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-6934
PETITION OF JASON TEVES AND MONICA TIERNEY

DECISION OF THE BOARD
(Hearing Held: October 29, 2025)
(Effective Date of Opinion: December 12, 2025)

Case No. A-6934 is an application by Petitioners Jason Teves and Monica Tierney for three variances needed for the construction of a detached carport. The construction requires a variance of twenty-four (24) feet as it is within forty-one (41) feet of the front lot line. The required setback is sixty-five (65) 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 forward of the rear building line. As an accessory structure, the proposed detached carport must be located behind the rear building line of the principal building, in accordance with Section 59.4.4.7.B.2.a of the Zoning Ordinance. Finally, the construction requires a variance of three (3) feet as it is within nine (9) feet of the right side lot line. The required setback is twelve (12) feet, in accordance with Section 59.4.4.7.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, October 29, 2025. In attendance for the Board were Chair and Member Caryn Hines, Vice Chair and Member Richard Melnick, and Members Alan Sternstein and Donald Silverstein. Petitioner Jason Teves appeared in support of the requested variances.

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

After Petitioner Teves's testimony and submission of evidence and the Board's questions and discussion, and in the Board's open session, Mr. Sternstein moved to grant the requested variances, and Ms. Hines seconded the motion. The motion failed on a 2-2 vote, with Messrs. Melnick and Silverstein voting in opposition. A statement by the members voting in opposition explaining their votes follows this Decision. Statements by Ms. Hines and Mr. Sternstein in support of their votes to grant the application also follow.

Section 59.7.3.2.F.1 of the Zoning Ordinance provides that the affirmative vote of three Board members is necessary to approve a variance, and that if the required number of votes is not obtained, the variance is denied, as follows:

> The Board of Appeals must act by an affirmative vote of 3 members to approve, approve with conditions, or deny the application within 30 days after the close of the record of the public hearing. If the required number of affirmative votes is not obtained, the application is denied.

Because the motion to grant the variances failed to garner the three votes required to grant the application, the application for the requested variances is statutorily denied, and the Board adopts the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Decision stated above is adopted as the Resolution required by law as the Board's 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 12th day of December, 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.

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PETITION OF JASON TEVES AND MONICA TIERNEY

Statement of Members Melnick and Silverstein Opposing Grant of the Variances

Background and Summary

The petitioners, Jason Teves and Monica Tierney, requested three variances for the construction of a free-standing carport (accessory structure) on their property at 108 Delford Avenue, Silver Spring. The petitioners have not met the Necessary Findings for granting of a variance according to Section 59.7.3.2.E of the Montgomery County Zoning Ordinance (County Zoning Code). The Justification for Variance included with their variance application ("application") contains inaccurate statements and does not include sufficient facts or arguments to meet the standards for granting the requested variances. Accordingly, petitioners' application must be denied.

Applicable Law

The County Zoning Code, at Section 59.7.3.2.E, states the "Necessary Findings," to allow the Board of Appeals ("Board") to grant a variance, in relevant part as follows:

E. Necessary Findings

. . . To approve a variance, the Board of Appeals must find that:
1. denying the variance would result in no reasonable use of the property; or
2. each of the following apply:
    a. one or more of the following unusual or extraordinary situations or conditions exist:
        i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;
        ii. the proposed development uses an existing legal nonconforming property or structure;

iii. the proposed development contains environmentally sensitive features or buffers;
iv. the proposed development contains a historically significant property or structure; or
v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

b. the special circumstances or conditions are not the result of actions by the applicant;
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;
d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and
e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

County Zoning Code, Section 59.7.3.2.E.1., is not applicable, because petitioners can make reasonable use of their property without the variance. Accordingly, to determine this variance application, we look to the provisions of County Zoning Code, Section 59.7.3.2.E.2.

Consequently, to grant this variance, the Board must find that petitioners met their burden of proof and production, by the preponderance of the evidence, as to each of the requirements in 59.7.3.2.E, Section 2-- namely 2.a. through 2.e. This includes the need for petitioners demonstrate the existence of "one or more of the unusual or extraordinary situations or conditions" listed in subsection 2.a.i though 2.a.v. The relevant provisions therein are sub-sections 2.a.i., or, 2.a.v. (since sub-sections a.ii, iii., and iv. are neither applicable to, nor the basis for, petitioner's application), and sub-section 2.c. Moreover, petitioners must prove "the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan," under sub-section 2.d. In particular, petitioners must prove:

(a) under subsection 2.a., that "one or more '**unusual or extraordinary situations or conditions**' exist," from the five (5) listed therein- with the two pertinent to this matter being:

i. 2.a.i ("**exceptional** narrowness, shallowness, shape, topographical conditions, **or other extraordinary conditions peculiar to a specific property**"), "or,"

ii. 2.a.v. ("the **proposed development substantially conforms** with the **established historic or traditional development pattern of a street or neighborhood**"), "and"

(b) under subsection 2.c., "the requested variance is the **minimum necessary** to overcome the **practical difficulties** that full compliance with" the County Zoning Code "would impose **due to the unusual or extraordinary situations or conditions on the property.**" Montg. Co. Code, Section 59.7.3.2.E.2.a.i.& v.; -2.c., "and"

(c) under subsection 2.d., the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan.

Facts and Analysis

We now apply the above-cited governing law, to the facts in this case, to reach the appropriate conclusions related to whether petitioners have met, by the preponderance of evidence, their burden of proof and production necessary to allow this Board to grant their variance application.

a. Unusual or Extraordinary Conditions

Each of the alternative factual-finding requirements under sub-section 2.a., to justify an exception from applicable law and grant a variance, is premised on petitioners proving the existence of "an unusual or extraordinary condition or situation." In the absence of evidence proving an unusual or extraordinary condition or situation on the property, none of the exceptions in 2.a. apply. Petitioners must prove one of the five exceptions in sub-section 2.a, including:

(i) "exceptional narrowness, shallowness, topographical, or other extraordinary conditions peculiar to the property exist (Section 59.7.3.2.E. 2.a.i.)

In their application for a variance, the petitioners claim that the property is shallower than typical lots in the neighborhood. A review of Exhibits 9 and 11, however, shows this claim is not accurate. The depth of this lot is comparable to, or larger than, the lots of neighboring properties on this block, on the block across the street, and elsewhere in the neighborhood. When questioned about this, the petitioner, Mr. Teves, testified that he meant the lot was narrower than most of the lots in the neighborhood. Again, a review of Exhibits 9 and 11 does not support this claim.

