

**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-6910

PETITION OF MARVIN & MARY MARGARET HARRIS

OPINION OF THE BOARD
(Hearing Date: April 9, 2025)
(Effective Date of Opinion: April 23, 2025)

Case No. A-6910 is an application by Marvin and Mary Margaret Harris (the "Petitioners") for variances needed in connection with the proposed construction of an accessory structure (detached garage). The proposed construction requires a variance to be located forward of the rear building line. In accordance with Section 59.4.4.4.B.2.c of the Zoning Ordinance, any accessory structure must be located behind the rear building line of the principal building. In addition, the proposed construction requires a variance of thirty (30) feet as it is within fifty (50) feet of the front lot line. The required setback is eighty (80) feet, in accordance with Section 59.4.4.4.B.2 of the Zoning Ordinance. Finally, the proposed construction requires a 4% variance as the footprint of the proposed garage is 54% of the existing main building footprint size. In accordance with Section 59.4.4.4.B.2.d of the Zoning Ordinance, the maximum allowable footprint is 1,102 square feet.

The Board of Appeals held a hearing on the application on April 9, 2025. Petitioner Marvin Harris appeared at the hearing in support of the variance application. He was represented by Angela Nasata, Esquire. Builder Robert Velisek testified in support of the application, as did Paul M. Sill, P.E., who was accepted as an expert witness.

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

EVIDENCE PRESENTED

1. The subject property is Lot 15, Block A, Foxlair Acres Subdivision, located at 22116 Creekview Drive in Gaithersburg, Maryland, 20882, in the RE-2 Zone.

2. The subject property is a three-sided, two (2) acre lot. The entire north side of the property is bordered by Creekview Drive, which extends in a straight line for approximately 275 feet from the property's westernmost corner along the northwest side of the property before curving almost 90 degrees to the east, after which point it straightens out again continues in a southeasterly direction for approximately 51 feet, to the easternmost corner of the property. The entirety of the Creekview Drive frontage is viewed as the front lot line of the property. The property's rear (southwest) lot line is straight and is 260.46 feet in length; it meets the front lot line at a 90-degree angle. The property's side (southeast) lot line is also straight and is 442.44 feet in length. It also meets the property's front lot line at a 90-degree angle, and it joins the property's southwest lot line at the southernmost corner of the property at a slightly acute angle. The net effect is that despite having only three sides, the property generally presents as a rectangular corner lot with an arced corner. See Exhibits 3, 4(a)-(b), and 9(a).

3. The property contains a house that is set far back on the property, close to its southern corner. The house is set diagonally on the property such that it "faces" the curve of abutting Creekside Drive. See Exhibits 3 and 4(a)-(b). Per SDAT, the house was built in 1987, and the property was purchased by the Petitioners in 2021. See SDAT Printout.

4. The Site Plan contains contour lines which indicate that the property slopes downward from a high point of 504 feet at its southernmost corner to a low point of approximately 470 feet along its northeastern frontage. See Exhibits 4(a)-(b). The Petitioners' variance Application cites the property's topography, as well as its shallowness and shape, as features that make it unique. See Exhibit 1.

5. The Site Plan also shows that the property contains a 16.5 foot wide utility easement that extends along the entirety of the property's rear (southwestern) lot line. The Site Plan shows that there is a well with a 100 foot diameter buffer zone located behind (south) and to the left (east) of the Petitioners' house. Finally, the Site Plan shows that the majority of the Petitioners' "front" yard is occupied by a large septic reserve area, and that there is a 10 foot public utility easement and a 20 foot slope easement that run the length of the property's front lot line along Creekview Drive. See Exhibits 4(a)-(b).

6. The Petitioners' Statement of Justification ("Statement") states that the Petitioners' front yard is "mostly flat, but the rear yard sits much higher than the front yard and the house." The Statement states that the Petitioners' house sits "on the very rear" of their property and that it is "not square" to the lot lines. The Statement states that the house is "positioned such that the desired garage location will violate the rear plane of the house." The Statement notes the presence of "17-foot [wide] utility right of way along the rear of the Property line," and states that the property's well "is located to the left side of the rear yard." See Exhibit 3.

