

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6890

PETITION OF STEVE PACKS AND PATTI MURAKAMI

OPINION OF THE BOARD

(Public Hearing Date: November 6, 2024)
(Effective Date of Opinion: November 15, 2024)

Case No. A-6890 is an application by Petitioners Steve Packs and Patti Murakami for two variances needed for the proposed construction of an accessory structure (shed). The proposed construction requires a two (2) foot variance as it is within three (3) feet of the side lot line. The required setback is five (5) feet, in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a seven (7) foot variance as it is within three (3) feet of the rear lot line. The required setback is ten (10) feet, in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on November 6, 2024. Petitioner Steve Packs appeared in support of the application with his architect, Jeffery Broadhurst.

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

EVIDENCE PRESENTED

1. The subject property is Lot 4, Block 29, Rock Creek Hills Subdivision, located at 10107 E. Bexhill Drive in Kensington, Maryland, 20895, in the R-90 Zone. It is a corner property, 10,173 square feet in size, situated on the southeastern side of the intersection of E. Bexhill Drive, which borders the subject property to the northwest, and Wake Drive, which borders the subject property to the northeast and is slightly convex. 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 an acute angle. Unlike the front lot lines, the subject property's side and rear lot lines meet at a significantly obtuse angle.

The result is that the subject property has an unusual diamond-like shape. See Exhibits 4 and 8. Per SDAT, the property contains a house that was constructed in 1959. It was purchased by the Petitioners in 2000. See SDAT printout.

2. The Petitioners' variance Application states that the subject property is a corner property with a house that fronts on E. Bexhill Drive. The Application states that the yard to the right of the Petitioners' house is considered their "rear" yard for zoning purposes, and that the yard to the rear of their house, opposite E. Bexhill Drive, is considered their "side" yard. The Application states that the Petitioners' property "has an atypical layout and is unusually shallow." The Application states that there is a "deep accessory building rear setback that applies to this corner lot that restricts placement of an accessory structure." See Exhibit 1.

3. The Petitioners' Statement of Justification ("Statement") states that they are seeking to locate an 8' x 12' storage shed in the "back corner" of their property, in a location that was formerly "used as a playground area with a swing set, climbing wall, and small playhouse." See Exhibit 3. The Statement states that the Petitioners are seeking to locate the shed three (3) feet from their side lot line, which is shared with 3312 Wake Drive, and three (3) feet from their rear lot line, which is shared with 10105 E. Bexhill Drive. The Statement states that the proposed shed location, and the need for the requested variances, is due to the property's "trapezoidal shape and unusual shallowness." See Exhibit 3.

4. The Statement states that because the portion of the yard that is "publicly perceived" as the Petitioners' side yard is considered to be their rear yard for zoning purposes, compliance with the Zoning Ordinance would "force" the Petitioners to "place the shed in a more prominent location, fully visible from the street," which the Statement states "runs against the intention of the zoning code to place the accessory structure behind the principle structure." In addition, the Statement states that placing the shed in compliance with the Zoning Ordinance would "break up the usefulness" of the Petitioners' "limited yard space." Finally, the Statement states that granting the requested variances would allow the Petitioners "to minimize visibility from the street and reinforce the privacy of [their] neighbors' existing fence and landscaping," and would enhance the usefulness of their "limited yard space." See Exhibit 3.

5. The Statement states that the proposed shed will be constructed off-site, minimizing disruption to the Petitioners' neighbors. The Statement further states that the proposed location for the shed "minimizes the effect on abutting and confronting properties," "maintains clearance and privacy for the two directly abutting neighbors (10105 E. Bexhill and 3312 Wake)," and "provides reasonable clearance and setback from the relevant property lines while ensuring access for maintenance and safety." The Statement notes that the total lot coverage with the proposed shed will be "1,120 square feet below Montgomery County's maximum allowed total lot coverage of 3,051 square feet for this property." See Exhibit 3.

6. In their Statement, the Petitioners include photographs, taken from various angles, of their house and the area in which they propose to locate the shed. See Exhibit 3. They also include elevations for their proposed shed, which show that it will have a footprint of eight feet by twelve feet (8' x 12'), and will be ten feet, nine inches (10'-9") tall at its highest point. See Exhibit 5.

