

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

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

CASE NO. A-6916

PETITION OF MARGARET SHORTEN

OPINION OF THE BOARD

(Hearing Held: June 4, 2025)

(Effective Date of Opinion: June 20, 2025)

Case No. A-6916 is an application by Margaret Shorten (the "Petitioner") for a variance necessary for the installation of a shed. The Petitioner's shed requires a variance of five (5) feet as it is within five (5) 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 Wednesday, June 4, 2025. The Petitioner appeared in support of the application. Abutting neighbors Leslie and Carla Holt, who live at 1604 Dale Drive, appeared in opposition.

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

EVIDENCE PRESENTED

1. The subject property is Lot 3, Block Q1, Woodside Park Subdivision, located at 1600 Dale Drive in Silver Spring, Maryland, 20910, in the R-60 Zone. The property is a corner lot which fronts on both Woodland Drive and Dale Drive to the east, and Luzerne Avenue to the south, and is described by the Petitioner as not only being small, but also as an "extraordinary shaped trapezoid corner lot." Per SDAT, the property contains a house that was built in 1951. See Exhibits 3, 4, and 9(a), and SDAT Printout.

2. The Petitioner is proposing to locate a small (7' x 7') Rubbermaid shed behind the rear building line of her house, as is required by the Zoning Ordinance, but in a location that encroaches into the required ten (10) foot setback from the property's rear lot line.¹

¹ The Petitioner's shed requires a ten (10) foot setback from the property's rear lot line instead of a five (5) foot setback because the lot abutting the Petitioner's corner lot along her rear lot line fronts on the side street (Luzerne Avenue) and is in a Residential Zone. See Section 59.4.4.9.B.2 of the Zoning Ordinance. When the Petitioner initially inquired about the required setbacks for her shed, she was told by DPS that

The Petitioner's Statement of Justification ("Statement") states that "[t]he small flat land area in back of [her] house is the only buildable area" on her property, and that building in this area "leaves the smallest environmental footprint." The Statement states that "the only flat land buildable in back of [the Petitioner's] house is very small," and that the "rear back area is narrow, curved, has a steep slope, and there is storm water runoff from Luzerne Ave. curb." See Exhibit 3. The Petitioner includes a photograph of the area available for a shed as a supplemental submission to her application. See Exhibit 8(g). Another of the Petitioner's supplemental submissions indicates that she has been working with the County's Rainscapes program to install plantings on her property that would help mitigate the flow of stormwater from Luzerne Avenue across her property. See Exhibit 8(a). This supplemental submission and the Petitioner's Statement indicate that the stormwater carries salt and sediment that "stresses and kills/decays shrubs and trees." See Exhibits 3 and 8(a).

2. The Statement states that the conditions that make the Petitioner's property unique are not due to her own actions. The Statement states that the Petitioner "did nothing to change the framework, curvilinear topographical shape of trapezoid lot, hedge, trees, narrowness, steep hills, [or] shallowness" of her property, and that her property lines have not changed since she purchased the property. See Exhibit 3.

3. The Statement states that the Petitioner's yard and garden have been designed to stem water flow "to prevent foundation/structural problems/water/drainage problems from water flowing downward from Luzerne Ave. curb into storm drain at bottom of roadway." The Statement notes that the plants in her garden have healthy root systems, and that the garden "[c]reates unity [of] form and texture" that is "balanced with [the] outdoor space." The Statement states that moving the shed "is displacement and unreasonable for a short distance," that it "would ruin [her] existing round Hosta garden and would create an irregular land surface," and that it would cause her a hardship. See Exhibit 3.

4. The Statement states that the requested variance is the minimum needed to allow the Petitioner to overcome the practical difficulty that would be caused by full compliance with the Zoning Ordinance due to the unique conditions peculiar to the subject property. The Statement states that the Petitioner's garage "has no additional room," and that using it to store the items that would be kept in the shed "would be unsafe and clutter [the] small garage." The Statement states that the Petitioner was originally given incorrect information about the setback requirements for her shed. See Exhibits 3 and 8(b). The Statement states that after one of her neighbors complained about the shed, an Inspector with the County's Department of Permitting Services ("DPS") came out to mark her property line with orange spray paint. See Exhibits 3 and 8(g)-(h). One of her supplemental submissions states that the Inspector who marked her property told her that her shed was on her property and behind the rear building line of her house, and further states that the Inspector told her that she "would not want to move the shed next to [her] house; there might be a fire and it's in a small area near the steps to the kitchen door." See Exhibit 8(h).

