

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6849**

**PETITION OF STEPHEN RINEHART AND AKI ROBERGE**

**OPINION OF THE BOARD**

(Opinion Adopted February 28, 2024)  
(Effective Date of Opinion: March 6, 2024)

Case No. A-6849 is an application for variance relief needed for the proposed construction of an accessory structure (shed). The proposed construction requires a variance of 15.75 feet as it is within 9.25 feet of the street lot line along Lincoln Avenue. The required setback is twenty-five (25) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of 1.75 feet as it is within 3.25 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. Finally, the proposed construction requires a variance because the subject property has an insufficient rear yard, and the proposed structure cannot be located behind the rear building line. The minimum setback for a principal building (i.e. house) from the rear lot line is twenty (20) feet, and accessory structures are required to be located behind the rear building line of the principal building, 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 February 28, 2024. Petitioner Stephen Rinehart appeared in support of the requested variances.

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

**EVIDENCE PRESENTED**

1.        The subject property is Lot 56, Block 95A, Hampshire Knolls Subdivision, located at 422 Boyd Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone. It is a four-sided corner property, situated on the west side of the intersection of Lincoln Avenue and Boyd Avenue. Although the "point" where this property's front lot lines come together is arced, if these lot lines were extended to their natural intersection, they would form a severely acute angle. Unlike the front lot lines, the subject property's two remaining lot lines, which are set at right angles to their respective front lot lines, meet at a significantly obtuse

angle. The result is that the subject property has an unusual shape that is described by the Petitioners as “triangular,” but could also be described as “diamond” or “kite” shaped. See Exhibits 3, 4, and 7.

2. The Justification Statement (“Statement”) describes the property as being extremely shallow and oddly shaped, and refers to the property as a “small corner lot.” See Exhibit 3. Per SDAT, the subject property is 6,574 square feet in size, contains a house that was built in 1942, and was purchased by the Petitioners in 2009. See SDAT Printout.

3. The Petitioners are seeking to construct an 8' x 10' single-story shed at a distance of 3.25 feet from their northwestern lot line, which is shared with Lot 55 on Lincoln Avenue, and 9.25 feet from their front lot line along Lincoln Avenue. The required setbacks from these lot lines are five (5) feet and twenty-five (25) feet, respectively. Accordingly, the proposed shed needs variance relief from both of these lot lines. The Statement states that the proposed location of the shed, on the “side of the property abutting Lot 55 along Lincoln Avenue,” was chosen because it is “clearly the side with the most room,” going on to explain that “[t]o maintain as much of the extremely small and oddly shaped rear yard as possible, the placement was proposed to be as much in the widest corner as possible without going too close to the street.” See Exhibit 3.

4. The Statement states that the Petitioners need a third variance because the subject property has an insufficient rear yard, and the proposed structure cannot be located behind the rear building line. The Statement states that while accessory structures are required to be located in the rear yard, because the existing house is not set back twenty (20) feet from either of the non-front (i.e. northwest or southwest) lot lines, neither of these areas is considered a “rear yard.”<sup>1</sup> See Exhibits 3 and 6.

5. The Statement states that “[a] review of the official vicinity map of this area reveals that a vast majority of the residential lots are rectangular in shape,” and that a “more normal shape” would allow for “more rear yard in a generally uniform overall square footage or size of land.” See Exhibits 3 and 7.

6. The Statement states that the peculiar shape of the subject property is due to the actions of the original developer, and not to any actions by the Petitioners, who were not responsible for the development of this property. The Statement further states that the design of the subject property is “like no other in the area,” and that “[t]here is no room for any improvement in the rear without requesting a variance.” See Exhibit 3.

7. The Statement states that the “odd shape and extremely shallow size” of the subject property “has created an unavoidable need for a variance.” The Statement states that the strict application of the Zoning Ordinance would cause the Petitioners a practical

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<sup>1</sup> The Statement states that the existing house is setback 8.5 feet at its closest point from the lot line shared with Lot 55 along Lincoln Avenue (i.e. the northwest lot line), and five (5) feet from the lot line shared with Lot 57 along Boyd Avenue (i.e. the southwest lot line). See Exhibit 3.

difficulty because it would prevent the Petitioners from “enjoying a diminutive accessory storage structure that nearly every other neighbor is able to enjoy.” See Exhibit 3.

8. The Statement states that at only 80 square feet, the proposed accessory structure is “very small.” The Statement states that the requested variances, needed to allow the proposed accessory structure, are “by far the minimum variance that the applicants could possibly seek, and this was done so intentionally so as to not adversely impact neighbors or the general plan.” See Exhibit 3. The Statement later elaborates on this, stating that:

The requested variance is by far the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual conditions in that the structures are modest in size. The shed is the smallest size sold by this supplier and meant for storage only. This was intentional as it is not an oversized structure that would require much more in variance request. Any other location on the lot would actually require more of a variance request. The applicant simply seeks to utilize a very small piece of their property for exterior storage. A place to keep items like a lawnmower that nobody wants inside the house. A luxury nearly everyone else can claim.

9. The Statement states that the requested variances can be granted without substantial impairment to the intent and integrity of the general plan and applicable master plan, noting that the proposed shed would be “keeping in line with normal improvements” in the area, notably on other lots that do not have the constraints of the subject property. See Exhibit 3.

