

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6943

PETITION OF JACEK KACZMAREK

OPINION OF THE BOARD

(Public Hearing Date: November 5, 2025)
(Effective Date of Opinion: November 20, 2025)

Case No. A-6943 is an application by Petitioner Jacek Kaczmarek for a variance needed for the construction of an accessory structure (shed). The construction requires a variance of ten (10) feet as it is within two (2) feet of the side lot line. The required setback is twelve (12) feet, in accordance with Section 59.4.4.7.B.2 of the Zoning Ordinance. In addition, the construction requires a variance to be located in the side yard. Accessory structures are required to be located behind the rear building line of the principal structure, in accordance with Section 59.4.4.7.B of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, November 5, 2025. Petitioner Jacek Kaczmarek appeared in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Lot 10, Block H, Olney Square Subdivision, located at 18313 Dutchess Drive in Olney, Maryland, 20832, in the R-200 Zone. It is a rectangular property located on the east side of Dutchess Drive. The property has a width of 80 feet and a depth of 135 feet, resulting in a total area of 10,800 square feet. See Exhibits 4 and 9.
2. The Petitioner purchased the subject property in 2014. The property is improved with a single-family house that was built in 1972. See SDAT Printout. The Petitioner is seeking permission to locate a 10' x 12' storage shed on the property forward of the rear

building line and at a distance of two (2) feet from the property's left (north) side lot line. See Exhibits 1, 4, and 6(a)-(b).

3. The Petitioners' variance Application cites the property's narrowness as a reason that compliance with the Zoning Ordinance would pose a practical difficulty for him. In addition, the Application states that the presence of an "existing previously approved pool at the back of the property that needs to be unobstructed" is an extraordinary condition peculiar to the subject property that causes compliance with the Zoning Ordinance to pose a practical difficulty for the Petitioner, and that differentiates the subject property from neighboring properties. The Application states that if the requested variances are not granted, "[t]here will be no place to store materials and equipment not suitable to be stored inside the home." See Exhibit 1.

4. The Petitioner's Statement of Justification ("Statement") states that the size of his property, the location of his house, and the presence of a pool make the subject property unique for the purposes of meeting Section 59.7.3.2.E.2.a.i of the Zoning Ordinance. See Exhibit 3. The Statement further states that the "current placement of house on property is consistent and conforms with established development pattern of the neighborhood," and that the "[h]ouse conforms to established building line with adjacent neighbors' homes," in satisfaction of Section 59.7.3.2.E.2.a.v of the Zoning Ordinance. The Statement indicates that the other parts of Section 59.7.3.2.E.2.a are not applicable. See Exhibit 3.

5. The Statement states that the Petitioner is not responsible for the aspects of the subject property that make it unique, stating that "[t]he placement of the house on the property was the responsibility of the original developer and not the actions of the applicant," and that the "[p]lacement of house created a shallow rear yard (10 feet)." See Exhibit 3.

6. The Statement states that it is impossible to site the shed in compliance with the Zoning Ordinance because the "shed would overlap [the] pool." Thus the Statement states that the requested variances are "the minimum necessary to overcome the practical difficulties of the site, house & pool locations," in satisfaction of Section 59.7.3.2.E.2.c of the Zoning Ordinance. See Exhibit 3.

7. The Statement states that the shed would be set back 90 feet from the street, and would be "screened by 5 foot tall fence with hedge of evergreen trees providing a partial screen of shed from street." The Statement concludes that because of this, the proposed shed "will have little impact (visually or physically) to the streetscape or established development patterns of neighborhood." The Statement further notes that the proposed location for the shed "is behind the adjacent neighbor's house-rear wall plane," such that the proposed shed "cannot be seen nor does it block the neighbor's rear yard views, light or air." In light of the foregoing, the Petitioner asserts that both Section 59.7.3.2.E.2.d and Section 59.7.3.2.E.2.e of the Zoning Ordinance are satisfied. See Exhibit 3.

