

**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-6829

PETITION OF KYLE WALKER AND NIAMH REDMOND

OPINION OF THE BOARD
(Public Hearing Date: October 11, 2023)
(Effective Date of Opinion: October 25, 2023)

Case No. A-6829 is an application by Petitioners Kyle Walker and Niamh Redmond for two variances needed for the proposed construction of a shed. The proposed construction requires a variance of three (3) feet as it is within two (2) feet of the rear lot line. The required setback is five (5) feet, in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of three (3) feet as it is within two (2) feet of the side lot line. The required setback is five (5) feet, in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on October 11, 2023. Petitioners Kyle Walker and Niamh Redmond appeared in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Block 3, Lot 20, Manor Woods Subdivision, located at 14502 Westbury Road in Rockville, Maryland, 20853, in the R-90 Zone. It is a five-sided corner lot with three front lot lines. The property is located on the west side of Westbury Road and the south side of Levada Terrace. The property's frontage along Westbury Road is longer than its frontage along Levada Terrace. In addition, the property's Levada Terrace frontage is slightly concave, following the curvature of that street. The property's

third (eastern) front lot line is a short, truncated corner that faces the intersection of these two streets. The property's remaining two property lines are both straight; they meet their respective front lot lines at right angles and meet each other at a slightly acute angle at the property's western-most point. The property has an area of 9,181 square feet, and was recorded in 1964. Per SDAT, it contains a house that was constructed in 1965, and was purchased by the Petitioners in 2019. See Exhibit 1, 4, and 8(a), and SDAT printout.

2. The Petitioners' Statement of Justification ("Statement") states that they are seeking to construct an 8' x 10' shed in the rear (western) corner of their property. The Statement states that the Petitioners intend to use the shed to store lawn equipment, a child's bicycle, and other athletic equipment, all of which are either being stored outside under a tarp, or in the Petitioners' laundry room. The Statement notes that most of the homes in the Petitioners' subdivision either have a carport/garage or a shed to store these types of items, and that the Petitioners' home has neither. See Exhibit 3.

3. The Statement describes the Petitioners' property as "a 0.21-acre corner lot that is oddly shaped and on the downstream end of Levada Terrace." See Exhibit 3. The Statement states that the "location and topography of the lot means that during and after rains, the backyard can experience significant volumes of water runoff from upstream neighboring properties due to its topography," noting that "[t]he property slopes from back to front with steepest slope being on left side of the house." See Exhibit 3.

4. The Statement states that if the requested variances are not granted, the shed would be "positioned within the existing drainage path from upstream lots." The Statement further states that compliance with the required setbacks would entail the "removal of existing vegetation (dogwood tree, azalea bushes and forsythia bushes)..." Finally, the Statement states that the requested variances are the minimum needed to "facilitate the ability to construct the shed without having to regrade the backyard and change the existing drainage pattern and to avoid having to remove existing vegetation." See Exhibit 3.

5. The Statement states that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties because the shed "will be mostly out of view due to an existing fence on the subject property and mature vegetation that the petitioner does not intend to remove." See Exhibit 3. The Petitioners have submitted letters of support for the grant of the requested variances from numerous neighbors. See Exhibits 7(a)-(j).

6. The Petitioners have included several Exhibits to their Statement, including a topographical map showing the property's slope, a photograph showing drainage across the rear corner of the subject property during a normal rain event, and comparative photographs depicting the required location for the proposed shed versus the proposed location. These photographs also show the existing fencing and vegetation. See Petitioners' Exhibits 1-4 to their Statement (BOA Exhibit 3).

