

**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-6610

PETITION OF RICHARD P. STIFEL, JR. AND LIDA STIFEL

OPINION OF THE BOARD

(Hearing Date: May 1, 2019)

(Effective Date of Opinion: May 9, 2019)

Case No. A-6610 is an application by Richard P. Stifel, Jr., and Lida Stifel (the "Petitioners") for variances needed in connection with the construction of an accessory structure (garage). Specifically, the Petitioners are requesting a variance of 7.40 feet so that they can locate an accessory structure within 7.60 feet of the side lot line. The required setback is fifteen (15) feet, in accordance with Section 59-4.4.4.B.2 of the Zoning Ordinance. In addition, the Petitioners are requesting a variance to permit the proposed construction of an accessory building in a location forward of the rear building line of the principal building. Section 59-4.4.4.B.2.c of the Zoning Ordinance requires that accessory structures be located behind that line. Finally, the Petitioners are seeking variance relief from the limitation set forth in Section 59-4.4.4.B.2.d of the Zoning Ordinance, in order to permit a total accessory structure footprint that is greater than 50% of the footprint of the main building.

The Board of Appeals held a hearing on the application on May 1, 2019. The Petitioners were both present in support of the variance application, and were represented by Jody S. Kline, Esquire.

Decision of the Board:

Variance to permit the proposed construction of an accessory building in a location forward of the rear building line **GRANTED**.

Variance of 7.40 feet from the required 15.00 foot side lot line setback **GRANTED**.

Variance to permit a total accessory structure footprint greater than 50% of the footprint of the main building **DENIED**.

EVIDENCE PRESENTED

1. The subject property is Parcel P179, MT Pleasant ETC Subdivision, located at 14000 Turkey Foot Road, Gaithersburg, MD, 20878, in the RE-2 Zone.
2. The subject property is a five-sided, 2.63 acre lot, described in the Petitioners' Statement of Justification ("Statement") as having a "rhomboidal" shape. See Exhibits 3 and 4(a).
3. The Statement at Exhibit 3 describes the evolution of the subject property, noting that while it is not designated as historic, "the property is very distinctive due to its topography, its pattern of physical development since the mid-nineteenth century, its historic character and its relationship with the history of Montgomery County," as follows:

The main structure on the subject property was built in the mid-19th century as a residence for the miller who operated the Mill on adjacent property. Since then there have been many additions to the house as well as construction of outbuildings to serve the residence. Through time, the previous stable, warehouse and barrel house associated with the miller's house have been converted to storage sheds and an art studio on the subject property. The residence and the property are not designated historic under the County's Historic Preservation program (due to the many alterations to the residence) but the house and the property's relationship to the famous adjacent Dufief Mill is obvious.

4. The Statement indicates that the proposed accessory structure is 60% completed, that construction was initiated on the mistaken belief the "replacement of an existing structure would not require a building permit," and that "[t]he building is being constructed on the location of a pre-existing outbuilding." The Statement explains that the new accessory structure is intended to serve multiple purposes, indicating that the second floor will serve as an art studio and gallery for Mrs. Stifel, the first floor will be used to store one car and as a workroom/workspace, and the lower level will have two parking spaces, one for a car and the second for a riding tractor that is presently stored on the asphalt parking area. See Exhibit 3.
5. The Statement at Exhibit 3 indicates that the proposed accessory structure will have a footprint of 912 square feet (38' x 24'), which is 27.7% of the footprint of the main building (3,290 square feet). It explains the need for a variance from the limitation in Section 59-4.4.4.B.2.d of the Zoning Ordinance, which states that that accessory buildings cannot exceed 50% of the footprint of the main building, as follows:

What causes the need for a variance is the fact that over the past 150+ years since the house was built (estimated to have been built between 1853 and 1866), a number of outbuildings have been constructed on the

property. Under the Department of Permitting Services' practices the total of all accessory buildings on a site is the amount of footprint used to determine compliance with Section 59.4.4.B.2.d. Those buildings include:

Two (2) White Frame Garages (Photo #8)
One (1) White Frame Shed (Photo #8)
Frame Workshop (Art Studio) (Photo #1)
Playhouse (Photo #9)

The total footprint of all of these structures is 1,320 square feet, or 40.1% of the footprint of the main building.

In summary, it is the total footprint of six different outbuildings, five of which are intrinsic to the historic character of the Stifel property, that pushes the cumulative footprint of all accessory structures to exceed the 50% limitation.

6. The Statement at Exhibit 3 indicates that "it is not possible to construct the desired building in the 'rear yard,'" explaining that:

The property has exceptional topographical conditions. The front yard has grade changes of 28 feet (290 elevation at house level to 262 elevation at Turkey Foot Road). In the rear yard, the grade elevation is even more pronounced dropping from 290' at the residence level to 274' at the property line (and all the way to 244' at the creek level). Therefore, along with the accumulation of historical structures on the property, the only location for a potential garage is the location proposed.