7. The Statement states that "[t]he layout of the property and the original improvements provides few areas to accommodate the installation of the accessory structure without significant disturbance of the current landscape and property elevation." The Statement notes that the Petitioners are not the original owners of this property and

are not responsible for its current layout. The Statement states that placing the proposed garage behind the rear building line of the house will "require removal and leveling of a substantial portion of the rear yard," necessitating "approximately 174 feet of retaining wall" and the removal of existing mature landscaping. See Exhibit 3.

8. The Statement states that given the "limited space between the principal structure and the side and rear property lines (and related easements)," the requested variances are the minimum needed to "accommodate the needs of their household (five adults including Petitioners, all of driving age), while maintaining the aesthetic appearances of the neighborhood." In addition, the Statement states that "as more fully noted on the design sketches and layouts, the three variances are the minimum exceptions needed to overcome the practical difficulties that full compliance with the current restrictions would impose." The Statement explains that with the grant of variances to allow the proposed structure to be located forward of the rear building line and fifty (50) feet from the front lot line, "the accessory structure would be placed in an area with minor disturbance to the Property while, simultaneously, allowing for maximum use and access." Regarding the requested 4% variance from the footprint limitation, the Statement states that "approving a 4% size variance relating to the customary limitation of any accessory structure being less than 50% of the footprint of the principal structure does not dramatically impact the appearance but does permit Petitioners full satisfaction as to both need and use of the accessory structure." See Exhibit 3.

9. The Statement states that granting the requested variances will allow the Petitioners to construct an accessory structure (detached garage) that conforms to the established development pattern in their neighborhood. The Statement states that "most of the houses in Petitioners' neighborhood also sit on two acre lots and have 2 or 3 car attached garages," and that "[s]everal of houses also have a detached two or three car garage and one house [has] a detached four car garage." The Statement includes addresses and photographs of eleven such properties. See Exhibit 3.

10. The Statement states that granting the requested variances will not be adverse to the use and enjoyment of abutting and confronting property owners. The Statement states that the Petitioners "sought the advice, input and consent of all nine (9) of their neighbors," and further states that "as evidenced by the letters in support of Petitioners' application, each and all neighbors have given their respective support and approval for Petitioners' request." In addition, the Statement states that the proposed location for the accessory structure "is the least visually-intrusive to any potentially impacted neighbor," noting that the proposed placement of the structure "does not appear to impact any of the neighbor's visual sight-lines." See Exhibits 3 and 7(a)-(i).

11. At the hearing, Mr. Sill testified that the property is generally rectangular in shape, with street frontage on two sides, two utility easements, and a WSSC easement. He testified that the property is sloped, with an elevation that falls from 504 feet to 470 feet. Mr. Sill testified that in his expert opinion, based on the property's existing septic reserve area and topography, and the resultant location of the house to the back of the property, there is no way to locate the proposed garage behind the house. He testified that none

of these circumstances are due to the actions of the Petitioners. Mr. Sill testified that in his opinion, the requested variances satisfy all of the elements of the variance test that is set forth in Section 59.7.3.2.E.2 of the Zoning Ordinance. He testified that if the size of the proposed garage were reduced, the Petitioners would lose a garage door.

12. Ms. Nasata stated that the subject property is unique. She stated that the Petitioners have owned the subject property since 2021. Ms. Nasata stated that the Petitioners have three adult children living in the house with them. She stated that the proposed three-car, detached garage is in keeping with the character of the neighborhood. Ms. Nasata stated that the area of the property where the Petitioners propose to locate their garage minimizes disturbance.

13. Mr. Velisek testified that he has worked for Morton Buildings for over four years, and that he has built a lot of buildings in Montgomery County. He testified that the proposed garage is a pre-engineered 30 foot by 40 foot (1,200 square foot) building, and that the next smaller size garage has an area of only 728 square feet. Mr. Velisek testified that the smaller garage would not meet the Petitioners' needs and would not allow them to house their cars and lawnmower. He testified that the proposed building is the only structure that would address the Petitioners' needs, and that the proposed location is the only place that the structure would fit on the property without significant land disturbance. In addition, Mr. Velisek testified that the back corner of the subject property borders other adjacent properties, and that locating the structure in that corner would have a greater impact on those properties than the proposed location. Finally, Mr. Velisek testified that the requested 4% variance from the footprint limitation would not dramatically impact the appearance of the structure.