The petitioners further state in their application that, "[p]ositioning the carport fully behind the rear building line would encroach upon the backyard, utility easements, or useable open space". The intent of the zoning code is to ensure that accessory structures are located in the backyard by requiring they are behind the principal structure. He further explained that by "utility easements" he meant the septic tank that is on the left (west) side of the house. Since the existing driveway is on the right (east) side of the house, building the carport on the left side would not be

"practical" and was not considered. Finally, the petitioner testified that there was no open space in the backyard because it was heavily wooded with some large trees. No photos or documents showing measurements or conditions of the backyard were offered into evidence, other than the topographical slope map that Board Member Alan Sternstein referenced, which we recognize and address in this opinion. Trees were visible in the backyard in petitioners' photos included in Exhibit 5 (c), but the photos did not show that trees would prevent building the carport attached to the rear or the right-side of the principal residence.

The petitioner claims the "home was constructed closer to the front property line than current setback standards allow". This is not accurate. Exhibit 4, Site Plan, shows the principal structure is set back 76 feet from the front property line. Current zoning regulations only require a 40-foot setback.

Additionally, the petitioner testified that the topography of the rear yard created a practical difficulty in locating the carport behind the principal structure. He estimated the slope in the backyard to be about 25%. Exhibit 11, a topographical map of the property introduced during the hearing, however, shows the slope to be close to 11.5%. The topographical map also shows the principal residence is built on ground that slopes at about 14.3%. This leads to a finding that the proposed structure could, in fact, be attached to the principal structure in an area where the property's slope, topography and vegetation permit the construction.

Furthermore, all properties in the neighborhood surrounding the petitioners' property have topographical slope issues that are similar to, or in many cases far worse than, the slope issues existing on petitioners' property. Consequently, even if one were to view narrowness, shallowness, topographical (including slope or trees) or other conditions described by petitioners as being "unusual or extraordinary," the evidence fails to demonstrate that any such alleged conditions are "peculiar to a specific property." To the contrary, the evidence strongly demonstrates that all neighboring properties confront the same issues-- and in many instances in a more onerous manner.

(ii) Proposed Development Conforms with the Established Historic or Traditional Development Pattern of a Street or Neighborhood (Section 59.7.3.2.E. 2.a.v.)

The petitioner claims that, "[s]everal nearby homes have similar structures located within comparable distances from lot lines." This is not accurate. When asked to identify these homes on Exhibit 9, the petitioner could only

identify one house across Delford Ave with a carport, which he said was attached to the principal structure. In contrast, the proposed structure would be detached from the principal residence.

b. Minimum Necessary to Overcome the Practical Difficulties that Full Compliance would impose Due to the Unusual or Extraordinary Conditions on the Property (Section 59.7.3.2.E. 2.c.)

As noted above, the petitioner testified that the topography of the rear yard created a practical difficulty in locating the carport behind the principal structure. While he estimated the slope in the backyard to be about 25% (Exhibit 11), a topographical map of the property introduced during the hearing shows the slope to be close to 11.5%. It also shows the principal residence is built on ground that slopes at about 14.3%. This leads to a finding that the proposed structure could, in fact, be attached to the principal structure in an area where the property's slope, topography and vegetation permit the construction.

Further, petitioner indicated that 'additional expense,' due to the driveway's current location on the right-hand (east) side of the principal residence, was the reason the carport could not be built on the left-hand (west) side of the principal residence.

Also, Petitioners did not provide evidence to demonstrate conditions on the property that prevented construction of the carport as an attachment to the right-side of the principal residence.

c. The Variance Can be Granted Without Substantial Impairment to the Intent and Integrity of the General Plan and the Applicable Master Plan
As noted above, the proposed detached carport, to be built in front of the principal residence building line, is not consistent with the established historic or traditional development pattern of the street or neighborhood. Similarly, the proposed development appears to be neither in keeping with the intent and integrity of the County Zoning Code, nor with the general plan, the master plan or the public interest. The topographical, structural concerns, and common scheme of the neighborhood does not support the building of detached structures on the property, in front of the principal residences.

Conclusions of Law
(Section 59.7.3.2.E of the Montgomery County Zoning Ordinance, and *Cromwell v. Ward,* 102 Md. App. 691 (1995))

The Board may grant a variance application only upon a finding that petitioner has met the standards provided for in Section 59.7.3.2.E of the Montgomery County Zoning Ordinance, and *Cromwell v. Ward,* 102 Md. App. 691 (1995), as described below.

Moreover, this Board noted the following in *Petition of Robert Williams, Jr.,* Case No. A-6444 (December 8, 2014) (seeking to place solar panels on a property) — involving assertions of slope, narrowness and expense as bases for a variance, and in which the Board denied a variance application. In that case, the Board noted:

> A variance permits a use of a structure that otherwise would not be permitted by the zoning ordinance, which has led the Maryland Court of Special Appeals to clarify that "the authority to grant a variance should be exercised sparingly and only under exceptional circumstances," *Cromwell v. Ward*, 102 Md. App. 691, 703, 651 A.2d 424, 430 (1995) (citation omitted). Review of a variance application under an ordinance like Montgomery County's involves a two-step process to discern a unique characteristic of the property and then to determine whether a practical difficulty results from the uniqueness of the property:
>
> > The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is -- in and of itself -- unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, i.e. a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance caused by the property's uniqueness, exists. *Cromwell,* 102 Md. App. at 694-695, 651 A.2d at 426.
> > That the variance might allow an improvement to property that is "suitable or desirable or could do no harm or would be convenient or profitable to its owner" does not provide a basis for granting a variance. *Cromwell*, 102 Md. App. at 707, 651 A.2d at 432. The need for the variance must arise from the application of the zoning ordinance to the **unique or peculiar characteristics of the property**. *See Cromwell,* 102 Md. App. at 717-718, 651 A.2d at 437. [Emphasis added]. The zoning ordinance must impact upon the land in a unique manner that does not exist where a restriction applies "equally to all lots of similar size." Cromwell, 102 Md. App. at 720, 651 A.2d at 438.

Finally, in *Montgomery County v. Rotwein*, 169 Md. App. 716, 732-733; 906 A.2d 959 (2006), the Court of Special Appeals reiterated that financial hardship is not grounds for granting a variance and that economic loss alone does not constitute a practical difficulty:

Economic loss alone does not necessarily satisfy the "practical difficulties" test, because, as we have previously observed, "[e]very person requesting a variance can indicate some economic loss." *Cromwell*, 102 Md. App. at 715 (quoting *Xanthos v. Bd. of Adjustmen*t, 685 P.2d 1032, 1036-37 (Utah 1984)) [Emphasis added]. Indeed, to grant an application for a variance any time economic loss is asserted, we have warned, "would make a mockery of the zoning program." *Cromwell*, 102 Md. App. At 715.

