

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6928

PETITION OF JAMIE AND RICHARD HARPER

OPINION OF THE BOARD

(Opinion Adopted July 30, 2025)
(Effective Date of Opinion: August 6, 2025)

Case No. A-6928 is an application for a variance needed for the proposed construction of an accessory structure (pergola). The proposed construction requires a variance of five (5) feet as it is within five (5) feet of the rear lot line. The required setback is ten (10) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on July 30, 2025. Petitioners Jamie and Richard Harper appeared in support of the requested variances. They were assisted by Lynnette Brunson of Brunson Designs.

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

EVIDENCE PRESENTED

1. The subject property is Lot 32, Block J, Georgetown Village 6 Subdivision, located at 9933 Mayfield Drive in Bethesda, Maryland, 20817, in the R-60 Zone. It has an area of 6,848 square feet. The subject property is a four-sided corner property, bordered to the west by Mayfield Drive and to the north by Camrose Terrace. The property's frontage along Camrose Terrace follows the curvature of the street and is convex. The "corner" where the property's front lot lines meet is arced. The subject property's rear (south) and side (west) lot lines, which are straight and are set at right angles to their respective front lot lines, meet at a significantly obtuse angle. The result is that the property has a very unusual shape. Per SDAT, the subject property contains a house that was built in 2012, and it was purchased by the Petitioners in 2015. See Exhibits 4 and 6, and SDAT Printout.

2. The Petitioner's Justification Statement ("Statement"), which describes the subject property as "unique," states that the house on the subject property is set back approximately 27 feet from both Camrose Terrace, where the functional "front" of the Petitioners' home is located, and Mayfield Drive. As a result, the Statement states that the house "sits substantially back" on the subject property, and that the southeast corner of the Petitioners' home sits about seven (7) feet from the closest property line (i.e. the side (east) property line). See Exhibit 3.

3. The architectural Site Plan shows that the Petitioners' house occupies nearly all of their property's buildable envelope, and that the back of their house sits on the rear setback line, twenty (20) feet from the property's rear lot line. See Exhibit 3(b).

4. The Statement states that a pergola is allowed as an accessory structure in the R-60 Zone, and that the Petitioners are seeking to construct a 21'-6" x 13'-6" pergola structure on their property. The proposed pergola will be located five (5) feet from both the side (east) and rear (south) lot lines. It will be fourteen (14) feet tall. The Statement states that "[b]ecause of the unique conditions of the site it is impractical to build the accessory structure" in compliance with the required ten (10) foot setback from the rear lot line. The Statement states in support of this that the Petitioner's existing house "has a 7' side building restriction line, a 25' front building restriction line (Mayfield Dr and Camrose Terr), and a 20' rear building restriction line...." The Statement further states that the house has "an existing 15'-0" x 15'-0" concrete patio" that is "unbearable to fully enjoy" because of the amount of sunlight it receives. The Statement states that the proposed pergola "is being installed to provide a shaded area." The Statement indicates that the proposed pergola meets all of the setback requirements "except for meeting the rear building restriction line requirement of 10'-0". See Exhibit 3.

5. The Statement states that construction of the proposed pergola will not require the removal of any trees. The Statement further states that because of the "spacing of the surrounding houses," the proposed pergola "would only be seen by two neighbors who have no objection to its placement." See Exhibit 3. The Petitioners have submitted letters of support from both of these neighbors. See Exhibits 3(f) and (g). The Statement states that because the Petitioners' house "sits above the street line elevation," and because the Petitioners intend to install a 72-inch privacy fence, the proposed pergola will not be easily visible from Mayfield Drive. See Exhibits 3 and 3(e). Finally, the Statement states that the proposed location of the pergola "will not impact the natural drainage slope of water." See Exhibit 3.

6. The Statement states that the subject property is also unique for the purposes of satisfying Section 59.7.3.2.E.2.a of the Zoning Ordinance because "[t]he rear and one side of the lot are concealed by adjacent properties," and the view into the back yard area will be obscured by the proposed 72-inch privacy fence. In addition, the Statement states that the Petitioners "have proposed placing the accessory structure in a location that will preserve the natural surroundings." See Exhibit 3.

7. The Statement states that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose due to the unusual or extraordinary situations or conditions on this property. In support of this, the Statement states that the subject property's "unique situation compared to neighboring properties ... causes the zoning requirements to disproportionately impact the property's reasonable use and enjoyment, creating a practical difficulty." In addition, the Statement states that the proposed pergola will meet all of the zoning requirements except one, noting that "[t]he pergola will slightly extend beyond the building line by 5 feet." Finally, the Statement states that "[p]lacing the structure 10 feet from the side and rear lines is impractical." See Exhibit 3.

8. The Statement states that granting the requested variance "does not impact the integrity or purpose of the general plan or applicable master plans." In addition, the Statement states that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties. The Statement states that "[t]he proposed pergola accessory structure will be minimally visible from the street and only visible to two neighbors," and that it will "maintain the residential character of the neighborhood." See Exhibit 3.

