

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6936

PETITION OF SHERRY LYNN JACOBS HARDY

OPINION OF THE BOARD

(Hearing Date: October 8, 2025)

(Effective Date of Opinion: October 15, 2025)

Case No. A-6936 is an application by Petitioner Sherry Lynn Jacobs Hardy for variance relief needed for the proposed construction of a shed. The proposed construction requires a variance of two (2) feet as it is within three (3) feet of the left side lot line. The required setback from the side lot line is five (5) feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of two (2) feet as it is within three (3) feet of the rear lot line. The required setback from the rear lot line is also five (5) 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 October 8, 2025. Petitioner Sherry Lynn Jacobs Hardy appeared in support of the requested variances.

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

EVIDENCE PRESENTED

1. The subject property is Lot 12, Block 3, Hillwood Manor Subdivision, located at 7204 13th Place in Takoma Park, Maryland, 20912, in the R-60 Zone. It is an interior lot located on the west side of 13th Place. The subject property is rectangular in shape, with a width of sixty (60) feet and a depth of ninety-five (95) feet, for a total area of 5,700 square feet. The property contains a house that was built in 1941. It was purchased by the Petitioner in 2001. See Exhibits 1, 1(a), and 1(b).

2. The Petitioner's variance Application states that there was a "very old 8' x 9' shed in the southwest back corner" of the property (i.e. the left rear corner), located approximately six (6) inches from the abutting property lines. See Exhibits 1 and 1(c). The Application states that the former shed collapsed, and that the Petitioner is seeking to replace it with a "10' x 12' Heartland Shed." The Application states that the Heartland Shed requires a three (3) foot setback, and that it will be placed on a concrete pad. The Application states that the Petitioner is seeking a variance to locate the new shed three (3) feet from the side and rear lot lines, noting that "[a]lthough the difference between a 5-foot and 3-foot setback may appear minor, in the context of such a small backyard, it would have a significant impact on both the usable space and the overall aesthetics of the property." See Exhibit 1. The Petitioner includes diagrams of her property showing the location of the shed with the required five (5) foot setbacks and with the requested three (3) foot setbacks. See Exhibits 1(g) and 1(h). The Application states that the requested two (2) foot variances are the "minimum necessary to overcome practical difficulties" posed by full compliance with the five (5) foot setbacks that are required by the Zoning Ordinance. See Exhibit 1.

3. The Application states that the subject property's "small lot size, shortage of usable space, and inability to effectively landscape around the shed with the 5-foot setback because of its proximity to existing hardscaping" make the property unique for the purposes of satisfying Section 59.7.3.2.E.2.a.i of the Zoning Ordinance. See Exhibit 1. The Application further states that with an area of 5,700 square feet, the subject property is substandard in size for the R-60 Zone, which has a minimum lot size of 6,000 square feet. Finally, the Application states that the usable area of the Petitioner's rear yard, which was small to begin with, is constrained by the presence of hardscaping that further reduces its usable space and exacerbates the adverse impact posed by full compliance with the Zoning Ordinance, as follows:

The rear yard at its maximum width is 27' x 60' (rear wall of house to fence), but with the flagstone path and deck along the back, the usable open space is only approximately 19' x 60'. A 5-foot variance around the shed would take up 255 sq.ft., or 22% of that usable space and place the shed in an awkward and isolated location in the middle of the side yard.

In addition, the 5-foot setback would place the shed only 1'-1'4" away from an existing flagstone path, creating a narrow strip of unusable space that breaks up the backyard even further and would be difficult to landscape or maintain. By contrast, a 3-foot setback would increase the space between the shed and the path to 3'-3'4". This would help alleviate the impact of the awkward shed location and put it more in context with the size of the yard by moving it closer to the fence. This additional space also would eliminate the 1-foot strip and allow for planting bushes and other vegetation to further integrate the shed into the backyard and maximize its usable space.

See Exhibits 1, 1(g), and 1(h). The Application states that the Board “has granted setback variances to other property owners in Takoma Park with similar awkward backyard situations.” See Exhibit 1.

