

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6818

PETITION OF DIRK AND ANITA BURGENDORF

OPINION OF THE BOARD
(Public Hearing Date: July 19, 2023)
(Effective Date of Opinion: July 26, 2023)

Case No. A-6818 is an application by Petitioners Dirk and Anita Burgdorf for two variances needed for the proposed construction of a shed. The proposed construction requires a variance of 11.50 feet as it is within 0.50 feet of the rear lot line. The required setback is twelve (12) feet, in accordance with Section 59.4.4.7.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of 11.50 feet as it is within 0.50 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 July 19, 2023. Petitioner Anita Burgdorf appeared in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Block Eye, Lot 9, Milestone Subdivision, located at 21515 Manor View Circle in Germantown, Maryland, 20876, in the R-200 Zone. It is a five-sided corner lot with three front lot lines. The property's northwest and northeast front lot lines are both slightly convex, and follow the curvature of Red Admiral Way and Manor View Circle respectively. The property's third (northern) front lot line is a short, truncated corner that faces the intersection of these two streets. The property's remaining two property lines (right side/southwest and rear/southeast) are both straight; they meet at an acute angle at the property's southern-most point. The property has an area of 8,506 square feet, and was recorded in 1991. Per SDAT, it contains a house that was constructed in 1994, and was purchased by the Petitioners in 2002. See Exhibit 1, 4, and 7(a), and SDAT printout.

2. The Petitioners' Statement of Justification ("Statement") states that they are seeking to replace an existing shed that is located 0.5 feet from their right side lot line. The Statement states that due to the placement of their house on the property, and the property's topography, there is no other place to locate the shed. See Exhibit 3.

3. The Statement states that the narrowness, shallowness, shape, topography, and other extraordinary conditions peculiar to the Petitioners' property cause them a practical difficulty. The Statement states that their property's topography and unusual shape limit the locations available for their replacement shed to the proposed location. See Exhibit 3. The Site Plan and Zoning Vicinity Map confirm that the subject property has an unusual five-sided shape. See Exhibits 4 and 7(a). In addition, the Site Plan indicates that the area behind the rear building line of the Petitioners' house is sloped, and the Petitioners have included photographs of their property depicting this slope with their submission. See Exhibits 4 and 5(c)-(e). Finally, the Statement states that the Petitioners' shed cannot be moved any further from their right side lot line because of the presence of a mature tree that "helps to support the soil in that part of the hill." The Statement further states that "[i]f the tree were disturbed, the land would be compromised and impact the area surrounding the tree which would thus potentially impact the structural integrity of the foundation of the home." See Exhibit 3. The tree in question can be seen in one of the Petitioners' photographs, and its location is shown on the Site Plan. See Exhibits 4 and 5(d).

4. The Statement states that "[o]ther homes in this community have sheds already constructed within the required setbacks." See Exhibit 3. The Petitioners include photographs, including an aerial photograph, showing a shed on the abutting property that appears to be located in close proximity to the property lines. See Exhibits 5(c), 5(d), and 7(c).

5. Finally, the Statement states that the proposed shed will not be adverse to the use and enjoyment of neighboring properties because the Petitioners' property is encircled by a tall fence. See Exhibit 3. The photographs submitted by the Petitioners show a solid wood fence with a lattice top. See Exhibit 5(c)-(e). The plans for the shed indicate that the peak of the shed roof will be a maximum of 8.5 feet tall. See Exhibit 5(b).

6. At the hearing, Ms. Burgdorf testified that the subject property contains an existing shed that has a hole in its roof. She testified that she and her husband purchased a replacement shed a year ago, and that they have been working to secure the approvals necessary for its installation/construction. She testified that the replacement shed has the same floor area as the existing shed but might be slightly taller. Ms. Burgdorf testified that the replacement shed would be located in the same place on the property as the existing shed.

Ms. Burgdorf testified that her property is shaped like a diamond (i.e. like the gemstone). She testified that her backyard is shaped "like a funnel" and that it slopes down and across, directing water towards the shed. Ms. Burgdorf testified that the

existing shed is on a pedestal to allow drainage underneath it, towards the park that is located behind their property. She testified that the location of the existing shed is the only possible location for the replacement shed without excavation of the slope or other extreme measures, and noted that placement of the shed mid-slope would block drainage and possibly flood their house.

