

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
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(240) 777-6600

**Case No. A-6946**

**PETITION OF DIANE HENNER BERINSTEIN**

OPINION OF THE BOARD

(Public Hearing Date: December 10, 2025)  
(Effective Date of Opinion: December 17, 2025)

Case No. A-6946 is an application by Petitioner Diane Henner Berinstein for a variance needed for the proposed construction of an accessory structure (shed). The proposed construction requires a variance of 18.50 feet as it is within 21.50 feet of the front lot line. The required setback is 40 feet in accordance with Section 59.4.4.7.B of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on November 12, 2025. The Petitioner appeared in support of the requested variance with her architects, Greg Wiedemann and Gaby Castillo.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 6, Block B, River Road Estates Subdivision, located at 9920 Meriden Road in Potomac, Maryland, 20854, in the R-200 Zone. It is a four-sided corner property, 42,540 square feet in size, situated on the northeastern side of the intersection of Meriden Road, which borders the subject property to the west, and Newhall Road, which borders the subject property to the south. 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, which intersect the property's front lot lines at what appear to be right angles, meet at a significantly obtuse angle. The result is that the

subject property has an unusual diamond-like shape. See Exhibits 4(a)-(b) and 9. Per SDAT, the property contains a house that was constructed in 1953. It was purchased by the Petitioner in 2002. See SDAT printout.

2. The Petitioner's variance Application states that the Petitioner "do[es] not have sufficient garage space to store bicycles and lawn equipment," and that currently, she cannot "store and easily access any of these items." The Application further states that the Petitioner "would like to be able to store bikes, rakes, shovels and a wheelbarrow in a shed in the back yard." See Exhibit 1.

3. The Application states that the Petitioner's property "has a large number of very mature shade trees including White Oak, Red Oak, Poplar, Holly, Chestnut and Beech." The Application states that the presence of these mature trees constitutes an extraordinary condition peculiar to the property that makes it unique for the purposes of granting a variance. The Application states that situating the proposed shed the required forty (40) feet from Newhall Road "would interfere with the root systems of these mature trees that the homeowners do not want to disturb." See Exhibit 1.

4. The Petitioner's Statement of Justification ("Statement") states that she is requesting an 18.50 foot variance to allow for the construction of a shed in the side street setback from Newhall Road, 21.50 feet from the property line. The Statement states that the property contains environmentally sensitive features, "specifically mature trees with critical root zones and native plants that will be adversely affected if the shed is built" in compliance with the required forty (40) foot setback. The Statement indicates that these trees constitute an exceptional condition peculiar to the subject property. The Statement states that the Petitioner is not responsible for the presence or location of these trees, noting that "[t]he existing mature trees were on the property before we purchased it; we did not plant them, but we work hard to maintain and protect them." See Exhibit 3.

5. The Statement indicates that "[t]he existence of mature Holly, Oak, Beech and Chestnut trees and the specific root growth pattern of each tree prevent the shed from being located in any other location" other than the proposed location, causing the Petitioner a practical difficulty. The Statement further states that "[t]he requested setback of 18.50 ft. for the shed placement minimizes impact on the existing mature trees." Finally, the Statement states that "[l]ocating the shed within required 40 ft. setback would interfere with tree roots and [an] existing water irrigation line." See Exhibit 3.

6. The Statement states that the requested variance "is the minimum reasonably necessary to allow for the construction of a functional shed as recommended by Arborist Geoff Favali." See Exhibits 3 and 7(a). The Statement states that any reduction of the requested variance would "cause an adverse effect on the mature trees, and native plants." See Exhibit 3.

7. The Statement states that the Petitioner has retained an Arborist and landscape company for the past ten (10) year "to maintain the health of existing mature trees on the property." The Statement states that "[t]hese professionals have performed annual

maintenance of the mature trees and provided all measures to protect and conserve existing mature trees and plantings.” The Statement states that the Petitioner has undertaken “considerable effort” to maintain the existing, mature trees on her property, and notes that she has “replaced non-native fescue (grass) with more native and drought tolerant plantings along the border of the property.” The Statement states that “[i]n the opinion of eco-sensitive landscape, in consultation with both Arborist and landscaper, this proposed location of the shed provides the least disturbance overall.” See Exhibit 3.

