finds that the Historic Preservation Commission ("HPC") has reviewed and approved a HAWP for the proposed addition. See Exhibit 3. Accordingly, the Board finds that the proposed development contains a historically significant property, and that this element of the variance test is satisfied.

Section 59.7.3.2.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 and Site Plan, the testimony of Mr. Knudson, and the representations made by Ms. Rogers, that the proposed addition, which is to a building located in an historic district, has been approved by the HPC, will respect the viewsheds into the property from Frederick Road, and will maintain the current setback of the Morton Building from the rear lot line. See Exhibits 3 and 4(a). Thus the Board finds that the proposed development substantially conforms with the established historic development pattern on this property and along Frederick Road, in satisfaction of this element of the variance test. See Exhibit 3.

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 and the representations made by Ms. Rogers, that the conditions that make the subject property unique are not the result of any actions by the HVFD. In support of this, the Board finds that the subdivision of the Overall Property and the addition to the Administrative Office Building, which ultimately resulted in the existing Morton Building being considered a principal structure under the current Zoning Ordinance and thus nonconforming because it does not meet the setbacks for a principal structure, were initiated by a former owner of the property. To the extent that any affiliation of the former owner with the HVFD might be viewed as problematic, the Board further finds that the 2007 addition to the Administrative Office Building was constructed with permits that were lawfully issued under the Zoning Ordinance and other applicable laws, and that these permits could not have been issued if they would have caused the Morton Building to become nonconforming under the laws in effect at that time. Thus the Board finds, consistent with the representations of Ms. Rogers, that it was the enactment of the 2014 Zoning Ordinance that caused the existing Morton Building to become nonconforming, and that there is nothing in the record to suggest that the HVFD is responsible for the enactment of the 2014 Zoning Ordinance. In addition, the Board finds that there is nothing in the record to indicate that the HVFD is responsible for the subject property being located in the Hyattstown Historic District, and that there is similarly nothing in the record to show that the HVFD is responsible for the established historic development pattern of the property's street or neighborhood. See Exhibit 3. In light of the foregoing, the Board finds that the HVFD took no actions to create the special circumstances or conditions peculiar to this 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 Statement, Site Plan, and architectural elevations that the requested variance is the minimum necessary to overcome the practical difficulties posed by full compliance with the Zoning Ordinance, and to allow the proposed addition to the nonconforming Morton Building to proceed. In support of this, the Board notes that the HVFD uses the Morton Building as a garage for its rescue equipment. The Board finds that the HVFD cannot expand the existing Morton Building without variance relief, causing them a practical difficulty, and that the proposed addition to the Morton

Building will be no closer to the rear lot line than the existing building. The Board finds that per the Statement, “[a]n expansion of the existing garage that maintains the 30-foot rear yard setback would be impracticable, as it would preclude necessary internal circulation within the garage,” and that it would “not [be] feasible to reconfigure the proposed addition due to structural constraints.” The Board further finds that the HVFD needs to expand the existing Morton Building to provide weather protection and secure storage for its rescue apparatus, including the Department’s UTV and the utility truck needed to pull it. Finally, the Board finds that granting the requested variance is the minimum necessary to provide the needed storage, to allow the proposed addition to be structurally integrated with the existing Morton Building, and to allow the addition to have workable internal circulation, and thus is the minimum needed to overcome the practical difficulty posed by full compliance with the Zoning Ordinance. See Exhibits 3, 4(a), and 5(a)-(b). In light of the foregoing, 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, for the reasons set forth above in paragraph 12 under the “Evidence Presented” heading, as well as in the Statement, that the requested variance can be granted without substantial impairment to the intent and integrity of the applicable Approved and Adopted 1994 Clarksburg Master Plan and Hyattstown Special Study Area, in satisfaction of this element of the variance test. The Board further finds, based on the approval by the Historic Preservation Commission, that the variance needed for the proposed construction can be granted without substantial impairment to the Hyattstown Historic District. See Exhibit 3. 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, per the Statement, Site Plan, and the testimony of Mr. Knudson, that the proposed addition will not encroach any further into the setback from the rear lot line than the existing Morton Building. The Board further finds that any view of the proposed addition from Frederick Road will be limited because the Morton Building is located behind the Original Firehouse building. In addition, the Board finds that the abutting property to the rear of the subject property contains a commercial use that includes “outdoor storage” and that is thus unlikely to be adversely affected by the proposed addition, as shown in the aerial photograph included on page 2 of the Statement. Finally, the Board finds, based on the Statement and architectural elevations, that the proposed addition will “blend seamlessly” with the existing structure. See Exhibits 3, 4(a), and 5(a)-(b). On the basis of the foregoing, 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 needed to allow the proposed addition to the existing Morton Building 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(a) and 5(a)-(b).

Therefore, based upon the foregoing, on a motion by Caryn L. Hines, Chair, seconded by Richard Melnick, Vice Chair, with Alan Sternstein, 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 7th day of May, 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.