7. The Statement at Exhibit 3 indicates that the proposed development contains a historically significant property or structure, and substantially conforms to the established historic or traditional development pattern of a street or neighborhood, as follows:

Though the property is certainly historic in nature, the house and its property has not itself been designated historic under the County's Historic Preservation Ordinance. The affiliated Dufief Mill site, however, is a County Historic Property. The fact that the subject property was originally built and developed in conjunction with the Mill lends significant historic weight to protect and maintain the character of the site.

The Stifels' proposal continues the pattern of location for outbuildings typical in this area of Montgomery County. The new building is built on the site of a former storage shed. That shed was aligned with three other outbuildings (see Photo #8) that will remain, all of which were constructed within 3 to 5 feet of the western property line of the property undoubtedly before Montgomery County had applicable zoning regulations in this part of the "Up County."

The pattern of rural development is repeated on the adjacent property to the west where a large "timber frame barn" building is located with 4 – 5 feet of the common property line between these two adjoining properties. (see Photo #8)

In summary, the Stifels' proposal is consistent with the historical pattern of development on this and surrounding properties both in terms of the proximity to perimeter boundary lines and to the fact that construction of outbuildings does occur in front yards.

* * *

As explained in the previous paragraph, the Stifels proposed to construct the new building in accordance with the existing pattern of structures on the subject properties.

8. The Statement at Exhibit 3 indicates that the existing topography and historical nature of the existing buildings make the proposed location the only available location for the proposed structure. The Statement indicates that these factors are not due to any actions by the Petitioners. It further indicates that the variance requested is the minimum needed to complete this construction which was mistakenly already begun. It indicates that the construction of the proposed structure will not impair the intent and integrity of the Potomac Subregion Master Plan, and will not be adverse to the use and enjoyment of abutting neighbors. In support of this latter assertion, the Statement notes that the garage "will replace a previously existing outbuilding" and will "clean up the site," and that "[a]djacent property owners with adjoining outbuildings even closer to the common property line do not object to the requested variances."
9. At the hearing, Mr. Kline used a topographical map to orient the Board to the subject property. He noted that the driveway is circuitous due to the grade, the house being at an elevation of 290 feet, and Turkey Foot Road being at an elevation of 258 feet. Mr. Kline explained that the topography is even more pronounced at the rear of the property, where it falls off sharply towards Muddy Branch. See Exhibit 4(b). He showed the Board where the "rear building line" of this property is located, and noted that there is very little available area behind that line that is not encumbered with difficult topography.

Mr. Kline explained that the house, while not designated as historic because of a series of (non-historic) updates, is known as the "miller's house" for the adjacent historic mill property. Mr. Kline catalogued the existing accessory buildings along the property's northwest side lot line—two garages and a frame shed, some of which are located within 3.5 feet of the side lot line, and the partially-constructed (new) accessory structure, which is located 7.6 feet from the side lot line at its closest point. He stated that the new building is located in approximately the same location as a previously-existing accessory building, which was about seven (7) feet from the side lot line. He acknowledged that the new building is larger than its predecessor, but emphasized that it is no closer to the side lot line than its predecessor had been. He indicated that the yellow outline on the site plan shows

the location of the new building, and stated that this location is consistent with the pattern of development of the existing buildings. See Exhibit 4(a). Mr. Kline also indicated that there are accessory structures on the abutting property that are also very close to the property line and to the Petitioners' structures. See Exhibit 4(a). He indicated that this pattern of locating accessory structures very close to the property line is further illustrated on the Zoning Vicinity Map. See Exhibit 7.

In addition to the garages, frame shed, and new accessory building, Mr. Kline noted that the property also contains a small one-story frame house and a playhouse. Mr. Kline stated that the topography of the property is the driving factor behind the locations of these various uses on the property, and that when one considers the presence of the house and other existing features, the topography renders the remainder of the property unbuildable.

Finally, with respect to the requested variance relief from the 50% footprint limitation, Mr. Kline asserted that an accumulation of small accessory buildings on a property is not as damaging as the presence of a single large accessory building, and that the footprint of the new accessory building is less than 50% of the footprint of the main building.¹

10. Richard Stifel testified that the home on the subject property was built around 1852, and does not have much of a basement, resulting in limited storage. He testified that the proposed accessory building is intended to provide additional storage space for his tractor and vehicles, and to provide studio space for his wife. He testified that the outbuilding that the proposed accessory building is replacing was a chicken coop or shed.

In response to a Board question asking if there was any way he could meet the 50% footprint limitation, Mr. Stifel indicated that it might be possible to remove one of the garages or perhaps the playhouse, or worst case to remove a portion of the new accessory building. He indicated that he had not done the calculations to ascertain which of the existing structures would have to be removed in order to comply with the 50% footprint limitation.

11. Lida Stifel testified that she uses the existing one-story frame structure as her art studio. She testified that it is packed with her paintings, and that she needs additional space. She testified that the proposed accessory building would have a beautiful view of the garden, would allow her to invite others to her studio (to paint or to view her artwork), would allow her to be far enough removed to paint from models, and would have good light.