14. Mr. Harris testified that it is typical in his community to have both an attached garage and a detached garage, providing combined garage space for five (5) cars. He testified that at least five homes in his neighborhood have this arrangement. Referring to the Zoning Vicinity Map, Mr. Harris showed the Board where the homes with these types of structures that are pictured in his Statement are located relative to his home. He noted that three of the detached garage structures appeared to be set forward of the rear building line.

Mr. Harris testified that he has lived in Montgomery County for a long time, and that he has lived at the subject property since 2021. He testified that he moved to the subject property after his daughter and son-in-law moved in with him, resulting in the need for a larger home. Mr. Harris testified that everyone who lives at the subject property drives a car. He testified that in addition to space for vehicles, he also needs space to store equipment associated with his profession. Mr. Harris testified that denial of the requested variances would cause him an undue hardship, and that at present, he has to keep a lot of equipment on his porch.

Mr. Harris testified that the proposed garage is consistent with the architecture of the neighborhood. He testified that he has spoken with his neighbors, and that they are supportive of the proposed construction.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variances can be granted because they 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 Site Plan, that the subject property is encumbered with multiple easements and a large septic reserve field that prevented the Petitioners' house from being located farther forward on the property, which in turn limited the area behind the rear building line of the house that is available for the construction of an accessory structure. In addition, the Board finds that the presence of a well, with its 100-foot diameter buffer zone, and the 16.5 foot wide utility easement behind the property's rear building line further diminish the area available for the construction of an accessory structure, and that the application of the required setbacks further constricts the available area. Finally, the Board finds, based on the Statement and Site Plan, that the property's slope prevents the construction of an accessory structure in the allowed area without regrading and the installation of a retaining wall. See Exhibits 3 and 4(a)-(b). The Board finds that these features combine to create 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;*

The Board finds, based on the Statement, the SDAT Printout, and the testimony of Mr. Harris, that the Petitioners purchased their property in 2021, and that their house was built on that property in 1987. Accordingly, the Board finds that the Petitioners are not responsible for the circumstances that make their property unique, namely the siting of their house, the presence and placement of the septic reserve field, easements, and well on their property, and the property's slope. In light of this, the Board finds that this element of the variance test is satisfied.

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 and Site Plan, the Board finds that the subject property's large septic reserve area and the resultant placement of the house towards the rear of the property, and the location of the Petitioners' well and the buffer zone around that well, coupled with the topography of the property and the presence of a utility easement, significantly constrain the area available for the erection of an accessory structure without variance relief, causing the Petitioners a practical difficulty. The Board further finds, based on the testimony of Mr. Harris and Mr. Velisek, that compliance with the footprint

limitation would prevent the Petitioners from being able to construct an accessory structure of a size that meets their needs, and as demonstrated in their Statement and through testimony, that substantially conforms with other such structures in their neighborhood. The Board finds that this also causes the Petitioners a practical difficulty. Finally, the Board finds that the requested variances are the minimum needed to overcome these practical difficulties, and to allow the Petitioners to undertake the proposed construction, 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;*

The Board finds that the construction of the proposed accessory structure continues the residential use of this property, and thus finds that the requested variances can be granted without substantial impairment to the intent and integrity of the general plan and applicable 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.*

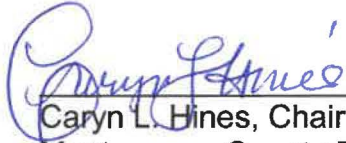
The Board finds, based on the Statement and the testimony of Mr. Harris, that granting the requested variances, needed to allow the construction of the proposed accessory structure, will not be adverse to the use and enjoyment of abutting or confronting properties. The Board further finds, based on the Statement, that the proposed location minimizes any visual intrusion of the proposed structure on neighboring properties. See Exhibit 3. The Board notes that the Petitioners have submitted letters of support for the grant of the requested variances from numerous neighbors. See Exhibits 7(a)-(i). Finally, the Board finds that the variance proceedings were properly noticed and the variance sign 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 variances. In light of the foregoing, the Board finds that granting the variances will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variances, needed to allow construction of the proposed accessory structure (detached garage) 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(a)-(b) and 5(a)-(i) (exterior elevations only).

Therefore, based upon the foregoing, on a motion by Donald Silverstein, seconded by Richard Melnick, Vice Chair, with Caryn L. Hines, Chair, Alan Sternstein, and Amit Sharma 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.


Caryn L. Hines, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 23rd day of April, 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.

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.