Section 59-G-3.1. of the Montgomery County Zoning Ordinance ("Authority - Board of Appeals") provides that the Board of Appeals may grant petitions for variances as authorized in Section 59-A-4.11 (b) upon proof by a preponderance of the evidence that:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property; . . ..

It is under this subsection that the Board must employ the analysis from the *Cromwell* case, set forth above.

In the *Robert Williams, Jr.*, case the Board of Appeals opined:

The Board acknowledges that from Mr. Williams' perspective, the property's slope and the presence of large trees constrain where the solar array can most conveniently be located. The Board notes Mr. Williams' testimony that he cannot locate the solar panels to the rear of the house, in the western portion of the area between the house and the barn, because of the prohibitive cost of constructing solar panels on the slope there, but finds that these reasons describe the convenience and desirability that *Cromwell* states are not grounds for a variance. The Board further notes that under *Rotwein*, the fact that it would be more expensive to install solar panels on the sloped ground to the west of the area between the house and barn than it would be to install them in the southeast corner of the property does not constitute a practical difficulty, and cannot be grounds for the grant of a variance.

Conclusion

Applying the test that allows this Board to grant a variance under *Cromwell* and Montgomery County Zoning Ordinance, Section 59.7.3.2.E.2, leads to the following conclusions and results. For the reasons noted above and those summarized below, petitioners failed to show that:

(a) (i) one of the enumerated unusual or extraordinary circumstances peculiar to the specific property-- narrowness, shallowness, topography, or other extraordinary condition, exists on the property, or (ii) the proposed development substantially conforms to the established historic or development pattern of a street or neighborhood; and

(b) the requested variance is the minimum necessary to overcome a practical difficulty imposed due to an extraordinary or unusual condition on the property; and

(c) the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan.

Therefore, we find the following:

a. one or more of the following unusual or extraordinary situations or conditions must exist:

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

The petitioner did not prove that this standard was met. The property shape is a regular, rectangle measuring approximately 149 feet wide by 315 feet deep. The lot width at the front building line is approximately 149 feet, which is 49 feet greater than the minimum required for this zone (R-200). The lot area, at 46,193 square feet, is more than twice the minimum 20,000 square feet required for this zone. The slope on the property is neither severe, nor is the slope as steep as many of the neighboring lots. Further, Petitioner offered no evidence to show the presence of topographical conditions or other extraordinary conditions that are peculiar to this property to justify the variance. The petitioner did testify that the rear of the lot was wooded, but he did not provide any evidence that this caused a practical difficulty that resulted in the need for a variance.

. . .

v. *the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood.*

The proposed development does not conform to the traditional development pattern of this neighborhood. There are no detached accessory structures forward of the principal structure in this area; only carports that are attached to principal structures on this street are situated forward of the rear building line.

. . .

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;*

While petitioner estimated the slope in the backyard to be about 25% (Exhibit 11), a topographical map of the property introduced during the hearing shows the slope to be closer to 11.5%, and also shows the principal residence was built on ground that slopes at about 14.3%. This leads to a finding that the proposed structure could, in fact, be attached to the principal structure in an area where the property's slope, topography and vegetation permit the construction, so that the proposed variance is not the minimum necessary to overcome practical difficulties that compliance with the law would impose due to an unusual or extraordinary situation or condition.

Further, petitioner indicated that 'additional expense,' due to the driveway's current location on the right-hand (east) side of the principal residence, was the reason the carport could not be built on the left-hand (west) side of the principal residence.

Also, Petitioners did not provide evidence to demonstrate conditions on the property that prevented construction of the carport as an attachment to the right-side of the principal residence.

d. *the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan.*

The variance can not be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan. As noted above, the proposed detached carport, to be built in front of the principal residence building line, is not consistent with the established historic or traditional development pattern of the street or neighborhood. Similarly, the proposed development appears to be neither in keeping with the intent and integrity of the County Zoning Code, nor with the general plan, the master plan or the public interest. The topographical, structural concerns, and common scheme of the neighborhood does not support the building of detached structures on the property, in front of the principal residences.

In summary, the petitioners did not prove the existence of a condition listed in County Zoning Code, Section 59.7.3.2.E 2(a), and the other required factors in County Zoning Code, Sections 59.7.3.2.E.2.c. & d., so that the standard to grant a variance has not been met, and the application for a variance should be DENIED.

Respectfully submitted,

Richard H. Melnick
Richard H. Melnick, Vice-Chair

Donald P. Silverstein
Donald P. Silverstein, Member

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Statement of Chair Caryn L. Hines
Supporting the Grant of the Requested Variances in Case No. A-6934

As a preliminary matter, I agree with Member Sternstein that the fact that the carport at issue in this case is already constructed, without proper permits, is not relevant to the Board's consideration of the Petitioners' requested variances. Section 59.7.3.2.E of the Zoning Ordinance, which sets out the test for the grant of a variance, is silent with respect to whether the structure for which variance relief is requested is proposed or existing, and is similarly silent with respect to whether the Petitioner obtained proper permits prior to construction. As noted in *Chesapeake Bay Foundation, Inc. v. DCW Dutchship Island, LLC*, 439 Md. 588, 625, 97 A.3d 135, 157 (2014), cited by Mr. Sternstein in his footnote 8, the Board has no authority to punish those who undertake construction without the proper approvals; the Board's only authority in the instant case (and all variance cases) is to apply the variance test set forth in the Zoning Ordinance to the facts of the individual case.

With that as a preliminary statement, below are the Evidence and Findings that support my vote to grant the variances requested in this case.

EVIDENCE

1. The subject property is Lot 1, Block 4, North Springbrook Sec 1 Subdivision, located at 108 Delford Avenue in Silver Spring, Maryland, 20904, in the R-200 Zone. It is an interior lot that is located on the south side of Delford Avenue. The subject property is generally rectangular in shape, although the property's frontage on Delford Avenue is slightly concave. The property is more than two times deeper than it is wide, and it has an area of 46,193 square feet. Per SDAT, the property is improved with a house that was built in 1962. It was purchased by the Petitioners in 2016. See Exhibits 4 and 9, and SDAT Printout.

2. The Petitioners' variance Application cites the narrowness of the subject property as a characteristic that makes the subject property unique. The Application states that the house and original driveway are sited on the southwest side of the property, bringing them "much closer (narrow) to the neighboring property line of 112 Delford Ave." See Exhibit 1.