"[i]n the R-60 zone a shed can be as close as 5' from the rear and 5' from the side property lines." See Exhibit 8(b). The Petitioner is proposing to locate the shed five (5) feet from the rear lot line. See Exhibit 4.

5. The Statement states that “[e]veryone has a shed in [the Petitioner’s] residential neighborhood.” See Exhibit 3. The Petitioner has provided pictures of several of these sheds with her submission. See Exhibits 8(c) and (d).

6. The Statement states that the requested variance can be granted without substantial impairment to the integrity of the general plan and applicable Master Plan. The Statement states that the requested variance “[d]oes not alter the essential social, environmental and economic character of Woodside Park,” that the “[g]eneral plan is a framework that is consistent with Woodside Park,” and that the “[f]ramework supports structure, balance and growth preservation.” See Exhibit 3.

7. The Statement states that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties. The Statement states that the Woodside Park subdivision “conveys trees and gardens.” It states that the Petitioner’s shed “has a surrounding hedge” so that it “cannot be seen from the roadway and has absolutely no negative affect on neighbors.” The Statement states that the shed “has a standard neutral color,” that it will be “used for storing lawn equipment and garden supplies,” and that it “has positive effect and is conducive to environment maintaining a yard/garden.” Finally, the Statement states that the Petitioner “need[s] a small shed for safety,” citing crime in the community. See Exhibit 3.

8. The record contains a letter of opposition to the grant of the requested variance from Michelle Foster, whose signature indicates affiliation with Friends of Montgomery Hills. Ms. Foster’s letter notes that the Petitioner installed the shed without first requesting a variance, and suggests that this shows a disregard for established zoning and permit procedures. Ms. Foster’s letter states that locating the shed in accordance with the required setbacks would not cause the Petitioner a hardship because there is room elsewhere on her property to accommodate the shed, and she includes a drawing purporting to show this with her letter. Finally, Ms. Foster’s letter states that “[t]he setback requirement exists for good reason—to maintain the established character, spacing, and privacy that define [the] neighborhood,” and that “[u]ndermining that standard would set a troubling precedent.” See Exhibit 11(a).

In addition, the record contains a response from the Petitioner to Ms. Foster’s letter. The Petitioner states that Ms. Foster lives down Luzerne Road next to Georgia Avenue, in a different subdivision, and that the drawing of her property that Ms. Foster submitted has “a deceptive design” and “no specific measurements.” The Petitioner’s letter states in response to the shed placement proposed in the drawing submitted by Ms. Foster that the “bottom of [her] lot is not buildable,” and that “[p]lacing the shed there would cause property damage, snow and water would seep into the shed door and flood.” The Petitioner’s response states that the selected location for the shed is “attractive” and provides access to the yard, garden, and an electrical outlet. The Petitioner’s response states that “[t]o carry lawn equipment up and down steep steps and hill would cause an injury to young and old, male and female and break lawn equipment,” presumably referring to the slope that would have to be navigated if the shed were located elsewhere

in her rear yard. Finally, the Petitioner's letter states that the opposition letter was sent in response to a very close vote (one vote margin) by a very small number of community members. See Exhibit 11(b).

9. The record contains a letter of support for the grant of the requested variance from Elizabeth Hosford. Ms. Hosford states that she has viewed the Petitioner's property, and that "the shed at issue is not even visible from the street." Her letter goes on to observe that "given that the property is a corner lot, the applicable setbacks can make it difficult to place even small structures, like sheds." Ms. Hosford's letter states that the opposition letter "omits key facts" and should not be viewed as a mandate by the Woodside Park Civic Association ("WPCA"). Her letter notes that "although the Woodside Park neighborhood comprises approximately 600 homes ... the monthly WPCA meetings are very sparsely attended," and that "when the WPCA took up the motion to oppose the 1600 Dale Drive variance at its most recent meeting, 21 of 600 homeowners voted, and the vote was 11-10 in favor of opposing the variance." Ms. Hosford's letter states that the homeowner who made the motion to oppose the grant of the requested variance stated that it was his view that "if even one member of the neighborhood opposes a variance, then the Association should also oppose the variance." Finally, Ms. Hosford's letter states that if an adjacent homeowner had concerns about the requested variance, those concerns should be "accorded appropriate weight." See Exhibit 10.

