

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Rockville, Maryland 20850
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(240) 777-6600

Case No. A-6456

PETITION OF KEIR LIEBER AND MEREDITH BOWERS

OPINION OF THE BOARD
(Opinion Adopted March 4, 2015)
(Effective Date of Opinion: March 20, 2015)

Case No. A-6456 is an application for a variance to construct a swimming pool in a front yard. Section 59-4.4.7.B.2.a of the Montgomery County Zoning Ordinance requires that accessory structures be located in the rear yard.

The Board of Appeals held a hearing on the application on March 4, 2015. Keir Lieber and Meredith Bowers appeared and testified in support of their application.

Decision of the Board: Requested Variance **Denied**.

EVIDENCE PRESENTED

1. The subject property is Lot 16, Block 1, Kefauver Tract, Bradley Hills Subdivision, located at 7203 Bradley Boulevard, Bethesda, Maryland, 20817, in the R-200 Zone. The subject property is significantly set back from Bradley Boulevard on a pipe stem driveway. Two other houses share the driveway and are situated between the Petitioners' house and Bradley Boulevard. The pool would be located approximately 550 feet from Bradley Boulevard and not visible from that road. [Exhibit Nos. 3, 4, 8].

2. The Petitioners' lot is heavily wooded with mature trees except in the proposed location for the pool. The Petitioners state "The location of the pool would not be easily visible to neighbors, given the many buffer areas of trees and vegetation, and the pool would be one of many in the surrounding area." [Exhibit Nos. 3; 5(b)-(d)].

3. The Petitioners state that "six of the seven properties directly adjoining ours have swimming pools, most of which are located between our property line and the neighboring house." [Exhibit No. 3]. Ms. Bowers testified that both of the other properties along the shared pipe stem driveway, i.e. the homes between the subject property and Bradley Boulevard, have swimming pools.

4. In response to Board questions, the Petitioners stated that locating the pool in the rear yard would require removal of a number of large, mature trees which currently provide a natural barrier between the subject property and the neighboring property to the rear. [Transcript, March 4, 2015, p. 9]. In addition, Mr. Lieber stated that the woods around his house and the immediately neighboring homes have "been kind of untouched for 80, 90 years" and that having to remove trees to locate the pool in the rear yard "would shrink the size of this kind of unique private expanse of undeveloped woods." [Transcript, p. 12].

5. In response to a Board question Mr. Lieber stated that no trees would have to be removed to locate the pool in the front yard. [Transcript, p. 12].

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the requested variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-7.3.2.E.

1. *Section 59-7.3.2.E.2 each of the following apply:*

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 that subject property's location on a pipe stem driveway is somewhat uncommon, but not that unusual in the county, and not an extraordinary condition peculiar to this property.

2. *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 even if the property's location on a pipe stem lot were an extraordinary condition peculiar to this property, the practical difficulty that gives rise to the variance request does not derive from that condition, but rather from the Petitioners desire to preserve the trees on their property. The Board understands the desirability of preserving the trees, but finds that preserving the trees is a matter

of the Petitioners preference, rather than a practical difficulty that would justify a variance. The Board notes the holding of the Court of Special Appeals of Maryland in *Montgomery County v. Rotwein*, that a variance applicant must show more than simply that proposed construction would be suitable, or desirable, or could do no harm, or would be convenient or profitable to its owner. See *Rotwein*, 169 Md. App. 716, 730, 906 A. 2d 959, 967 (2006).

3. Because the application fails to meet the requirements of Section 59-7.3.2.E.2.c, the Board does not address the other provisions of Section 59-7.3.2.E.2.

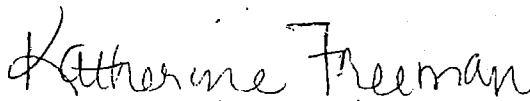
Therefore, based upon the foregoing, on a motion by David K. Perdue, Chair, seconded by Edwin S. Rosado, with Carolyn J. Shawaker, Vice-Chair, Stanley B. Boyd, and John H. Pentecost in agreement, the Board adopted the following Resolution:

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.



David K. Perdue
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 20th day of March, 2015.



Katherine Freeman
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 (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. 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.