3. The Petitioners' Statement of Justification ("Statement") states that they are seeking variance relief to allow an existing carport to remain on their property. The Statement explains the circumstances surrounding the construction of the carport, noting that the carport was built without permits but with the assurances of the Petitioners' contractor that no approvals were needed. The Statement states that "[a]t no point during the planning or construction did [the Petitioners] realize a permit would be required" for the construction, and that after receiving their contractor's assurances, they "moved forward in good faith." See Exhibit 3.

4. The Statement states that physical features of the subject property make it unique for the purpose of granting the requested variances, and cause the Petitioners a practical difficulty in fully complying with the development standards required by the Zoning Ordinance. The Statement cites the property's shallowness as one of these features.[1] The Statement further states that the property's topography and mature vegetation, along with the placement of the Petitioners' house, constitute physical characteristics that make strict adherence to the Zoning Ordinance difficult and make the property unique, as follows:

> **Existing topography and mature vegetation**, along with the orientation of the house, make it difficult to site the carport in a way that complies with both front and side setback rules while maintaining ease of access.

The Statement states that positioning the carport behind the property's rear building line would encroach on utility easements. Finally, the Statement states that the location of the house relative to the front lot line "makes compliance with the 65-foot front setback particularly burdensome for any meaningful accessory structure." The Statement concludes that the property's "physical characteristics create a practical difficulty in complying with the zoning ordinance." See Exhibit 3.

5. In addition to the property's physical characteristics, the Statement states that "[s]everal nearby homes have similar structures located within comparable distances from lot lines, suggesting that this variance would not be out of character with the neighborhood." See Exhibit 3.

6. The Statement states that the Petitioners' carport complies with the intent of the Zoning Ordinance, and causes "no harm" to the public interest. In support of this, the Statement states that the carport is "modest in size, open-sided, and designed in harmony

[1] At the hearing, Mr. Teves testified in response to a Board question that the reference to shallowness should have been to the property's narrowness, which he explained refers to the narrowness of the property between his house and the property's right side.

with the mid-century style of the home, maintaining light, air, and visibility for neighboring properties." In addition, the Statement states that "[t]he structure does not obstruct public utilities, pedestrian access, or traffic visibility, and poses no risk to public safety or the welfare of surrounding residents." The Statement states that the carport "does not negatively impact neighboring properties." Thus the Statement concludes that "[a]pproval of this variance will not undermine the intent of the zoning code or the public interest." See Exhibit 3.

7. The Statement states that the requested variances are the "minimum necessary" to alleviate the hardship posed by full compliance with the Zoning Ordinance, noting that the requested variances are the "least deviation necessary to provide functional and reasonable use of the property." The Statement states that the placement of the carport "was selected to minimize encroachment into setbacks while ensuring practical access to the driveway and home," and notes that the carport "is intended solely to shelter personal vehicles, not for use as living space or any other purpose." See Exhibit 3.

8. The Petitioners' abutting neighbors to the right (west) have submitted a letter of support for the requested variances. Their letter indicates that the Petitioners' carport does not encroach on their property and is "consistent with the character of the neighborhood." The neighbors' letter states that the Petitioners' carport "enhances the appearance of their property," that it "has been constructed tastefully," and that it gives the Petitioners' home "a proper and well-integrated parking area." See Exhibit 8.

9. The Petitioners have submitted before and after photographs of their property, showing the property before the carport was constructed and afterwards. In addition to showing the carport, these photographs show that there is a significant downward slope from right to left across the front of the subject property, with the driveway area on the right being at the highest point and relatively level. The photographs depict a very large tree just behind and slightly right of the carport, and show that the area behind the Petitioners' house is heavily wooded. See Exhibit 5(c).

10. The Petitioners have submitted a letter with photographs from licensed structural engineer Omid Gharavi, P.E., setting forth his professional engineering assessment of the existing "carport and storage structure." Mr. Gharavi states in his letter that he inspected the accessible structural components of the existing structure on April 2, 2025, and that based on his inspection, it is his professional engineering opinion that the existing carport is "structurally sound and adequate for its intended use." See Exhibit 7.

11. At the outset of the hearing, Mr. Teves testified about the history of the project that ultimately brought him before the Board. He testified that after expanding the width of a portion of his driveway to accommodate two cars, he engaged a contractor recommended by his neighbor to build a carport. Mr. Teves testified that he designed the carport, noting that he is a graphic designer and works in marketing. He testified that he did not know anything about permitting requirements, but did know that there is a required separation between structures on abutting properties. Mr. Teves testified that he had asked the contractor how much space would be needed between the carport and the property line

that he shared with his neighbor to the west, and was told ten (10) feet.[2] Mr. Teves testified that he and the contractor measured the distance between the neighbor's flower bed, which he thought approximated the property line, and the carport area with a measuring tape to make sure that the requisite separation was met. He testified that he asked his contractor if a permit would be needed for the proposed construction, and that his contractor told him that no permit was needed unless an architect was involved. Mr. Teves testified that because he had already designed the proposed structure, he did not need an architect. He testified that he took the word of his contractor that no permit was necessary. Mr. Teves testified that he is a "by the book" type of person, and that he would not have risked the amount of money he spent on this carport only to end up in his current situation had he known a permit was needed.

Mr. Teves testified that his house was built in 1962 on the far right side of the property. Mr. Teves testified that the carport could not be located on the left side of the property because the property's septic tank is located on that side.[3] He later testified that the drainage field for the property's septic tank is located behind his house. Mr. Teves testified that there is a small fenced area that is relatively level and about fifteen (15) feet deep immediately behind his house, and that his property slopes downward from there. He estimated that the grade is about 25 percent (25%). Mr. Teves testified that his backyard is wooded, and that there is a large, three-foot wide tree behind his carport.

In response to a Board question asking why he characterized his property as "narrow," Mr. Teves testified that what he meant is that the right side of the property, where his house and driveway are located, is narrow. He testified that his property slopes away to the left, and that the driveway area is the most level area of the property. Mr. Teves testified that the reference to "shallowness" in his Statement should have been to narrowness.

In response to a Board question asking if nearby homes had structures similar to his carport, Mr. Teves testified that there is a house around the corner that is like his (but turned sideways) that has an attached carport that is closer to the road than his carport. In addition, he testified that there are other homes that are similarly structured.[4] Mr. Teves testified that he originally wanted to construct an attached carport that had access to his basement, but that his property drops ten (10) feet down to the basement level and flat area behind his house, that the available area could only accommodate a single car carport, and that his contractor discouraged this option because the

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[2] Mr. Teves later testified that while he was aware that there were setbacks between neighboring properties, he did not know that there was a required setback from the street.

[3] Per the County's Department of Permitting Services' website, a building on a concrete slab, such as the Petitioners' carport, must be located at least 15 feet from a septic tank and 20 feet from a septic trench or septic reserve area. See Exhibit 7 (photos 5 and 8, showing concrete slab) and https://www.montgomerycountymd.gov/DPS/Resources/Files/Land_Development/Guideline_Minimum%20Setbacks.pdf .