4. In addition to having a small size that makes it unique for the purposes of granting a variance, the Application states that the requested location for the proposed shed would substantially comply with the established historic or traditional development pattern for the placement of sheds in this street or neighborhood, which would also serve to make the property unique for the purposes of the variance test. The Application states that the Petitioner's original shed was built in or around the time that her house was built at a distance of six (6) inches from the property lines, and that the five (5) foot setback requirement did not exist at that time.¹ The Application states that “[b]ecause the neighborhood is older and no setback requirement existed, sheds in [the Petitioner's] neighborhood historically are near the property lines.” In addition, the Application states that because the neighborhood is “older,” most properties do not have driveways or garages, and instead rely on sheds for storage. To illustrate this point, the Application states that “of the 12 houses on [the Petitioner's] street, 13th Place, only 3 have driveways and small garages. The rest of the houses do not have garages and rely on sheds for storage.” Thus the Application concludes that the proposed three (3) foot setback from the side and rear property lines “would be consistent with the traditional development pattern” of the neighborhood. See Exhibit 1.

5. The Application states that the conditions that make the subject property unique are not due to any actions of the Petitioner. The Application states that the need for the requested variance relief “is due to the property's original design and dimensions, which were established by the developer decades ago,” noting that the “substandard lot size, lack of a garage, and narrow yard were not created by petitioners, but limit available options today for placement of a shed.” See Exhibit 1.

6. The Application states that the requested variances can be granted without substantial impairment to the intent and integrity of the Takoma Park Master Plan. In support of this, the Application states that “[r]eplacing the shed would not negatively affect the residential use of the property,” and that the “variance request is consistent with the Takoma Park Master Plan goal to ‘[p]reserve existing residential character, encourage neighborhood reinvestment, and enhance the quality of life throughout Takoma Park.’” See Exhibit 1.

7. The Application states that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties. In support of this, the Application states that the proposed shed “will be screened from neighbors by existing fencing on three sides,” and that “[i]f the variance is granted, the east side of the shed will be planted with foliage.” In addition, the Application notes that the proposed shed “will replace a shed that had existed in that location for decades.” The Application states that the Petitioner and her husband “have contacted all adjoining and confronting neighbors, and they have

¹ The subject property was located in Prince George's County at the time of its development. See Exhibit 1(a).

no objection to the variance." See Exhibit 1. The Petitioner submitted emails from all of her abutting and confronting neighbors (five emails total) stating that they have no objection to the grant of the requested variances. See Exhibit 1(k).

8. At the hearing, the Petitioner testified that she is seeking variance relief to allow her proposed shed to be placed three (3) feet from her side and rear lot lines instead of the required five (5) feet. She testified that granting the requested variances will allow the new shed to be located in the same place as her previous shed. The Petitioner testified that with an area of 5,700 square feet, her property is the smallest in the neighborhood. She testified that her backyard is exceptionally narrow. In addition, the Petitioner testified that in her neighborhood, there is a pattern of sheds being located next to or on the abutting property lines. She testified that the location of her proposed shed is consistent with this neighborhood pattern, and that her shed is also consistent with the character of her home.

The Petitioner testified that adherence to the required five (5) foot setback would cause the shed to use up 22% of her backyard, causing her a hardship. She testified that the requested two (2) foot variances would make a big difference and would provide for more usable space in her backyard. The Petitioner testified that the need for the requested variances is not due to her actions, but rather to the size of her property and the absence of a garage. She testified that the requested variances are the minimum necessary to overcome the practical difficulties caused by her property's size and the required setbacks for a shed. The Petitioner testified that granting the requested variances would be consistent with the Takoma Park Master Plan and would not be detrimental to the general plan. Finally, the Petitioner testified that granting the requested variances would have no adverse impact on neighboring properties, stating that she had personally contacted the neighboring property owners and had received written consent for the placement of the proposed shed. See Exhibit 1(k).