8. 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 Petitioner’s shed, if located as proposed, will “not impact water run-off or create shade in neighboring properties.” It states that the shed was carefully designed “to match the design character of the existing home and neighboring properties.” The Statement indicates that a Site Plan showing the proposed location of the shed, and elevations of the proposed shed, were shared with the Petitioner’s abutting and confronting neighbors. The Statement states that these neighbors “have all expressed support of [the] variance request and find no objection to shed design and location.” See Exhibit 3. The record contains elevations for the proposed shed and letters of support from ten of the Petitioner’s neighbors. See Exhibits 5(a)-(d) and 8(a)-(j).

9. As noted above, the Petitioner includes a letter from her Arborist, Geoff Favali, that explains his recommendation regarding the placement of the shed. In his letter, Mr. Favali states that he is a licensed tree expert with more than 40 years of experience who “has been hired to help maintain the health of the mature trees on the Berinstein’s property for the past 10 years.” His letter states that he performs annual maintenance on the “many fully mature white oak, beech, holly, poplar, maple, and chestnut trees on the Berinstein’s property to ensure that these trees continue to live as long as possible.” See Exhibit 7(a).

Mr. Favali’s letter states that the Petitioner consulted him to help identify a location on her property for the proposed storage shed that would “minimize impact on the existing mature trees.” His letter states that the proposed location “was chosen to balance avoiding disturbance to the established root systems of the trees on [the] property with the County’s requirement of a 40-foot setback.” Mr. Favali’s letter goes on to state that “[g]iven the placement of mature holly, oak, beech and chestnut trees and each tree’s specific root growth pattern,” the proposed placement for the shed “minimizes risk.” It notes that the only better location would be two (2) to four (4) feet closer to Newhall Road and thus would require a larger variance. Mr. Favali’s letter states that while this “ideal” location would be “slightly farther from the far-reaching and more shallow root system of the beech tree,” the Petitioner is “looking for a solution that most closely meets both the needs of [her] trees and the County’s regulations.” Mr. Favali states in his letter that other than the proposed location and the one other location identified above, he “cannot recommend any other location on the property without concern for the tree canopy.” See Exhibit 7(a).

Finally, Mr. Favali’s letter states that while the grant of the requested variance would allow a deviation from the County’s development standards, it would further what

he indicates is a “greater County goal – maintaining the health of the existing mature tree canopy, which benefits all.” Mr. Favali’s letter states that the Petitioner and her husband “have worked hard to protect these trees, not just for the past 10 years that [he has] been of service to them, but since they purchased the property in 2002.” His letter states in closing that granting the requested variance would benefit both the Petitioner and the community’s “shared ecosystem.” See Exhibit 7(a).

10. The Petitioner has also submitted a letter from her landscape contractor, Jon Winter. Mr. Winter states in his letter that he has a degree in Ornamental Horticulture and Landscape Design from the University of Maryland, and that he has been working as the owner and operator of a landscape contractor business for over 30 years. Mr. Winter’s letter states that he has been working with the Petitioner and her family for more than 13 years, “designing, installing, and maintaining their gardens.” Mr. Winter’s letter states that he and his company “have taken great care to design the backyard garden beds and plantings, so they incorporate and work harmoniously with the mature tree root structures.” His letter states that the Petitioner’s “request to place the proposed shed in the alternative location makes sense from a root zone protection standpoint as well as an aesthetic standpoint,” and states that “[t]he health of [the] mature trees is an integral part of the overall garden aesthetic.” See Exhibit 7(b).

11. At the hearing, the Petitioner testified that she and her husband purchased the subject property in 2002, and that it was originally improved with a “Golden Key” kit home that was built in 1951. She testified that Mr. Wiedemann has worked with them since they purchased the property to expand their house while preserving the surrounding lot, and that Ms. Castillo, who works with Mr. Wiedemann, has been working with them almost that long. The Petitioner testified that she is seeking a variance to allow a shed needed to house things like bicycles and lawn equipment (among other things) that do not fit in the garage. She noted that the shed is “not extravagant.” The Petitioner testified that she and her husband are seeking to minimize the environmental impact of the proposed shed on the mature plantings and old growth trees that exist on their property. She testified that a lot of the trees in her backyard fall under the protection of the Planning Department,<sup>1</sup> and that some of the hollies, which are not protected, are about 100 years old.