10. At the hearing, the Petitioner testified that the shed has already been installed in the requested location. She testified that there is no other place behind her house to locate the shed. The Petitioner testified that she went to DPS during COVID to see where the shed could be placed, and was told that it had to be behind her house and five (5) feet from the rear lot line. She testified that she had the shed placed behind her house and five (5) feet from her rear lot line, in what she described as "the only buildable place." The Petitioner then testified that about a year ago, one of her neighbors complained about the shed, and DPS sent an Inspector to her property who told her that the shed was fine where it was, but that she would need to get a five (5) foot variance. The Petitioner reiterated that the current location of the shed is the only place it can be placed behind her house. She testified that she is on a slope where water flows, and she explained the difficulties she would experience if the shed were located elsewhere and she had to navigate the slope to access her lawnmower. She testified that the shed is small, that it is on a brick foundation, and that it does not have electricity. The Petitioner testified that she needs a shed because her garage is small and cannot house the items she seeks to store in her shed.² In response to a Board question asking about the slope in her yard, the Petitioner referenced some of the photographs she had submitted with her variance application as supplemental information. See Exhibits 8(c), (e), and (g). In response to a Board question asking why she could not move the shed closer to her house, the Petitioner testified that there are steps from her kitchen and a walkway there, as well as an existing garden that she said is "old" and was there when she purchased the property about ten years ago. See Exhibit 8(e). She testified that if she removed the garden and

² The Petitioner's garage was built pursuant to variance Case No. A-6567, which was granted to her in 2018. See Exhibit 7. The Petitioner's Site Plan shows that the rear wall of her garage is flush with the rear wall (and rear building line) of her house. See Exhibit 4.

put the shed in that location, the shed would be in a drainage area and would be very close to her kitchen steps. The Petitioner testified that she needs the garden for drainage purposes because of her property's downward slope, and that she would have water and snow and a puddle near her steps if the garden were removed. The Petitioner testified that the first photograph in Exhibit 8(g) shows the slope in her back yard, and she again stated that the shed cannot be located anywhere else on her property. The Petitioner testified that the DPS Inspector had looked at her shed, had said that it was in the only buildable location, and had noted that it could not block egress from the house via the existing steps and walkway. The Petitioner testified that there is a hedge to ensure privacy from her neighbors.

11. Mr. Holt testified that the shed is not a permanent structure, and that it had been incorrectly placed from the beginning. He testified that when the shed was being erected, the Petitioner's abutting neighbor on Luzerne (i.e. the neighbor whose right side lot line is the Petitioner's rear lot line) had inquired about the location of the shed, and that notwithstanding this inquiry, installation continued. Mr. Holt testified that the shed was not placed in conformance with the Zoning regulations, and that the Petitioner could place it against her garage, noting that there is space behind the garage that would meet the setback requirements. Mr. Holt stated that the shed is wholly out of place, and he asserted that the Petitioner has not shown that she could not place it elsewhere on her property.

In response to a Board question asking if he can see the shed from his property, Mr. Holt testified that he can see it through windows in his house. In response to a question asking if he would still be able to see it if it were moved closer to the Petitioner's house, Mr. Holt testified that he would, and that it was not placed in compliance with the applicable regulations. In response to a Board question asking if the presence of the shed adversely affects the use and enjoyment of his property, Mr. Holt testified that it has very little effect on the use and enjoyment of his property.