[4] Mr. Teves later testified that while there are not many houses on his road with carports, most of the houses have garages that were built with the home. Mr. Teves testified that his confronting neighbor at 111 Delford Avenue has an attached carport on the right side of his house, and that his neighbor at 115 Delford Avenue has a one-car garage on the left side of his house.

construction would be very difficult. In response to a Board question asking why he could not locate the carport behind his house, Mr. Teves testified that in addition to the afore-mentioned challenges, it would be difficult to get behind the house, and that doing so would require him to remove trees and the small fenced area behind his house. Mr. Teves testified that there are too many trees for him to extend the driveway straight back, and that lengthening the driveway would be very expensive. He testified his property slopes significantly downward just past the carport before leveling off and then dropping again. In response to a Board question asking if he could locate the carport on the other side of his house, Mr. Teves testified that he had considered that, but that the area is sloped and further from his house, that it would require the installation of a second driveway, and that it would have cost more than twice as much as he spent on the existing construction. He testified that he built what he could with the money he had.

Mr. Teves testified that his neighbor to the right had submitted a letter of support for the requested variances, and that he had talked with his neighbor to the left who has no objection but did not submit a letter. Mr. Teves testified that no one in his neighborhood has any issues at all with his carport, and that everyone who walks by the property compliments it. In response to Board questions asking if he had received any feedback from his neighbors who live across the street, Mr. Teves testified that his neighbors who live at 111 Delford Avenue are renters who keep to themselves, and that his neighbors at 115 Delford Avenue were some of the neighbors who had expressed their approval in passing.

Pursuant to a Board question asking Mr. Teves how it was that he came to seek a variance, Mr. Teves testified that the need for a building permit was flagged by an electrician that he had hired to do other work. In response to a Board question asking how he got his building permit denial, Mr. Teves testified that the County Inspector who came to look at the electrical work gave him his business card, and that he then called the County to ask what he needed to do to make things right with respect to his carport. Mr. Teves testified that he hired a structural engineer to inspect the carport and to certify that it complied with applicable Codes and could be granted a permit. See Exhibit 7. Mr. Teves testified that he submitted all of the other necessary information to the County with his permit application.

In response to a Board question asking about the reference in the Statement to a utility easement behind his home, Mr. Teves testified that the drainage field for his septic tank is behind the house. In response to a Board question asking how the septic field impacts his ability to build, Mr. Teves testified that the carport could not be constructed on the left side of his home because of the septic tank, that it could not be constructed on the right because of existing trees, and that he did not want to construct it behind his house over the drainage field for his septic system. He testified that this left the area at the end of his driveway for the carport.

12. One of the Board members asked that the Board take judicial notice of the property's topography as shown on the County's ArcGIS contour map, stating that he sought out this map, which is publicly available, because the Statement mentions

topography and the photographs submitted by the Petitioners show that the property is sloped. The Board member stated that the contour map confirms that there is a topography problem on the subject property. The Petitioner reviewed the map and asked that it be included in the record. See Exhibit 11.

FINDINGS OF LAW

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;

Based on the Statement, photographs, contour map, and testimony of Mr. Teves, I find that the subject property is encumbered with sloping topography, and that after a shallow, relatively level area immediately behind the house, the remainder of the subject property slopes steadily downward toward the property's rear lot line. I further find, based on the photographs and contour map, that the front of the subject property slopes down from right to left (west to east). In addition, I find, based on the Statement and the testimony of Mr. Teves, that the area behind the Petitioners' home contains the drainage field for the property's septic system. Finally, I observe that while not dispositive, the Petitioners' backyard is heavily wooded and contains numerous large trees, as shown in the photographs and noted by Mr. Teves. See Exhibits 3, 5(c), and 11. I find that these circumstances, taken together, constitute an extraordinary condition peculiar to the subject 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;*

Per SDAT, I find that the Petitioners' house was built in 1962, but that the Petitioners did not purchase it until 2016. In light of this, I find that the Petitioners are not responsible for the slope of their property or for the location of their septic tank and drainage field. Accordingly, I find 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;*

Based on the Statement, photographs, contour map, and testimony of Mr. Teves, I find that the slope of the subject property, coupled with the locations of its septic tank and associated drainage field, make it impossible for the Petitioners to locate their carport in accordance with the requirements of the Zoning Ordinance without significant site work, causing them a practical difficulty. See Exhibits 3, 5(c), and 11. I further find, based on the Statement, the contour map, and the testimony of Mr. Teves, that the requested variances are the minimum necessary to overcome this practical difficulty and to allow the Petitioners to retain their carport in its current location, which is not only accessible from the existing driveway and relatively level, eliminating the need for extensive site

work, but which also does not impinge on the property's sanitary features (or the required setbacks from those features). See Exhibits 3 and 11. In light of the foregoing, I find 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;*

I find that the requested variances find that the Petitioners' carport will continue the residential use of the home, and thus can be granted without substantial impairment to the intent and integrity of the White Oak Master Plan (1997), which seeks, among other things, to "protect existing residential communities" and to "maintain and enhance the quality of housing and neighborhoods." Thus I find 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.*

In accordance with the Statement and testimony of Mr. Teves, I find that granting the requested variances, needed to allow the Petitioners' carport to remain in its current location, will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test. In support of this finding, I find, per the Statement, that the Petitioners' carport is "modest in size, open-sided, and designed in harmony with the mid-century style of the home, maintaining light, air, and visibility for neighboring properties." I further find, based on the Statement, that the carport "does not negatively impact neighboring properties." See Exhibit 3. In addition, I note that the Petitioners' abutting neighbors to the right (west) have submitted a letter of support for the requested variances, indicating that the carport enhances the Petitioners' property, and that it is "consistent with the character of the neighborhood." See Exhibit 8. I further note, in accordance with Mr. Teves, that his neighbors to the left (east) do not object to the carport, and that the feedback about the carport that he has received from neighbors passing by his house is positive. Finally, I note that the notice was properly posted, that the record contains no opposition to the grant of the requested variances, and that no one appeared at the hearing in opposition to the requested variances.

Based on the foregoing evidence and findings, I believe the requested variances satisfy the test for the grant of a variance set forth in Section 59.7.3.2.E.2 of the Zoning Ordinance.

