

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. CBA-2506-A

PETITION OF TALLYHO CLUB, INC.

OPINION OF THE BOARD

(Public Hearing Date: May 15, 2002)
(Effective Date of Opinion: June 25, 2002)

Case No. CBA-2506-A is application for a modification to a special exception pursuant to Section 59-G-2.56 (Swimming Pools, Community) of the Zoning Ordinance. Pursuant to Section 59-A-4.11 of the Montgomery County Zoning Ordinance, on May 15, 2002 the Board of Appeals held a public hearing on the modification Application. Richard Iselin, President of the Tally Ho Pool Club appeared on behalf of the Petitioner. He called Richard Foster, the architect who designed the proposed modifications, as a witness.

The Board received no correspondence or testimony in opposition to the application.

Decision of the Board: Special exception modification **Granted**,
subject to conditions.

EVIDENCE PRESENTED

1. The subject property is Parcel A, located at 8650 Bells Mill Road, Potomac, Maryland, in the R-200 Zone.

2. The Tally Ho Club requests permission to improve its existing special exception by constructing (1) a wood deck on the western side of the pool, (2) a covered porch to adjoin the pool house, and (3) concrete extensions to the existing deck areas at the baby pool and new wood deck. [Exhibit No. 4].

2. Mr. Iselin explained that this would improve circulation around the swimming pool, add useful deck area around the more heavily used parts of the pool, and enhance the facilities for activities by adding shaded area.

3. Mr. Iselin stated that the subject property is heavily treed, and the use is well buffered from neighboring properties [Exhibit Nos. 6, 10].

3. No increase in membership or other intensification of the existing use is proposed [Exhibit Nos. 12 and 13(b)].

4. Two small floodlights would be located as indicated on Exhibit No. 4(b), and Exhibit No. 10, adjacent to the covered wood deck, and would be directed upward into the trees.

5. Maryland National Capital Park and Planning Commission staff recommends approval of the modification request, with conditions [Exhibit No. 12].

FINDINGS OF THE BOARD

Section 59-G-1.3(c)(4) of the Zoning Ordinance provides:

The public hearing [on a modification to a special exception] shall be limited to consideration of the proposed modifications noted in the Board's notice of public hearing and to discussion of those aspects of the special exception use that are directly related to those proposals.

Section 59-G-1.21 Standard for Evaluation

A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The Board finds that the inherent effects of the special exception were addressed at the time the special exception was granted. The Board finds that the proposed modification, as described above, creates no non-inherent adverse effects. The requested changes are focused on enhancing use of the existing

special exception by the current membership and will not change its impact on neighboring properties.

Section 59-G-2.56. Swimming Pools, community.

The provisions of subsection 59-G-1.21(a) shall not apply to this section. In any zone, a community swimming pool may be allowed, upon a finding by the board that such use will not affect adversely the present character or future development of the surrounding residential community, and that such use of land will conform to the following minimum requirements:

(a) The swimming pool, including the apron and any buildings, shall not at any point be closer than 75 feet from the nearest property line nor closer than 125 feet from any existing single-family or two-family dwelling; provided, that where the lot upon which it is located abuts a railroad right-of-way, publicly owned land or land in a commercial or industrial zone. Any buildings erected on the site of any such pool shall comply with the yard requirements of the zone in which the pool is located.

The Board adopts the MNCPPC staff finding that the proposed modification satisfies the yard requirements for the R-200 Zone.

(b) A public water supply shall be available and shall be used for the pool or use of a private supply of water for the pool will not affect adversely the water supply of the community.

Public water service is available to the existing special exception.

(c) When the lot on which any such pool is located abuts the rear or side lot line of, or is across the street from, any land in a residential zone, other than publicly owned land, a wall, fence or shrubbery shall be erected or planted so as to substantially screen such pool from view from the nearest property of such land in a residential zone.

The Board finds that the existing special exception is well buffered from neighboring properties by existing mature vegetation and trees. The modification will not change the screening.

(d) The following additional requirements shall also be met: Special conditions deemed necessary to safeguard the general community interest and welfare, such as provisions for off-street parking, additional fencing or planting or other landscaping, additional setback from property lines, location and arrangement of lighting and other reasonable requirements, including a showing of financial responsibility by the applicant, may be required by the board as requisite to the grant of a special exception. Financial responsibility shall not be

construed to mean a showing of a 100 percent cash position at the time of application but shall be construed to mean at least 60 percent.

Not applicable to the proposed modification.

Therefore, based upon the foregoing, the Board grants the requested modification, subject to the following conditions:

1. The Applicant shall be bound by all of its testimony and exhibits of record and the testimony of its witnesses, to the extent that such testimony and representations are identified in the Board's opinion granting the modification.
2. All terms and conditions of the original special exception, except as modified by the Board of Appeals shall remain in full force and effect.
3. The Applicant must comply with Department of Permitting Services requirements for sediment and erosion control permits prior to building permits.

On a motion by Allison Ishihara Fultz, seconded by Angelo M. Caputo, with Louise L. Mayer and Donna L. Barron, Vice Chairman in agreement, and Donald H. Spence, Jr., Chairman 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 case.

Donna L. Barron
Vice-Chairman, Montgomery County Board of

Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 25th day of June, 2002.

Katherine Freeman
Executive Secretary to the Board

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 (See Section 59-A-4.63 of the County Code). 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.