12. Ms. Holt testified that she is concerned about the lack of compliance with the Zoning Ordinance.

FINDINGS OF THE BOARD

Based on the Petitioner's testimony and the evidence of record, the Board finds that the variance from the rear lot line 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, based on the testimony of the Petitioner, her Statement, her supplemental submissions, and the previous variance issued for this property, that the area behind the rear building line of the Petitioner's house is shallow, and that most of this area is encumbered by a steep slope. The Board further finds, based on the foregoing, that because of her property's slope, the Petitioner experiences stormwater drainage from Luzerne Avenue across the back of her property. See Exhibits 3, 7, and 8(a), (c), (d), (e), (f), and (g). The Board finds that these conditions combine to limit the useable area of this property for the placement of a shed behind the Petitioner's rear building line and constitute an unusual or extraordinary condition peculiar to the subject 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, based on the testimony of the Petitioner and the SDAT Printout, that the Petitioner's house was built in 1951, and that she acquired the property about ten years ago. The Board further finds that there is nothing in the record to suggest that the Petitioner is responsible for the placement of her house, the resultant shallowness of her back yard, the slope of her property, or her property's drainage issues. The Board notes that while the Petitioner is responsible for the construction of her garage, the Board's prior variance decision indicates that the drainage issues on her property predated that construction, and further notes that the shed could not have been constructed in the area occupied by the garage because that area is not behind the rear building line of the Petitioner's house. See Exhibits 4 and 7. In light of the foregoing, the Board finds that the special circumstances or conditions that make this property unique for the purposes of Section 59.7.3.2.E.2.a are not the result of any actions by the Petitioner.

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 and the testimony of the Petitioner, that without the grant of the requested variance, the Petitioner would not be able to locate a shed on the only flat area available behind the rear building line of her house, causing her a practical difficulty. The Board finds that the shallowness of the area between the Petitioner's house and her rear lot line, its sloping topography, and its drainage issues combine to preclude the location of the shed in accordance with the required setbacks. See Exhibit 3. The Board further finds, per the testimony of the Petitioner and Exhibits 8(a) and 8(h), that moving the shed closer to the house would not only put it in a drainage area, but would also require the removal of existing plants intended to manage the flow of water across the property, and would conflict with egress from the back of the house. The Board finds that the requested variance is the minimum needed to overcome these conditions and to allow the Petitioner to have a storage shed, like many others in her neighborhood. See Exhibits 3, 8(c), 8(d), and 8(f). Accordingly, the Board finds that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual characteristics of the Petitioner's property, 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 the requested shed is intended to house equipment necessary for yard work and thus furthers the maintenance and residential use of the Petitioner's property. Accordingly, the Board finds that the requested variance can be granted without substantial impairment to the North and West Silver Spring Master Plan (2000), which seeks to "preserve the existing residential character and to reinforce the many desirable features of the North and West Silver Spring neighborhoods," 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, based on the Statement and the letter of support, that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties because in the desired location, the shed is not visible from the roadway. See Exhibits 3 and 10. In addition, the Board finds, based on the photographs submitted by the Petitioner at Exhibits 8(e) and (g), that any view of the shed from the abutting neighbor on Luzerne Avenue is mitigated by vegetation. The Board reminds the Petitioner that the Board's previous grant of a variance needed for the construction of her garage was conditioned on the maintenance of "a dense hedge or other plantings to the street along the lot line with the adjoining property on Luzerne Avenue in order to reduce the visual impact of the encroachment of the garage into the setback area." See Exhibit 7. As the lot line shared with the adjoining property along Luzerne Avenue is the property line from which variance relief is requested in the instant case, the Board finds that this previously-imposed condition will also serve to obscure any view of the shed from this abutting property.


The Board recognizes that there is opposition to this variance, but notes that zoning is not a plebiscite. See *Montgomery County Council v. Scrimgeour*, 211 Md. 306, 313, 127 A.2d 528, 532 (1956), citing *Benner v. Tribbitt*, 190 Md. 6, 57 A.2d 346 (1948). In addition, the Board notes that it often hears variance requests for existing structures, and that in the instant case, there appears to have been some confusion, at least initially, as to the required rear setback. See Exhibit 8(b). Finally, the Board again notes that the Petitioner is required to maintain plantings along the shared lot line from which variance relief is requested, and further notes that Mr. Holt testified in response to a Board question that while he could see the Petitioner's shed from his property, it had very little effect on the use and enjoyment of his property.

Accordingly, the requested variance from the rear lot line, needed to allow a shed, is **granted**, subject to the following conditions:

1. Petitioner shall be bound by her testimony and exhibits of record;
2. Construction shall be according to Exhibits 4 and 5(a).

Therefore, based upon the foregoing, on a motion by Amit Sharma, seconded by Donald Silverstein, with Caryn L. Hines, Chair, in agreement, and with Richard Melnick, Vice Chair, and Alan Sternstein not 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 20th day of June, 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.