Ms. Burgdorf testified that their home was constructed in 1994, and that they purchased it in 2002. She testified that she has spoken to her neighbors and that none of them object to the proposed replacement of the existing shed. Ms. Burgdorf testified that some of her neighbors have accessory structures that are similarly situated. Finally, in response to a Board question, Ms. Burgdorf testified that they did not plant the mature tree that is located next to their existing shed, and that the proposed replacement shed would not have water or electricity.

FINDINGS OF THE BOARD

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

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

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

The Board finds, based on the Statement, Site Plan, and Zoning Vicinity Map, that the subject property has an unusual, five-sided shape, with three front lot lines, and converging right side and rear lot lines that meet at an acute angle, thus leaving a small, triangular area “behind the rear building line” of the house where an accessory structure such as a shed can be installed. See Exhibits 3, 4, and 7(a). The Board finds that the application of the required setbacks further constrains this already small buildable area, and further finds, based on the Statement, the photographs of record, and the testimony of Ms. Burgdorf, that the slope of the property’s rear yard precludes construction except in the location of the existing shed. See Exhibits 3, 4, and 5(c)-(e). The Board finds that these circumstances, taken together, constitute an extraordinary condition peculiar to this property, in satisfaction of 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;

Based upon the Statement and the testimony of Ms. Burgdorf, the Board finds that the proposed shed will be located in substantially the same place on the property as the existing shed. See Exhibit 3. The Board further finds, based on the Statement, photographs, and testimony of Ms. Burgdorf, that there are other accessory structures in the neighborhood that are located close to the property lines, similar to the Petitioners’

proposed shed. See Exhibits 3, 5(c), 5(d), and 7(c). Thus the Board finds that the location of the proposed shed will substantially conform with the established pattern for placement of accessory structures in this neighborhood, in satisfaction of this element of the variance test.

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

The Board finds that the subject property was recorded in 1991, and that its shape and slope are not the result of any actions by the Petitioners, who purchased the property in 2002. In addition, the Board finds that the established pattern for placement of accessory structures in the neighborhood is not the result of any actions by the Petitioners. Accordingly, the Board finds that the special circumstances or conditions peculiar to this property are not the result of actions by the Petitioners, in satisfaction of this element of the variance test.

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

The Board finds, based on the Statement, that full compliance with the setbacks in the Zoning Ordinance would not allow the Petitioners to replace their existing shed in its current location, and that the shape and topography of their property limit and foreclose other potential locations, causing the Petitioners a practical difficulty. The Board further finds, based on the Statement, Site Plan, and the testimony of Ms. Burgdorf, that the requested variances are the minimum necessary to allow the placement of the proposed replacement shed in the same location as the existing shed. Thus the Board finds that the requested variances are the minimum necessary to overcome the practical difficulties posed by full compliance with the Zoning Ordinance on account of the property's slope and unusual shape, in satisfaction of this element of the variance test.

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

The Board finds that allowing the Petitioners to proceed with the proposed construction of a replacement shed will continue the residential use of this home, and thus can be granted without substantial impairment to the intent and integrity of the applicable Germantown Master Plan, 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.*

The Board finds, based on the Statement, photographs, and the testimony of Ms. Burgdorf, that the proposed shed will replace an existing shed, that it will be located on the same area of the property as the existing shed, and that it will be at least partially screened from view by an existing fence. See Exhibits 3 and 5(c)-(e). In addition, the Board finds, based on the Zoning Vicinity Map and the testimony of Ms. Burgdorf, that the


area behind the Petitioners' house is parkland, thus reducing the number of neighbors who might be potentially impacted by the proposed construction. See Exhibit 7(a). The Board further finds, based on the testimony of Ms. Burgdorf, that the Petitioners have spoken to those neighbors who might be impacted by the proposed replacement shed, and that none object. Finally, the Board notes that despite being properly Noticed and posted, the record contains no opposition to the grant of the requested variances, and no one appeared at the hearing in opposition. In light of the foregoing, the Board finds that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variances, needed for the construction of the proposed shed, are **granted**, subject to the following conditions:

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

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines and Alan Sternstein in agreement, and with Laura Seminario-Thornton 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 26th day of July, 2023.



Barbara Jay
Executive Director

NOTE:

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

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

See Section 59.7.3.2.G of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.