Respectfully submitted,

Caryn L. Hines
Chair, Montgomery County Board of Appeals

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Case No. A-6934
PETITION OF JASON TEVES AND MONICA TIERNEY

Statement of Member Sternstein Supporting Grant of the Variances

Discussion of the Requested Relief and Evidence

The subject property is Lot 1, Block 4, North Springbrook Sec. 1 Subdivision, located at 108 Delford Avenue in Silver Spring, Maryland. The property is zoned R-200. It is an interior lot that is generally rectangular in shape, although the property's frontage on Delford Avenue is slightly concave. The property is more than two times deeper than it is wide, and it has an area of 46,193 square feet. Per SDAT, the property is improved with a house that was built in 1962 and was purchased by the Petitioners in 2016. See Exhibits 4 and 9, and SDAT Printout.

The Petitioners seek variance relief to allow an existing carport to remain on their property. Their Statement of Justification ("Statement"), Exhibit 3, explains the circumstances of the carport's construction and acknowledges that the carport was built without permits but with the assurances of the Petitioners' contractor that no approvals were needed. The Statement avers that "[a]t no point during the planning or construction did [the Petitioners] realize a permit would be required" for the construction and that after receiving their contractor's assurances, they "moved forward in good faith2."

Mr. Teves himself testified that after expanding the width of a portion of his driveway to accommodate two cars, he engaged a contractor recommended by his neighbor to build a carport. Mr. Teves testified that he designed the carport, noting that he is a graphic designer and works in marketing. He testified that he did not know anything about permitting requirements, such as setbacks, except that there is a required separation between structures on abutting properties. Mr. Teves testified that he had asked the contractor how much space would be needed between the carport and the property line that he shared with his neighbor to the west, and was told ten (10) feet. Mr. Teves testified that he and the contractor measured the distance between the neighbor's flower bed, which he thought approximated the property line, and the carport area with a measuring tape to make sure that the requisite separation was met.

According to the Statement, physical features of the subject property make it unusual for the purpose of granting the requested variances and cause the Petitioners a practical difficulty in fully complying with the development standards the Zoning Ordinance requires. The property's shallowness is cited as one of these features.[1] Also cited is the property's significantly uneven topography and mature trees. Specifically, according to the Statement, "[e]xisting topography and mature vegetation . . . make it difficult to site the carport in a way that complies with both front and side setback rules while maintaining ease of access." Likewise, Exhibit 5(c), photos of the house, show that the rear of the lot is heavily wooded from nearly the rear building line back and that the lot slopes significantly from its front to back and from right to left facing the house. The uneven topography is confirmed by a topographic map of the property and surrounding properties. Exhibit 11.[2] The topographic map also shows that the carport is sited on the only level portion of the property

As corroborated by Petitioners' photographs, Mr. Teves testified that his backyard is wooded and that the west side of his property is treed, including a large, three-foot wide tree. A carport, therefore, could not be constructed on the west side because of existing trees. Notably, too, the right side of the house could not accommodate a two-car carport without encroaching more into the 25-foot side yard than the existing carport. See Exhibits 4 and 5(a).

With regard to matters of adverse impact and the public interest, the Statement notes that the carport is "modest in size, open-sided, and designed in harmony with the mid-century style of the home, maintaining light, air, and visibility for neighboring properties." In addition, "[t]he structure does not obstruct public utilities, pedestrian access, or traffic visibility, and poses no risk to public safety or the welfare of surrounding residents." Finally, according to the Statement, the carport "does not negatively impact neighboring properties." See also Exhibit 5(c). There was no testimony, written statement or other evidence in the record to the contrary and alleging adverse pubic impacts, either to nearby properties or the zoning plans.

Indeed, the Petitioners' abutting neighbors to the right (west) have submitted a letter of support for the requested variances. Their letter indicates that the Petitioners' carport does not encroach on their property and is "consistent with the character of the neighborhood." The neighbors' letter states that the Petitioners' carport "enhances the appearance of their property," that it "has been constructed tastefully," and that it gives the Petitioners' home "a proper and well-integrated parking area." See Exhibit 8.

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[1] At the hearing, Mr. Teves testified in response to a Board question that the reference to shallowness should have been to the property's narrowness, which accounts for the narrowness between his house and the property's right side, facing the property.

[2] According to the topographic map, the grade on the lot varies from zero to primarily between 13% and 20%, with a drop of approximately 6 feet on a line from Delford Avenue to the rear of the house and a drop of approximately 7 feet on a line from the front of the house to its rear. Significantly, retaining walls exist on the east and south sides of the house. See Exhibit 4.

Mr. Teves testified that he had talked with his neighbor to the left who has no objection but did not submit a letter. Likewise, Mr. Teves testified that no one in his neighborhood has expressed to him any issues with his carport and that everyone who walks by the property compliments it. In response to Board questions asking if he had received any feedback from his neighbors who live across the street, Mr. Teves testified that his neighbors who live at 111 Delford Avenue are renters who keep to themselves and that his neighbors at 115 Delford Avenue were some of the neighbors who had expressed their approval in passing.

Mr. Teves testified that he did consider constructing an attached carport that had access to his basement but that his property drops ten (10) feet down to the basement level and flat area behind his house and that his contractor discouraged this option because the construction would be very difficult. In addition to these challenges, in response to a question asking why he could not locate the carport behind his house, Mr. Teves testified that it would be difficult to get behind the house and that doing so would require him to remove trees and a small fenced area behind his house.

Mr. Teves testified, as photos and the topographic map show, that there are too many trees on the east (left side facing house) and rear of his property for him to place a carport there. Removal of trees in those areas, again would, Mr. Teves testified, increase construction costs. Moreover, as previously noted and established by photographs and Exhibit 11, Mr. Teves testified that those areas are sloped and would require the installation of a second driveway, resulting in construction costs more than twice as much as he spent on the existing carport. Finally, Mr. Teves also testified that the carport could not be located on the east side because the property's septic tank is located on that side.

Reasons Justifying Grant of Petitioners' Variance Application

The current standards that must be satisfied in order for this Board to grant an area (as opposed to use) variance for property are set forth in Section 59.7.3.2.E.2 of the Montgomery County Zoning Ordinance. The Board Members who voted to deny the Petitioners' variance request expressly agree that these are the applicable standards. They cite those standards in their own Statement here ("Denial Statement"). They are as follows:

Section 7.3.2.E

To approve a variance, the Board of Appeals must find that:

* * * * *

2. each of the following apply:

   a. one or more of the following unusual or extraordinary situations or conditions exist:

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

ii. the proposed development uses an existing legal nonconforming property or structure;

iii. the proposed development contains environmentally sensitive features or buffers;

iv. the proposed development contains a historically significant property or structure; or

v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

b. the special circumstances or conditions are not the result of actions by the applicant;

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;

d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and

e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

My agreement with the Members' Denial Statement ends with the proposition that these are the standards that must be satisfied to justify the grant of a variance. Indeed, it must end there as a matter of law. For in order to argue that the Petitioners' application should be denied, my colleagues do not actually rely on these standards. Instead, as to the two critical matters in this case – physical characteristics of the property and practical difficulty – they rely on judicial cases construing and applying statutory standards materially different from what is the current law in Montgomery County.