9. At the hearing, Petitioner Jamie Harper testified that she and her husband have a tiny backyard that receives lots of sun in the summer, rendering it unusable because of the heat. She testified that they are seeking to install a pergola to provide some shade and make their backyard more livable. Petitioner Richard Harper testified that they are seeking space for their family and friends to gather.

10. Lynette Brunson testified that the subject property has little rear yard area. She testified that when the property was built, it included a concrete slab patio, but that the patio is incredibly hot because there is no shade. Ms. Brunson testified that the Petitioners cannot build a screened porch on the back of their home because of the setback requirements.

Ms. Brunson testified that the shaded area on Exhibit 3(b) shows the location of the proposed pergola. She testified that the existing slab would be redone, and that the pergola area would be extend slightly farther across the back of the house than the existing slab. Ms. Brunson testified that because of the constrained space behind the Petitioners' house, the proposed pergola would be "tight" to the property's side and rear lot lines. See Exhibit 3(b). She testified that there would be a 72-inch privacy fence around the rear of the Petitioners' property for screening. See Exhibit 3(e).

In response to a Board question asking if the unusual shape of the property, which is caused in part by the curvature of Camrose Terrace, forced the house to be sited toward the rear of the property, Ms. Brunson testified that it did. In response to a Board question about the orientation of the house, Ms. Brunson testified that the house fronts on Camrose Terrace but is addressed on Mayfield Drive, where the driveway and side of the house are located. She testified that this orientation also makes the subject property unusual.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59.7.3.2.E of the Zoning Ordinance, 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 the testimony of Ms. Brunson, that the subject property has an unusual shape, with curved frontage on Camrose Terrace that meets the property's frontage along Mayfield Drive at an arced corner, and remaining lot lines that meet at a significantly obtuse angle, giving this four-sided property a somewhat triangular shape. The Board finds that the property's unusual shape constrains its buildable envelope and thus limited the area available for the location of the Petitioners' house, causing the house to be located towards the rear of the property and leaving little room behind the house for the erection of accessory structures without variance relief. See Exhibits 3, 3(b), and 4. The Board finds that these factors, taken together, 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 Petitioners are not responsible for the shape of the subject property or the location of their home on that property, since their home was built in 2012, and the Petitioners purchased the property in 2015. See SDAT Printout. Thus the Board finds that the unusual circumstances peculiar to this property, notably its unusual shape and the constrained buildable area arising from that shape, 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 Site Plan, that the unusual shape of the subject property, and the resultant constraints on its buildable envelope, cause the setback and locational requirements of the Zoning Ordinance to leave insufficient room for the placement of the proposed pergola structure on the subject property. See Exhibits 3, 3(b), and 4. In support of this, the Board finds that as an accessory structure, the proposed pergola must be located behind the rear building line of the Petitioners' house, an area that the Site Plan shows is only twenty (20) feet deep. In addition, the Board finds that because the subject property is a corner lot in the R-60 Zone where the

abutting property fronts on the side street, the proposed accessory structure must be located ten (10) feet from the property's rear lot line, leaving only ten (10) feet between the rear plane of the Petitioners' house and the setback line. See Exhibit 4. The Board further finds, based on the Statement and the testimony of Ms. Harper and Ms. Brunson, that the proposed pergola is intended to provide shade for the part of the property that houses its existing patio. See Exhibit 3. In light of the foregoing, the Board finds that the requested variance is the minimum needed to allow the Petitioners to locate the proposed pergola on their property behind the rear building line of their house and in the area that is currently improved with a patio, and is thus the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would pose for the Petitioners on account of their property's unusual shape. Accordingly, 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 allowing the Petitioners to proceed with the proposed construction is consistent with the residential uses contemplated by the North Bethesda/Garrett Park Master Plan, which seeks to "protect and reinforce the integrity of existing residential neighborhoods." Thus the Board finds that this element of the variance test is satisfied.

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.*

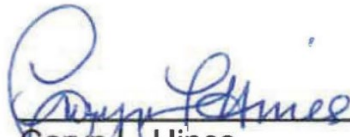
The Board finds, based on the Statement and the testimony of Ms. Brunson, that the proposed pergola "will be minimally visible from the street and only visible to two neighbors," and that it will "maintain the residential character of the neighborhood." See Exhibit 3. The Board further finds that the two neighbors who would be most impacted by the proposed pergola structure have submitted letters supporting the grant of the requested variance. See Exhibits 3(f) and 3(g). In addition, the Board finds, per the Statement and the testimony of Ms. Brunson, that the Petitioners intend to install a 72-inch privacy fence that will further obscure the view of the proposed pergola structure. Finally, the Board notes that despite being properly Noticed and posted, the record contains no written opposition to the grant of the requested variance, and no one appeared at the hearing to oppose the variance. Thus the Board finds that granting the requested variance, which is needed for construction of the proposed pergola, will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance from the rear lot line, necessary to allow construction of the proposed accessory structure (pergola), is **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 3(b), 4, and 5(a)-(i).

Therefore, based upon the foregoing, on a motion by Alan Sternstein, seconded by Amit Sharma, with Caryn L. Hines, Chair, Richard Melnick, Vice Chair, and Donald Silverstein 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 6th day of August, 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.