¹ Mr. Kline also noted at the hearing that the Zoning Ordinance uses the singular "building" in setting this limit. While he asserted that an argument could be made that this limitation is a per structure limitation, he acknowledged that the position of the County's Department of Permitting Services is to interpret this as a cumulative limitation on the footprint of all accessory buildings, and that the Board has previously sustained the Department's interpretation.

FINDINGS OF THE BOARD

Based on the Petitioners' binding testimony and the evidence of record, the Board finds that the variance to permit the proposed construction of an accessory building in a location forward of the rear building line, and the 7.40 foot variance needed to locate this accessory building within 7.60 feet of the side lot line, can be granted because they comply with the applicable standards and requirements set forth in Sections 59-7.3.2.E.2.a through e of the Zoning Ordinance, but that the requested variance to permit an accessory structure footprint greater than 50% of the footprint of the main building must be denied because it fails to meet Section 59-7.3.2.E.2.c, as follows:

1. *Section 59-7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.i: exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds, based on testimony and exhibits of record, that in addition to having an unusual five-sided, rhomboidal shape, the subject property is significantly encumbered with exceptional topographical conditions throughout, such that the elevation of the property falls approximately 30 feet from the existing house to the road, and falls off 16 feet to rear, after which it drops another 30 feet to the creek below. See Exhibits 3 and 4(b). Accordingly, the Board finds that the subject property satisfies this element of the variance test.

Section 59-7.3.2.E.2.a.v: the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the testimony and exhibits of record, that the location of the proposed accessory building close to the property line comports not only with the established historic or traditional development pattern on this property (where the proposed development is in a similar location relative to the side lot line as a previously existing accessory building and as three other existing accessory buildings), but also with the pattern on neighboring properties, including but not limited to the abutting property to the northwest. See Exhibits 3, 4(a), and 7. Thus the Board finds that the proposed development satisfies this element of the variance test.

2. *Section 59-7.3.2.E.2.b: the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioners are not responsible for the topography of the subject property, nor are they responsible for the established historic or traditional development pattern of accessory buildings being located close to the property lines on the subject property and on neighboring properties. See Exhibits 3, 4(a), 4(b), and 7. Thus the Board finds that there is no evidence in the record to suggest that the Petitioners created the special circumstances pertaining to this property.

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 that the topography of the property's rear yard limits the ability of the Petitioners to locate an accessory structure behind the rear building line, creating a practical difficulty for the Petitioners. The Board finds that the requested variance, to allow the proposed accessory building to be located in front of the rear building line, is the minimum necessary to overcome the practical difficulty imposed by compliance with this locational restriction of the Zoning Ordinance.

The Board further finds that the requested variance to allow the proposed accessory building to be located within 7.60 feet of the side lot line is the minimum needed to overcome the practical difficulties that would be imposed by locating the proposed structure in compliance with the setbacks set forth in the Zoning Ordinance because adherence to those setbacks would not allow location of the proposed structure in a manner that is consistent with the established historic or traditional development pattern of this property and neighboring properties. The Board notes that granting this variance would allow this accessory structure to be placed in a location that is consistent with that of its predecessor structure and with other existing accessory structures on the subject property and on neighboring properties.

With respect to the requested variance to permit a total accessory structure footprint that is greater than 50% of the footprint of the main building, the Board cannot find that this is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose due to the property's unique conditions set forth above. First of all, the Petitioners have not demonstrated that the subject property has any unusual or extraordinary situations or conditions for the purposes of meeting Section 59-7.3.2.E.2.a of the Zoning Ordinance which would prevent the construction of an accessory building that meets the 50% footprint limitation. Secondly, in response to Board questioning, the Petitioners testified that it was possible to remove one or more of the other existing accessory buildings in order to comply with the footprint limitation, or that if need be, the size of the proposed accessory building could be reduced. In light of that, the Board cannot find that compliance with this restriction poses a practical difficulty for the Petitioners or that the variance requested is the minimum needed. Accordingly, having found that the requested variance from the footprint limitation does not meet this element of the variance test, and given that the variance test is a conjunctive and not disjunctive test, the Board finds that the requested variance to permit a total accessory structure footprint that exceeds 50% of the footprint of the main building must be denied.

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 the variances to allow construction of this accessory structure forward of the rear building line and in close proximity to the side lot line, consistent with other existing structures on this and neighboring properties. will continue the residential

use of this property, and can be granted without substantial impairment to the Potomac Subregion Master Plan (2002).

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 that, based on the Statement at Exhibit 3, that the grant of the requested variances to allow the construction of the proposed accessory building forward of the rear building line and in close proximity to the side lot line will not be adverse to the use and enjoyment of abutting or confronting properties. The Board notes in support of this finding that the proposed accessory building will replace a previously existing outbuilding, and that adjacent property owners with adjoining outbuildings even closer to the common property line do not object to the requested variances. See Exhibits 3 and 4(a).

Accordingly, the requested variances to allow an accessory building to be located in front of the rear building line and within 7.60 feet of the side lot line are **granted**, subject to the following condition:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4(a), 5(a) and 5(b).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, with Stanley B. Boyd, Vice Chair, and Katherine Freeman in agreement, and with Jon W. Cook necessarily absent, 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.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 9th day of May, 2019.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.