

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
<http://www.montgomerycountymd.gov/boa/>
(240) 777-6600

Case No. A-6841

PETITION OF EISH AND EMILY PATEL

OPINION OF THE BOARD

(Public Hearing Date: December 13, 2023)
(Effective Date of Opinion: December 22, 2023)

Case No. A-6841 is an application by Petitioners Eish and Emily Patel for two variances needed for the proposed construction of a rear yard shed. The proposed construction requires a variance of 3.50 feet as it is within 1.50 feet of the rear lot line. The required setback is five (5) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of 3.50 feet as it is within 1.50 feet of the side lot line. The required setback is five (5) 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 December 13, 2023. Petitioners Eish and Emily Patel appeared in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Lot 1, Block 1, New Hampshire Avenue Highlands Subdivision, located at 7405 Wildwood Drive in Takoma Park, Maryland, 20912, in the R-60 Zone. It is an interior lot, rectangular in shape, located on the east side of Wildwood Drive. The subject property has a width of sixty (60) feet and a depth of ninety (90) feet. The property's area of 5,400 square feet is substandard for the R-60 Zone, which has a 6,000 square foot minimum. See Exhibits 4 and 7.

2. The Petitioners' Statement of Justification ("Statement") states that the subject property was purchased by the Petitioners in April, 2023. The Statement states that the Petitioners are seeking to construct a 10'x12'x8.5' shed on their property. The Statement states that the Petitioners intend to utilize an existing concrete pad that "was placed 6 inches from the rear and side property lines and served as the foundation for a shed that was removed by the previous owner before the time of purchase." The Statement states

that “[d]ue to the placement of existing trees near the corner of our property, moving the shed the required 5 feet from the rear and side lot property lines would damage the root systems of existing trees to the left and in front of our proposed location,” and that “[i]n order to comply with the City of Takoma Park municipal code sections 12.12.010-12.12.140 these trees cannot be removed or disturbed in the process of constructing the proposed structure.” The Petitioners’ Statement includes photographs showing these trees. See Exhibit 3.

3. The Statement states that placing the shed in a location that would not harm “existing tree root systems” and that met the required setbacks would “impair the functionality” of the Petitioners’ yard, leaving “little practical space for other uses” and causing the Petitioners a practical difficulty. The Statement states that the requested variance relief, needed to allow placement of the proposed shed 1.5 feet from the side and rear lot lines, on the existing concrete pad, would permit placement of the shed at the “maximum safe distance [from the side and rear lot lines] that will ensure no roots are damaged.” Thus the Statement concludes that the requested variances are the minimum needed to overcome the practical difficulty caused by full compliance with the Zoning Ordinance. See Exhibit 3.

4. Like the Statement, the Petitioners’ variance Application makes clear that the proposed shed needs to be sited at a distance of 1.5 feet from the side and rear property lines “in order to fit [the] shed without damaging or disturbing existing trees.” The Application states that the “[p]resence of mature trees and tree roots prevent expanding shed concrete pad to a size that will accommodate a 10’ x 12’ shed with a 5’ setback from each neighboring property line,” and that the Petitioners are “[u]nable to construct a shed anywhere else on the property” because “[m]ature trees are present in all other possible locations in the backyard.” See Exhibit 1.

5. The Statement states that the requested variances can be granted without adversely affecting neighboring property owners. The Statement states that “[t]he shed would not be adverse to the use and enjoyment of abutting or confronting properties as there is adequate foliage cover and it would not impede any views,” noting that “there was a shed in this exact location which did not cause any adverse effects to the abutting and confronting properties.” The Statement states that the proposed shed would “improve the appearance of the property” because it would “provide a space to put unsightly and essential yard equipment (e.g. lawn mower).” Finally, the Statement states that “[t]he neighbors on the two sides abutting the proposed structure have given verbal consent to its construction.” See Exhibit 3.

6. The Statement states that granting the requested setback variances “will have no substantial impairment to the intent of the general plan and applicable master plan.” See Exhibit 3.

7. At the hearing, Ms. Patel testified that she and her husband are seeking to install a shed on an existing concrete pad in the rear corner of their yard. She testified that they have a small lot with several trees, including three large trees located towards the corners of their property. Ms. Patel testified that her neighbors told her that the previous owners of the property had a shed on the concrete pad, but that they removed it before she and

her husband purchased the property. She testified that while the pad was up against the fence, the proposed shed would be one and a half feet away from the fence, which would allow for maintenance. Ms. Patel testified that they were told that if they moved the concrete pad closer to the house it would damage two trees on the right side of their property. She explained this was because their yard slopes from the house down to the fence, and locating the shed closer to the house would require excavation, which in turn would damage the trees. Ms. Patel testified that locating the shed in the other corner would require removal of a Magnolia tree. She testified that there is no other location available in their back yard for the proposed shed.

Ms. Patel testified that they spoke with their abutting neighbors to the right and to the rear who would arguably be most affected by the proposed shed, and that neither objected.

8. Mr. Patel testified that he and his wife had extended the concrete pad slightly to accommodate the proposed shed, but that they had to stop to avoid tree roots.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the 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.iii – the proposed development contains environmentally sensitive features or buffers;

The Board finds, based on the Statement, that the Petitioners' back yard contains mature trees with root zones that are protected by Title 12 of the Takoma Park Municipal Code. See Exhibit 3. The Board find that these trees and their root zones constitute an environmentally sensitive feature, 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 Petitioners purchased the subject property less than a year ago, and are not responsible for its size or for the presence of mature trees and tree roots on the property. See Exhibit 3. Accordingly, the Board finds that the special circumstances or conditions peculiar to this property are not the result of actions by the Petitioners, 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, that full compliance with the setbacks in the Zoning Ordinance would not allow the Petitioners to locate their proposed shed on an existing concrete pad where a shed had previously been located, and further finds, based on the Application and Statement, and on the testimony of Ms. Patel, that compliance with the required setbacks would prevent the Petitioners' from being able to locate the proposed shed in their backyard because of the presence of protected trees and root zones. See Exhibits 1 and 3. Thus the Board finds that compliance with the Zoning Ordinance causes the Petitioners a practical difficulty as they would not be able to locate their proposed shed in their rear yard without variance relief. The Board further finds, based on the Statement and the testimony of Ms. Patel, that the requested variances are the minimum necessary to allow the placement of the proposed shed in an area that will not adversely impact the protected trees and root zones, and in the same location as a predecessor shed. Thus the Board finds that the requested variances are the minimum necessary to overcome the practical difficulties posed by full compliance with the Zoning Ordinance on account of the property's environmentally sensitive features, 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 proposed construction will continue the residential use of this property, consistent with the recommendations of the Takoma Park Master Plan, which seeks to "[p]reserve existing residential character, encourage neighborhood reinvestment, and enhance the quality of life throughout Takoma Park," 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 testimony of Ms. Patel, that the proposed shed will be in a same location as a previously existing shed, and that it will be at least partially screened from view by foliage. See Exhibit 3. The Board further finds, based on the Statement, that the Petitioners have spoken to those neighbors whose properties abut the proposed construction, and that those neighbors have no objection. Finally, the Board notes that despite being properly Noticed and posted, the record contains no opposition to the grant of the requested variances, and no one appeared at the hearing in opposition. In light of the foregoing, 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.

Accordingly, the requested variances, needed for the construction of the proposed shed, are **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Richard Melnick, Vice Chair, Laura Seminario-Thornton, and Alan Sternstein 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.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 22nd day of December, 2023.



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 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.