The Petitioner testified that the subject property is a corner lot with two front setbacks. She testified that her house faces Meriden Road, and that while the location proposed for the shed is technically in her backyard, it needs to be 40 feet from her property line along Newhall Road. The Petitioner testified that the trees on her property constitute an environmentally sensitive feature of the property. She testified that any location other than the proposed location would risk severe damage to the mature trees on the property, or would require removal of the hollies. The Petitioner testified that granting the requested variance would allow her to locate the proposed shed in a way

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<sup>1</sup> The Petitioner testified that she knows this from the tree preservation plan filed when they built their house. She testified that when they expanded the house, all of the trees in the backyard that were not hollies were protected except a 23 inch beech tree that wasn’t large enough to be protected at that time. The Petitioner testified that given the number of years that have elapsed since that construction, the beech tree would probably be protected now too.

that preserves the trees and minimizes any impact to their root zones, allowing her to retain the trees that she and her husband have worked hard to preserve since buying the property.

The Petitioner testified that since 2002, she and her husband have hired arborists to care for the trees on their property. The Petitioner testified that they did not expand their home farther to the rear because of all the mature trees on their property, and noted that the design of an office addition had been changed so as not to impact the critical root zones of these trees. She testified that for the proposed shed project, they had their arborist and landscaper weigh in on whether there were any other places on the property that the proposed shed could be located without harming the trees: The Petitioner testified that these professionals said that there is no other space to locate the shed, and that the requested variance is the minimum needed to protect the trees. She later testified that her arborist originally wanted the shed to be located slightly closer to Newhall Road, which would have necessitated an even larger variance, so that the shed would be completely outside of the root zone of a beech tree, but that after determining that the impact of the shed on the roots of that tree would not cause its demise, he had agreed to the proposed location as a compromise in order to ensure that the requested variance was the minimum needed. The Petitioner testified that locating the shed anywhere else on her property would not support the County's goal of maintaining the health of its tree canopy.

The Petitioner reviewed the rendered Site Plan showing the tree canopies in green for the Board members.<sup>2</sup> See Exhibit 4(a). She testified that the light green canopies are the canopies of trees that are protected. The Petitioner testified that this Site Plan really illustrates the difficulty she faces in locating a shed on her property. She testified that the "green" area shown on that Site Plan is her rear yard, and that the proposed shed is required to be fully behind her house. The Petitioner testified that her rear yard is fenced, and that the proposed shed would be located inside of the fence and would encroach 18.5 feet into the setback from Newhall Road. The Petitioner testified that if the shed were to be located to the rear of the house, near the end of the driveway and in accordance with the required setbacks, it would be in an area occupied by a 23 inch diameter oak tree and three mature holly trees. The Petitioner testified that she talked with Mr. Wiedemann and Ms. Castillo for eight months about where to locate the shed. She testified that they went back and forth about all of the potential locations, and that the proposed location was determined to be the most appropriate.

The Petitioner testified in response to Board questions that if she were to locate the shed behind her patio, it would be in the center of her backyard, would block the view of her dog and any future grandchildren that might play in the yard, and would be in the drip line of three trees, including a 32 inch oak tree. The Petitioner testified that when the arborist came to look at her property in connection with this project, he said that the shed should not be placed behind the patio because of the oak trees located there and their

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<sup>2</sup> Ms. Castillo testified that the light green canopy markers are for large trees (i.e. more than 23 inches diameter at breast height), and that the dark green canopy markers are for trees that are still large, but not more than 23 inches DBH. Ms. Castillo testified that the Site Plan does not show all of the trees.

root structure. The Petitioner explained that each type of tree has a different root structure, with some having wider, more shallow roots, and others having deeper roots. The Petitioner testified that the trees behind her patio are all oak trees, which have both wide and deep roots.