7. At the hearing, Mr. Walker testified that he and Ms. Redmond are seeking variance relief to allow them to construct a shed in the back (western) corner of their yard. Mr. Walker testified that the subject property is a corner lot, and that it is located at a low point on the street. Mr. Walker testified that placing the proposed shed in accordance with the setbacks required by the Zoning Ordinance would disturb the natural drainage pattern through their yard. He referred the Board to the topographical map and first photograph that were attached to the Statement. See Petitioners' Exhibits 1 (topo map) and 2 (first photograph) to the Statement (BOA Exhibit 3). Mr. Walker testified that the blue arrow on the topographical map shows the drainage from upstream properties through their side yard. He testified that the first photograph shows the "stream" of water that flows through their yard during a normal rain event, later testifying that there would be more water if the rain were heavy. Mr. Walker testified that the water comes through the bush and down the channel, as shown by the arrows superimposed on this photograph. He testified that in the photographs at Exhibits 3 and 4 to their Statement, there is an orange bucket placed to show where the corner of the proposed shed that is closest to the house would be located without the grant of the requested variances (Petitioners' Exhibit 3), and with the grant of the requested variances (Petitioners' Exhibit 4). See Petitioners' Exhibits 3 and 4 to the Statement (BOA Exhibit 3). Mr. Walker testified that as shown in those pictures, if the variances are not granted, the shed will block the drainage channel, but if they are granted, the shed will be located outside of the drainage channel.

Mr. Walker testified that due to the layout of their property, the area proposed for the shed is their back yard. He testified that the only thing he and Ms. Redmond have done to the exterior of their property since purchasing it is to replace an existing fence that was falling down. Mr. Walker testified that most of his neighbors have a shed, a carport, or a garage that they can use to store things like lawn equipment. He testified that the subject property has none of these. After Ms. Redmond noted that there is no exterior entrance to their basement, Mr. Walker testified that they would have to bring the lawn mower through their house if they wanted to store it in their basement.

Mr. Walker testified that his immediate neighbors have all submitted letters of support for the requested variances. See Exhibits 7(a)-(j). In response to Board questions asking if he had letters of support from those neighbors who would be most impacted by the proposed shed, i.e. his abutting neighbors along Levada Terrace and Westbury Road, Mr. Walker indicated that he did.

8. Ms. Redmond testified that she and Mr. Walker purchased the subject property in 2019. She testified that she believed the previous owners had a shed in the location proposed for the new shed, and that those owners had removed it at some point prior to selling the house. Ms. Redmond testified that there is a significant slope in their rear yard, and that the patio and landscaping in that area existed at the time of their purchase. In response to a question asking how tall the proposed shed would be, Ms. Redmond testified that it would be about nine and a half feet tall, and that while her abutting neighbor on Westbury Road would be able to see part of the shed, the view would be screened by the existing fence and a dogwood tree.

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 and Petitioners' Exhibits thereto, notably the topographical map and photographs showing the drainage pattern on the property, that the subject property slopes downward from back to front, with the steepest slope being on the left side of the house. See Exhibit 3. The Board further finds, based on the Statement and the Petitioners' Exhibits thereto, and on the testimony of Mr. Walker, that the subject property is located downhill from other properties, that water from the uphill properties runs through the Petitioners' yard along a natural drainage channel, and that during heavy rain events, the volume of water running through the Petitioners' yard can be "significant." See Exhibit 3. The Board finds that these circumstances constitute 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 subject property was recorded in 1964, and that its slope and elevation relative to other properties in the neighborhood are not the result of any actions by the Petitioners, who purchased the property in 2019. 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 and the testimony of Mr. Walker, that because of the property's slope and its low elevation relative to its neighbors, the proposed shed would be located within an existing natural drainage channel if it were to be placed in full compliance with the setbacks required by the Zoning Ordinance, causing the Petitioners a practical difficulty. The Board further finds that a fully compliant location would disrupt the established water flow pattern, and would potentially causing problems not only for the shed but also for nearby residences. See Exhibit 3. In addition, the Board finds, based on the Statement, that the requested variances are the minimum needed to "facilitate the ability to construct the shed without having to regrade the backyard and change the existing drainage pattern...." 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 elevation relative to neighboring properties, 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 construction of the proposed shed will continue the residential use of the home, and thus can be granted without substantial impairment to the intent and integrity of the Aspen Hill Master Plan (1994), which seeks, among other things, to "protect and reinforce the integrity of existing residential neighborhoods," 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 and the testimony of Ms. Redmond, that the view of the proposed shed will be obscured by an existing fence and landscaping, and thus that the shed will be "mostly out of view." See Exhibit 3. The Board further finds that the record contains letters of support from all of the Petitioners' abutting and confronting neighbors, and a few others. See Exhibits 7(a)-(j). 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.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Richard Melnick, Vice Chair, Laura Seminario-Thornton, and Alan Sternstein in agreement, the Board adopted the following Resolution:

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



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 25th day of October, 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.