10. Finally, the Statement states that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties. In support of this, the Statement states that “[t]he very size of the single story detached structure guarantees that it will not be adverse to the use and enjoyment of abutting or confronting properties” because “[i]t will barely be noticed.” In addition, the Statement states that if the proposed shed were moved “any further down the property line away from Lincoln Avenue,” that would “squeeze it into a smaller area between the existing structure and the neighboring property.” See Exhibit 3.

11. At the hearing, Petitioner Stephen Rinehart testified that he and Aki Roberge purchased the subject property in 2009. He testified that the subject property is oddly shaped, and that there is nowhere on the property to locate a shed without variance relief. Mr. Rinehart testified that the subject property slopes downward from west to east, estimating the slope to be between 15 and 20 degrees. He testified that there had previously been a shed in the northwest corner of the property. Mr. Rinehart testified the previous shed was rotting and has been removed. He testified that he did not believe the previous owners got a permit for that shed, and that the area in which it was located is much smaller and closer to the property lines than the location proposed for the new shed. In response to a Board question asking why the proposed shed could not be located where the previous shed was located, Mr. Rinehart testified that that area does not work because there is only 8.5 feet between the house and the property line in that area,

making it difficult to locate the proposed shed, which is eight (8) feet wide. In addition, Mr. Rinehart testified that there are two existing HVAC units on the left (west) side of the house, and that locating the shed in the northwest corner of the property would make it very difficult to access those units.

Mr. Rinehart testified that the area of the property on which the proposed shed is to be located is relatively flat. He testified that there are existing concrete stairs in the yard on the south side of the proposed location that prevent him from placing the shed any closer to the house. Mr. Rinehart testified that the stairs down from the framed deck lead to these concrete stairs. He testified that the framed deck, the deck stairs, and the concrete stairs all existed on the property when it was purchased in 2009.

In response to a Board question asking if he had communicated with his neighbors about the proposed construction, Mr. Rinehart testified that he had spoken with his abutting neighbor on Boyd Avenue, and with several of his confronting neighbors, and that none of them had any problems with the proposed construction. He testified that he had knocked on the door of his abutting neighbor on Lincoln Avenue, but that neighbor did not answer, and that he had not spoken with that neighbor. Mr. Rinehart testified in response to further Board questioning that there is a privacy fence between his property and the abutting property on Lincoln Avenue. He testified that the fence is about 6.5 feet tall. Mr. Rinehart testified that the peak of the shed will eight (8) feet, 9.5 inches high, and that as such, it will be visible above the fence.

## **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 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.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds, based on the Statement, Site Plan, and the testimony of Mr. Rinehart, that the subject property has an unusual diamond or kite shape, with frontage on two streets that converge at a severely acute angle, and remaining lot lines that meet at an obtuse angle, leaving insufficient area for the existing house to meet the rear setback from either of the remaining property lines. See Exhibits 3 and 4. The Board further finds, based on Mr. Rinehart's testimony, that the property is encumbered with a significant slope, such that concrete stairs were installed on the property to help negotiate its terrain. The Board finds that these factors, taken together, 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, based on the testimony of Mr. Rinehart and consistent with the SDAT Printout, that the Petitioners purchased the subject property in 2009, after the development of the property and the construction of the existing house, deck, and stairs. See SDAT Printout. Thus the Board finds that the unusual circumstances peculiar to this property, notably its unusual shape and sloping terrain, 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 and the testimony of Mr. Rinehart, that the unusual shape of the subject property causes the setback and locational requirements of the Zoning Ordinance to preclude placement of the proposed shed on the subject property without variance relief, creating a practical difficulty for the Petitioners. In addition, the Board finds, per the Statement and the testimony of Mr. Rinehart, that the slope of the subject property further constrains the Petitioners' ability to locate a shed on their property, and that the proposed location for the shed was selected because that area of the property is relatively flat and has the "most room." Finally, the Board finds, in accordance with the Statement, that at 80 square feet, the proposed shed is modest in size. See Exhibit 3. In light of the foregoing, the Board finds that the requested variances are the minimum needed to allow the Petitioners to locate the proposed shed on their property, and thus to overcome the practical difficulty that full compliance with the Zoning Ordinance would pose for them, on account of their property's unusual shape and slope, 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;*

The Board finds that construction of the proposed shed will continue the residential use of the subject property, and that the grant of the requested variance will not impair the intent, purpose, or integrity of the Takoma Park Master Plan (2000) which seeks, among other things, "to support stable residential 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 Petitioners' Statement asserts that because of the single story nature of the proposed shed, it "will barely be noticed" by the neighbors. See Exhibit 3. The Board accepts this assertion, and finds, based on the testimony of Mr. Rinehart, that he has spoken with several of his neighbors, including his abutting neighbor on Boyd Avenue

and several confronting neighbors, and that none have expressed concern about the proposed shed. In addition, the Board finds, again per the testimony of Mr. Rinehart, that there is an existing privacy fence that would partially block any view of the proposed shed from the abutting property on Lincoln Avenue. Finally, the Board notes that despite being properly Noticed and posted, the record contains no written opposition to the grant of the requested variances, and no one appeared at the hearing to contest their grant. Thus the Board finds, in accordance with the representation in the Statement and the testimony of Mr. Rinehart, that granting the requested variances, which are needed for construction of the proposed shed, 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, necessary to allow construction of the proposed accessory structure (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(a)-(c).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Alan Sternstein, and Amit Sharma 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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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 6th day of March, 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.

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.