7. At the hearing, Mr. Packs testified that he has owned the subject property for 24 years, and that it is a corner property. He testified that he is seeking to install an 8' x 12' storage shed in the right rear (southern) corner of his property, which previously contained playground equipment. Mr. Packs testified that the area of his property that is considered to be his "rear" yard for zoning purposes is in actuality his side yard. He testified that this area of the property is shallow and tight.

Mr. Packs testified that while he wants functionality, he also wants to be respectful of his neighbors and of his neighborhood. Mr. Packs testified that granting the requested variances would allow the shed to be installed in the "most discreet and least noticeable" location on the subject property, adding that if the shed were placed in accordance with the requirements of the Zoning Ordinance, it would be an "eyesore" to the neighborhood. Mr. Packs testified that the requested variances would allow for placement of the shed in a location that works best for all parties. Mr. Packs testified that he has been talking to his neighbors about the proposed shed since the spring, and has received no objections. He submitted signatures from seven of his neighbors to that effect. See Exhibits 10(a) and (b).

Mr. Packs testified that his property has a fence, and that the neighbors to the rear also have a fence. He testified that the proposed location of the shed will leave room for maintenance between the shed and the fence. In response to a Board question asking why the shed could not be moved farther away from the property lines, Mr. Packs testified that if it were moved two (2) feet farther from the side lot line, it would be in the sight line from the street, and that if it were moved the required distance from the rear lot line, it would be in the middle of his limited yard. In response to a Board question asking if the proposed shed would have plumbing or electricity, Mr. Packs testified that it would not.

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.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, Zoning Vicinity Map, and testimony of Mr. Packs, that the subject property has an unusual, diamond-like shape, and is abnormally shallow, particularly on its southwestern side. See Exhibits 3, 4, and 8. The Board further finds, based on the Zoning Vicinity Map, that these conditions are unique to the subject property. See Exhibit 8. Accordingly, the Board finds that the property's shape and shallowness combine to constitute an unusual 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 SDAT Printout and the testimony of Mr. Packs, that the Petitioners purchased the subject property in 2000, long after its subdivision and the 1959 construction of the existing house. See SDAT Printout. Thus the Board finds that the special circumstances or conditions applicable 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, Site Plan, and the testimony of Mr. Packs, that because of the property's unusual shape and shallowness, strict application of the setback requirements in the Zoning Ordinance would cause the proposed shed to be located in a much more visually prominent location on the subject property than the location proposed by the Petitioners, such that it would appear to be located in the Petitioners' side yard instead of behind their house, contrary to the intent of the Zoning Ordinance. See Exhibits 3 and 4. The Board further finds, based on the Statement and the testimony of Mr. Packs, that placement of the shed in the location allowed by the Zoning Ordinance would be detrimental to the Petitioners' neighbors and neighborhood, and thus would cause the Petitioners a practical difficulty. The Board finds that the requested variances are the minimum needed to overcome this practical difficulty and to allow construction of the proposed shed in an area of the property that would minimize its visibility from the street and its impact on the Petitioners' neighbors and neighborhood. See Exhibit 3. Thus the Board finds that the requested variances are the minimum necessary to overcome the practical difficulties imposed by strict compliance with the Zoning Ordinance, in satisfaction of the 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 granting the requested variances, needed to allow the Petitioners to construct the proposed shed on their property, would continue the residential use of the home, and thus would be consistent with the residential uses contemplated by the Master Plan for the Communities of Kensington-Wheaton (1989) which seeks, among other things, to "protect and stabilize the extent, location, and

character of existing residential and commercial land uses,” and to “maintain the well established low- to medium-density residential character which prevails over most of the planning area.” 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.*

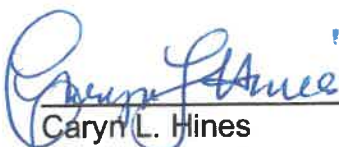
The Board finds, based on the Statement and the testimony of Mr. Packs, that granting the requested variances would allow the Petitioners “to minimize visibility [of the shed] from the street and reinforce the privacy of [their] neighbors’ existing fence and landscaping.” See Exhibit 3. The Board further finds, based on the photographs included with the Statement, the Site Plan, and the testimony of Mr. Packs, that the Petitioners have a privacy fence that extends along parts their side and rear lot lines, and that the proposed shed would be within the Petitioners’ fencing. See Exhibits 3 and 4. The Board finds, per the testimony of Mr. Packs and in accordance with Exhibits 10(a) and (b), that the Petitioners neighbors are supportive of the variance request. 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, 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.

Therefore, 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 15th day of November, 2024.


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.