Montgomery County extensively amended its Zoning Ordinance in 2014. Among other things, the amendments loosened the strictures that the pre-2014 Ordinance standards imposed on the grant of area variances. The pre-2014 standards are set forth in Section 59-G-3.1 of the pre-2014 Ordinance. Marked by me to show how they importantly differ from the current Code,[3] they provide:

Sec. 59-G-3.1.

~~The board of appeals may grant petitions for variances . . . upon proof by a preponderance of the evidence that:~~

To approve a variance, the Board of Appeals must find that . . . each of the following apply:

a. one or more of the following unusual or extraordinary situations or conditions exist:

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[3] Strikethroughs mark language the 2014 amendments deleted. Language that the 2014 amendments added is shown in italics.

~~(a) By reason of~~ *i.* exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific ~~parcel of~~ property~~, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property;~~

ii. the proposed development uses an existing legal nonconforming property or structure;

iii. the proposed development contains environmentally sensitive features or buffers;

iv. the proposed development contains a historically significant property or structure; or

v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

b. the special circumstances or conditions are not the result of actions by the applicant;

(~~b~~c) ~~Such~~*the requested* variance is the minimum ~~reasonably~~ necessary to overcome the ~~aforesaid exceptional conditions~~*practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property*;

(~~c~~d) ~~Such~~*the requested* variance can be granted without substantial impairment to the intent~~, purpose~~ and integrity of the general plan ~~or any duly adopted and approved area master plan affecting the subject property~~*and the applicable master plan*; and

(~~d~~e) ~~Such~~*granting the* variance will not be ~~detrimental to the use and enjoyment of adjoining or neighboring properties. . . . These provisions shall not be construed to permit the board, under the guise of a variance, to authorize a use of land not otherwise permitted~~adverse to the use and enjoyment of abutting or confronting properties.

It is evident that, in 2014, Montgomery County increased the number of circumstances in which the Board could grant a variance. Moreover and importantly here, the County no longer required that the "practical difficulties" suffered by the owner of the subject property be "peculiar" to that property or, therefore, that the property's "unusual" characteristics ("exceptional narrowness, shallowness, shape, topographical conditions") be "peculiar" to that property, as the Denial Statement argues. That is no longer the law. Thus, for example, the Board often gets variance requests from Takoma Park, where there are numerous properties that are exceptionally narrow or exceptionally shallow, yet the Board routinely grants variances for these conditions, even though they are not peculiar to some specific property in Takoma Park.

Likewise, just recently, the Board, including Members Melnick and Silverstein, unanimously voted to a grant a variance in *Petition of Kaczmarek*, Case No. A-6943 (hearing Nov. 5, 2025), where the shallowness and narrowness of an undersized lot justified construction of a shed within a side yard and its set back and forward of the rear

building line. At 10,800 square feet, however, the petitioner's undersized lot was not unique or peculiar but one of several similarly undersized R-200 zoned lots in the neighborhood, including lots adjacent to and in front of petitioner's lot. See Zoning Ordinance, Section 4.4.7 (20,000 square foot minimum lot size allowed in the R-200 zone).

It is also evident that, in 2014, Montgomery County also reduced the degree of hardship facing a variance applicant if the requested variance were not granted and necessary to grant a variance. Prior to 2014, the Zoning Ordinance required "peculiar or unusual practical difficulties to, or exceptional or undue hardship upon," the applicant. Today, the Zoning Ordinance merely requires "practical difficulties" due to "exceptional narrowness, shallowness, shape, [or] topographical conditions."

The Denial Statement's reliance on *Petition of Williams, Jr.,* Case No. A-6444 (December 8, 2014), is mistaken as a matter of law. That Board decision heavily relies, as does the Denial Statement, on *Cromwell v. Ward,* 102 Md. App. 691 (1995). The Denial Statement also relies on *Montgomery County v. Rotwein*, 169 Md. App. 716, 732-733; 906 A.2d 959 (2006). *Cromwell* and *Rotwein*, however, both rely on Montgomery County pre-2014 statutory language or language like it in another Maryland county requiring, for a variance, peculiarity or uniqueness of the unusual condition. That is also no longer the law in Montgomery County.[4]

Specifically, the Denial Statement rejects the practical difficulties that topographical features (sloping and tree covered) of Petitioners' lot and that a rear lot carport placement would create, were they denied the variances they seek. The Denial Statement finds (at 10) that "Petitioner offered no evidence to show the presence of topographical conditions or other extraordinary conditions that are peculiar to this property to justify the variance." After the 2014 amendments, however, the condition justifying a variance need no longer be peculiar or unique.[1] That finding, therefore, is not only contrary to law but untrue. As discussed at the outset of this Statement, Petitioners adequately established the unusual conditions necessary for the Board to grant their variance request. See Zoning Ordinance, Section 59.7.3.2.E.2.a(i).

The Denial Statement likewise mistakenly relies on *Cromwell* and *Rotwein* to argue that there is no practical difficulty confronting Petitioners because, it contends, it is possible for Petitioners to build their carport as an accessory structure in the rear yard of their property. In effect, the Statement applies not the current and laxer standard of "practical difficulty" but one of impossibility, a standard even more restrictive than the "peculiar or unusual practical difficulties" or "exceptional or undue hardship" standards the 2014 amendments rejected but on which *Cromwell* and *Rotwein* rely. Granting a variance requires only a showing of practical difficulty. The applicant for a variance is not required to prove that compliance with the Zoning Ordinance is an impossibility.

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[4] Notably, the Board decided the *Williams* case no more than two months after, if not before, the 2014 amendments. Board decisions are not effective until issued in writing, some times as much as 30 days after an oral vote at the end of a hearing. These timing matters would explain the Board's proper or, at least, mistaken reliance on the pre-2014 *Cromwell* and *Rotwein* cases.

Petitioners' practical difficulty is obvious. It is evident from Petitioners' photos and Exhibit 11 that there is a significant and continuous downward slope as one proceeds across Petitioners' right front yard to around the left side of the property (facing the house) and into the rear yard. It is also evident from Petitioner Teves's testimony and photographs that the rear yard is tree covered, with large mature trees. Petitioner Teves also testified that there is a septic tank on the left side of the property.