The Petitioner testified that she has letters from ten of her neighbors supporting the grant of the requested variance. In response to a Board question asking about the screening request in one of the letters, the Petitioner testified that there would be landscaping around the shed. She testified that because of the sloping terrain and existing plantings, this neighbor's view of the shed from his home would be obscured, although he may be able to see it from his garage. The Petitioner testified that she and her husband would install plantings around the shed to help blend it into its surroundings, suggesting that the plantings would be about three or four feet high, and may include species that are native to the area and encourage pollinators. She testified that they could not plant hollies to screen the shed because that would interfere with the roots of the existing trees. In addition, the Petitioner testified that they intend to increase the height of their fence from four feet to six feet to discourage deer. She testified that they are not sure what style fence they will be seeking to install, but that the fence would also help to screen the view of the shed.

## **FINDINGS OF THE BOARD**

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

The Board finds, based on the Application, Statement, Site Plan, Arborist's Letter, and the testimony of the Petitioner, that the subject property contains numerous mature, old growth trees, many of which are of concern to and protected by the Planning Department. In addition, the Board finds that the property contains holly trees that the Petitioner has estimated are 100 years old. See Exhibits 1, 3, 4(a)-(b), and 7(a). The Board finds that these trees constitute an environmentally sensitive feature of the subject property, and that the area available for development on the subject property is limited by the need to respect and protect the critical root zones of these trees so as not to compromise their viability. In light of the foregoing, the Board finds that this element of the variance test is satisfied.

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 and the testimony of the Petitioner, that the subject property was developed in 1951, and that the Petitioner and her husband purchased it in 2002. The Board further finds, based on the Statement, that the mature trees that constitute an environmentally sensitive feature of this property were present on the subject property before the Petitioner and her husband purchased it. See Exhibit 3. 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, the rendered Site Plan depicting tree canopies, the letters from the arborist and the landscaper, and the testimony of the Petitioner, that protection of the critical root zones of the property's existing mature trees so severely constrains the area available behind the rear building line of the Petitioner's house for the placement of a shed as to preclude its placement without variance relief. See Exhibits 3, 4(a), and 7(a)-(b). The Board finds that this causes the Petitioner a practical difficulty. The Board further finds, based on the testimony of the Petitioner and the letter from her arborist, that the proposed location for the shed is the only available location behind the rear building line of the house that would not adversely impact the health of the Petitioner's mature trees, other than one other location that is even closer to Newhall Road and would have required a larger variance. See Exhibit 7(a). In light of the foregoing, the Board finds that the requested variance is the minimum needed to overcome the practical difficulty posed by strict compliance with the setbacks established by the Zoning Ordinance, and to allow the Petitioner to locate a shed on her property without compromising the health of her trees. Accordingly, the Board finds that this element of the variance test is satisfied.

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 variance, needed to allow the Petitioner to construct the proposed shed on her property, would continue the residential use of the property, and thus can be granted without substantial impairment to the intent and integrity of the Potomac Subregion Master Plan (2002). Thus 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 granting the requested variance to allow the Petitioner to place her shed as proposed will not be adverse to the use and enjoyment of neighboring properties. See Exhibit 3. The Board further finds that the Petitioner has testified that she will install plantings around

the shed to help it blend into her back yard, and that she intends to raise the height of the fencing around her back yard to six feet, which will also help to soften the view of the shed. In addition, the Board finds, in accordance with Exhibits 8(a)-(j), that the Petitioner's 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 variance, and no one appeared at the hearing in opposition. In light of the foregoing, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance, needed for the construction of the proposed accessory structure (shed), is **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(a)-(b) and 5(a)-(f).

Therefore, based upon the foregoing, on a motion by Alan Sternstein, seconded by Richard Melnick, Vice Chair, with Caryn L. Hines, Chair, and Donald Silverstein in agreement, the Board adopted the following Resolution:

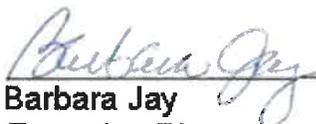
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



Caryn L. Hines

Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 17th day of December, 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.