In response to a Board question, the Petitioner testified that her original shed was eight feet by nine feet (8' x 9'), and that her proposed shed would be slightly larger (ten feet by twelve feet (10' x 12')) to allow increased storage for items such as her lawnmower and garden tools. In response to another Board question, the Petitioner testified that the proposed shed would not have plumbing, but may have electricity for lighting.

FINDINGS OF THE BOARD

Based on the Petitioner's 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 Application and Site Plan, and the testimony of the Petitioner, that the subject property is substandard in size for the R-60 Zone, which has a minimum lot size of 6,000 square feet. See Exhibits 1 and 1(a). The Board further finds that the substandard size of the property results in the property having an unusually small backyard, which in turn causes the application of the required accessory structure setbacks to result in an unusually constrained buildable area. The Board finds that this constitutes an extraordinary condition that is 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

The Board finds, based on the Application and the testimony of the Petitioner, that the location for the proposed shed, closer to the property lines than would otherwise be allowed by the Zoning Ordinance, substantially conforms with the established traditional pattern for placement of sheds in this neighborhood, in satisfaction of this element of the variance test. See Exhibit 1. In support of this, the Board finds that there was a shed in the left rear (southwest) corner of the subject property from the time the Petitioner's house was built in 1941, or shortly thereafter, until that shed collapsed. See Exhibits 1, 1(a), and 1(c). In addition, the Board finds, based on the Application, that because there was not a setback requirement for sheds when the Petitioner's neighborhood was developed, sheds are "historically" located "near the property lines." See Exhibit 1. Finally, the Board finds that because the Petitioner's neighborhood is "older" and most properties lack driveways or garages, homes in the Petitioner's neighborhood "rely on sheds for storage." See Exhibit 1. In light of this, the Board finds that the Petitioner's proposed shed substantially conforms with the established historic or traditional development pattern of a street or 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, based on the Application, that the Petitioner, who purchased the subject property in 2001, is not responsible for the substandard size of her property, which was developed in 1941, or for the established pattern for the placement of sheds in her neighborhood. See Exhibit 1. Thus 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;*

The Board finds that placement of the proposed shed in compliance with the setbacks required by the Zoning Ordinance would cause the Petitioner a practical

difficulty in that the shed not only could not be placed in a manner that is consistent with the historic location for a shed on the Petitioner's property, but also could not be placed in a manner that is consistent with the established historic pattern for the placement of sheds in the surrounding neighborhood. In addition, the Board finds that because of the small size of the Petitioner's property, compliance with the required setbacks would require the Petitioner to locate the shed in the middle of her backyard, in an awkward and isolated location that takes up a significant percentage of the usable space behind her house. The Board further finds that the variance relief requested by the Petitioner is the minimum needed to allow her to locate the proposed shed in a manner that provides the clearance the shed requires while at the same time approximating the historic shed location on her property, comporting with the established neighborhood pattern for the placement of sheds, and avoiding placement of the shed in the center of her backyard. In light of the foregoing, 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; and*

The Board finds that the proposed construction will continue the residential use of the property, and that the grant of the requested variances will not impair the intent, purpose, or integrity of the Takoma Park Master Plan (2000) which seeks, among other things, "to support stable 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 Application and the testimony of the Petitioner, that the location of the proposed shed is similar to the location of a shed that previously existed on the subject property, and conforms with the traditional pattern for the placement of sheds in the neighborhood. The Board further finds that the Petitioner has contacted all her abutting and confronting neighbors, and that none object to the placement of the proposed shed. See Exhibits 1 and 1(k). Finally, the Board notes that despite being properly Noticed and posted, no one appeared at the hearing in opposition to the grant of the requested variances. 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. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 1(d) and 1(h).

Therefore, based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by Alan Sternstein, with Caryn L. Hines, Chair, and Donald Silverstein in agreement, the Board adopted the following Resolution:

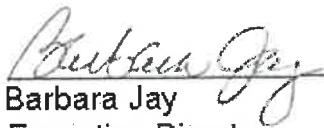
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



Caryn L. Hines

Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 15th day of October, 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 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.