Accordingly, in order to construct a carport in their rear yard, Petitioners would be required to construct an unusually long driveway, cutting right to left across and bisecting their front lawn and yard and descending six feet down the left side of the property to the rear yard.[5] This path would also impermissibly traverse portions of a buried septic tank and, presumably, drainage field.[6] Further, Petitioners would be required to clear large mature trees in the rear yard to accommodate a 21' x 24' carport. The long and sloped driveway, as well as a rear deck extending across the entire rear of the house, would need to be kept free of snow and ice in the winter, and entering Petitioners' home would require not a few steps from the front carport through the front door, as it now does, but climbing stairs to a deck that extends across the entire rear of their house and entering through the backdoor. See Exhibit 4. All this, the Denial Statement claims, is not a practical difficulty, simply because it is all possible to do, despite the initial construction and annual maintenance costs, the inconvenience of backdoor entry, septic tank and drainage field obstructions, and the need to deface Petitioner's entire front yard and lawn with a long driveway.[7]

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[5] The Denial Statement suggests that Petitioners could have constructed their carport on the right side of their house in order to avoid their need for any variance. According to the Denial Statement (at 9), "Petitioners did not provide evidence to demonstrate conditions on the property that prevented construction of the carport as an attachment to the right-side of the principal residence." The suggestion is entirely gratuitous. Petitioners' Exhibit 4 is a surveyor's certified site plan, showing, among other things, that the width of the property's right side yard is 25 feet. Constructing Petitioners' 21 foot wide carport in the right side yard would not only encroach further on the side yard than it already does but would still require a variance, a variance even greater than the three-foot variance requested. It would also confront the sloping topography that does not exist in the carports existing location.

[6] See the County's Department of Permitting Services' website (https://www.montgomerycountymd.gov/DPS/Resources/Files/Land_Development/Guideline_Minimum%20Setbacks.pdf).

[7] Just last week, in contrast to their votes in the instant case, Members Melnick and Silverstein voted unanimously with the Board to grant a variance allowing an applicant to install a second air conditioning unit in her side yard. There was already an existing unit in the side yard, including a power supply and air duct access, but co-locating the second unit with the first would have caused an encroachment. Avoiding the encroachment would have required installing a new power source and new duct work in the opposite side yard, to accommodate the second unit. The practical difficulty that zoning compliance presented was, according to the applicant, preventing her the comfort and convenience of dual-zone air conditioning, without the need for additional significant expenditures. The Board voted to consider the applicant's comfort and cost avoidance needs a practical difficulty. See *Petition of Sartucci*, No. A-6942 (hearing Nov. 5, 2025). See also *Petition of Ismail*, No. A-6934 (hearing Nov. 5, 2025) (granting a variance for a front yard encroachment, needed for a second story addition, where property topography interfered with her cultural need to observe the rising and setting sun).

Petitioners also satisfy the third requirement needed for a variance, that the special condition of their property is not the result of their actions. See Zoning Code, Section 59.7.3.2.E.2.b. SDAT information documented in the record shows that Petitioners' house was built in 1962, but Petitioners did not purchase it until 2016. Petitioners, therefore, are not the developer or original owner responsible for the location of their septic tank. Nor, surely, are Petitioners the geological source of their property's sloping topography.

The Denial Statement's argument that the variances requested cannot be granted without substantial impairment to the intent and integrity of a general plan and the applicable master plan is entirely antithetical to the concept of a variance. According to the Denial Statement (at 9),

> [T]he proposed detached carport, to be built in front of the principal residence building line, is not consistent with the established historic or traditional development pattern of the street or neighborhood. Similarly, the proposed development appears to be neither in keeping with the intent and integrity of the County Zoning Code, nor with the general plan, the master plan or the public interest.

If this reasoning were correct, no one could ever be granted a variance, for the first variance sought not in conformity with some development standard of a community and its zoning would, necessarily, be denied. There is a reason, of course, that the relief Petitioners seek is called "variance" relief, as well as why the impairment Section 59.7.3.2.E.2.d of the Zoning Ordinance prohibits must be "substantial."

The requested variances will not substantially impair any general plan, master plan or the public interest. In particular, Petitioners' carport will continue the residential use of the house on their property, consistent with the White Oak Master Plan (1997), which seeks, among other things, to "protect existing residential communities" and to "maintain and enhance the quality of housing and neighborhoods." Petitioners seek a carport for sheltering domestic automobiles, not a fat rendering plant.

Finally, granting the variances requested will not be adverse to the use and enjoyment of abutting or confronting properties or negatively affect them, as Section 59.7.3.2.E.2.e of the Zoning Ordinance prohibits. According to Petitioners' written statement in support of their request, their carport is "modest in size, open-sided, and designed in harmony with the mid-century style of the home, maintaining light, air, and visibility for neighboring properties." In addition, Petitioners' abutting neighbors to the right (west) have submitted a letter of support for the requested variances, indicating that the carport enhances the Petitioners' property and that it is "consistent with the character of the neighborhood." See Exhibit 8. Further, Petitioner Teves testified that his neighbors to the east of his property do not object to the carport and that the feedback about the carport that he has received from neighbors passing by his house has been positive. Finally, although notice of the variance request was posted, the record contains no opposition to the grant of the requested variances, and no one appeared at the hearing in opposition to the requested variances.

Conclusion

For all the foregoing reasons, I voted to grant Petitioners' requested variances. In doing so, I was not unmindful that Petitioners constructed their carport before seeking the variances requested and that Petitioner Teves' testimony was not entirely convincing that they did so unwittingly. These matters, however, were not and are not relevant to the basic issue before the Board: whether Petitioners satisfied each of the specified requirements in the Zoning Ordinance sufficiently for the Board to grant the variance relief requested.[8]

Respectfully submitted,

Alan B. Sternstein, Member
Board of Appeals
Montgomery County

[8]As the Court of Appeals (now Supreme Court of Maryland) stated in *Chesapeake Bay Foundation, Inc. v. DCW Dutchship Island, LLC*, 439 Md. 588, 625, 97 A.3d 135, 157 (2014), Petitioners' "failure to obtain the proper permits or variances before construction is not relevant. This fact would only be relevant if [Petitioners'] acts constituted the "peculiar circumstances" that created the need for the variances." Moreover, as the Board below in *Chesapeake* observed, "for all the moral outrage that should and has resulted from the erection of this structure and its related facilities, we must caution that decisions regarding punishment are not within the purview of this Board of Appeals." *Id.* at 625 n.29; 157 at n.29. Its "careful review of these laws has revealed no mechanism by which the Board can punish bad acts and actors. We will not exercise authority that we do not possess and will not legislate from the 'bench' of the Board of Appeals." *Id*.