8. At the hearing, the Petitioner testified that he owns the subject property and has lived there for 12 years. He testified that he is seeking variance relief to locate a shed on the side of his house. The Petitioner testified that his backyard contains a swimming pool that was built five (5) years ago. He testified that the shed would be used to store pool

chemicals, gasoline, and a lawnmower, and that it may be used for the seasonal storage of furniture.

The Petitioner testified that the proposed location is the only location available on his property to place a shed, stating that there is not enough room for the shed in the back of his property or on the other side of his house. He testified that trees would block the view of the shed from his neighbor's property, and that the shed would help block noise from his HVAC unit and pool equipment. In response to a Board question asking why he could not locate the shed in the right rear (southeast) corner of this property, the Petitioner testified that the area is so small that the shed would not fit in that space, and that it is the only green area on the property. In response to a Board question asking if he could place the shed behind (i.e. east of) his HVAC unit and further from the side lot line, the Petitioner testified that the shed would then block his dining room windows and would not be screened by existing trees. In response to a question asking why he could not attach the shed to the side of his house, on one side or the other of the HVAC unit and pool equipment, the Petitioner testified that the shed would block basement windows if placed in either of those locations.

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 Application, Statement, and Site Plan, that with a consistent width of 80 feet and an area of 10,800 square feet, both of which are substandard for the R-200 Zone, the subject property is both narrow and unusually small for the Zone in which it is located. See Exhibits 1, 3, and 4. The minimum lot width at the front building line in the R-200 Zone is 100 feet, and the minimum lot size in the R-200 Zone is 20,000 square feet. The Board finds that these conditions serve to make the subject property unique, 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 that the subject property was developed in 1972, and was purchased by the Petitioner in 2014. Thus the Board finds that the property's small size and substandard width pre-date its ownership by the Petitioner, and that the unique conditions peculiar to this property are therefore not due to any action by the Petitioner. See SDAT Printout. Accordingly, the Board finds that this element of the variance test is satisfied.

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 the Petitioner, that the unusually small size and substandard width of the subject property preclude placement of a shed in a location that complies with the development standards set forth in the Zoning Ordinance, causing the Petitioner a practical difficulty. The Board notes in this regard that the subject property is just over half of the minimum lot size for the R-200 Zone and is only 80% of the minimum lot width. The Board further finds that the requested variances are the minimum needed to allow the Petitioner to locate a shed on his property in the only location that, per his testimony, is available, and thus to overcome this practical difficulty. Accordingly, the Board finds that the requested variances are the minimum necessary to overcome the practical difficulty posed by full compliance with the Zoning Ordinance on account of the property's small size and narrowness, 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 granting the variances for the Petitioner's shed will continue the residential use of the property, and thus can be granted without substantial impairment to the intent and integrity of the Olney Master Plan (2005), which seeks to "reinforce the concept of Olney as a satellite community" and to maintain the existing zoning of developed properties. 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 the Petitioner, that the view of the shed from the abutting property to the left (north) will be partially screened by a five (5) foot tall fence and a hedge of evergreen trees. The Board further finds, based on the Statement and testimony of record, that in the proposed location, the shed will help block sound from the Petitioner's HVAC unit and pool equipment. See Exhibit 3. In addition, the Board finds, based on the Site Plans, that the Petitioner's fence extends around his rear yard and will help obscure any view of the shed from the neighboring property to the rear (east), and that the Petitioner's house would block the view of the shed from the abutting property to the right (south). See Exhibits 4 and 7. The Board finds, based on the Statement, that the shed will be set back 90 feet from the street, and that it will not block light or air. See Exhibit 3. 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

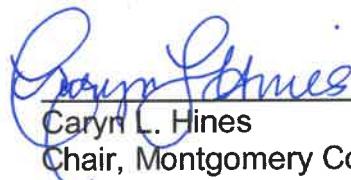
use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variances, needed for the Petitioner's shed, are **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 and 5(a)-(c).

Therefore, based upon the foregoing, on a motion by Alan Sternstein, seconded by Donald Silverstein, with Caryn L. Hines, Chair, and Richard Melnick, Vice Chair, 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 November, 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 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.