

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6743**

**PETITION OF PHILIP KULP**

**OPINION OF THE BOARD**  
(Public Hearing Date: April 27, 2022)  
(Effective Date of Opinion: May 11, 2022)

Case No. A-6743 is an application by Petitioner Philip Kulp for a variance needed for the proposed construction of an accessory structure. The proposed construction requires a variance to be located forward of the rear building line. Section 59-4.4.7.B of the Montgomery County Zoning Ordinance requires that accessory structures be located behind the rear building line of the principal building.

The Board of Appeals held a hearing on the application on Wednesday, April 27, 2022. Petitioner Philip Kulp participated in support of the requested variance.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 5, Block A, Williamsburg Gardens Subdivision, located at 10404 Holbrook Drive in Potomac, Maryland, 20854, in the R-200 Zone. It is a four-sided property, 20,597 square feet in size, with a relatively straight front lot line that extends 170.63 feet along the west side of Holbrook Drive. The property's right side lot line is set at a right angle to its Holbrook Drive frontage, and is 143.66 feet long. The property's left side lot line is also set at a right angle to Holbrook Drive, but at only 35.16 feet in length, is less than one-quarter as deep at the property's left side. The property has a sharply angled rear lot line, 257.45 feet in length, that connects its two sides. The extreme difference in the depth of the two side lot lines, coupled with the property's generous width, causes the property to present as having a triangular shape. See Exhibits 3, 4(b), and 7(b).

2. The Petitioner's Justification Statement ("Statement") states that the Petitioner purchased the subject property in 2016, and that at the time of purchase, the property was already improved with a home, deck, swimming pool, and a concrete area around the pool. See Exhibit 3. The Statement indicates that the Petitioner is seeking to construct a pavilion "at the side of the existing house, existing pool, and within the confines of the existing fence." The Statement states in multiple places that the Petitioner is unable to locate the proposed pavilion behind the rear building line of the house, as is required by the Zoning Ordinance, because of the property's unusual shape and the proximity of the existing improvements to the property lines, as follows:

The shape of the property is triangular, and the property lines converge from the street to a point at the rear of the property. While the lot is almost  $\frac{1}{2}$  an acre, when the house was constructed in 1957, the builder chose to place the primary structure near the rear at the converging lines of the triangle. Previous owners constructed the deck and pool area further back into the converging area of the property lines. We would like to construct an accessory structure next to the pool but due to the proximity of the primary structure to the rear property line and the triangular shape of the property, a location rear of the building line and set back from the rear property is not possible.

\* \* \* \* \*

The property has an irregular triangular shape which is wide at the street, narrow in depth, and the side property lines converge to a point at the rear of the property. The existing primary structure is only 20' from the rear property line, and the existing deck is only 13' from the rear property line. The existing pool consumes the rest of the area in the converging property located behind the house. Due to the converging dimensions of the triangular property and the location of the existing structures, there is no possible location behind the rear building line of the property, which also complies with setback requirements.

4. The Statement indicates that the locations of the existing house and other improvements are not attributable to the Petitioner, stating that the house was built in 1957, that the "decisions for the location of the primary structure at the narrow area at the rear of the property were made by the builder," and that the property's previous owners constructed the pool and the concrete area around it. See Exhibit 3.

5. The Statement describes the proposed pavilion in some detail, and noting that the "[t]he 168 ft<sup>2</sup> structure is minimal with a 12'x14' footprint and includes a roof overhang on the sides," and that the "dimensions of the structure were chosen to minimize the footprint in the location while still meeting the setback requirements," noting that the proposed accessory structure will meet both the side and rear setbacks. The Statement states that without the grant of the requested variance, the Petitioner would be unable to build the proposed structure. See Exhibit 3.

6. With respect to the impact of the proposed construction on neighboring property owners, the Statement at Exhibit 3 notes that "[t]he proposed pavilion will be constructed behind a fence that provides an obstructed view from the street and most neighbors, along with the existing topology, trees, and bushes," later stating that:

The proposed location for the accessory structure is within the confines of the existing fence, so it will be mostly obstructed from street and side views. The exterior portion of the proposed structure is cedar which is the same as the primary structure's siding. We also plan on using a stain color that is similar in appearance to the house. The rear neighbors have 1 acre lots, so the building is far from their homes and mostly obstructed from view by trees and bushes on their properties. The pavilion roof is flat to further reduce the shape and height of the structure, which limits the view for neighbors and the street. The pavilion will be placed next to the existing pool, and we believe it will enhance the aesthetics of the location.

7. At the hearing, Mr. Kulp testified that the subject property has a triangular shape, with the existing house located in the area where the lot lines converge. He testified that the house, deck, and pool were constructed prior to his ownership and were already on the property at the time of his purchase. Mr. Kulp testified that the proposed pavilion will be located in an area where a large tree recently died, and that this is the only area on the property that is available for its construction. Mr. Kulp stated that the design of the pavilion complements the existing house. He testified that the proposed pavilion will be behind a solid wood fence that will minimize its visibility from the street, and that trees and shrubbery will limit the view from the rear.

In response to Board questions, Mr. Kulp testified that he had spoken with some but not all of his neighbors regarding the proposed construction. He stated that the neighbors with whom he had spoken did not have an issue with his proposal.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and the evidence of record, the Board finds that the requested variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E, as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds, based on the Statement and Site Plan, that the subject property has an unusual shallow and triangular shape. See Exhibits 3 and 4(b). The Board further finds, based on the Zoning Vicinity Map, that the shallowness and shape of the subject property are unique among neighboring improved properties. See Exhibit 7(b). Thus the Board finds that the shape of the subject property constitutes an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the Petitioner purchased the subject property in 2016, and is not responsible for its unusual shallowness and shape, in satisfaction of this element of the variance test.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the subject property was developed in 1957, and that the location of the existing house and subsequent improvements, all of which predate the Petitioner's purchase of the property, leave no room for the proposed construction behind the rear building line of the Petitioner's home, on account of the property's shallowness and shape. The Board finds that this causes the Petitioner a practical difficulty in that it precludes construction of the proposed pavilion without variance relief. The Board finds that the requested variance is the minimum needed to overcome this practical difficulty. In support of this, the Board notes that the proposed pavilion is modest in size, and will meet the required side and rear setbacks. Thus the Board finds that this element of the variance test is satisfied.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the proposed construction will continue the residential use of the home, and thus can be granted without substantial impairment to the intent and integrity of the Potomac Subregion Master Plan (2002), in satisfaction of this element of the variance test.

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.*

Based on the Statement and the testimony of Mr. Kulp, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test. See Exhibit 3. The Board notes, in support of this finding, that the proposed pavilion will be located behind a fence and buffered from view by that fence, existing vegetation, and topography. See Exhibit 3. The Board further finds that the proposed structure will have a flat roof, which will minimize its visibility and perceived height. Finally, the Board notes that the record does not contain any objections to the grant of the requested variance.

Accordingly, the requested variance to permit the construction of an accessory structure forward of the rear building line is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines in agreement, and with Roberto Pinero 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.



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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 11th day of May, 2022.



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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.