

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

(240) 777-6600

**Case No. A-6460**

**PETITION OF OLGA CABELLO HENRY**

OPINION OF THE BOARD

(Hearing Held: April 15, 2015)

(Effective Date of Opinion: April 30, 2015)

Case No. A-6460 is an application by Olga Cabello Henry for a variance from the requirement in Section 59-4.4.4.B.2.c that accessory structures must be located behind the rear building line of the principal building. The Petitioner wishes to locate a swimming pool in her yard.

The Board of Appeals held a hearing on the application on Wednesday, April 15, 2015. Olga Cabello Henry appeared and testified in support of her application. Doug Parkinson of Anthony & Sylvan Pools also appeared and testified.

Decision of the Board: Variance Granted.

**EVIDENCE PRESENTED**

1. The subject property is Lot 20, Esworthy Estates Subdivision located at 10 Travilah Terrace, Potomac, Maryland, 20854, in the RE-2 Zone.
2. The subject property is a through lot, with frontage on three streets and with no rear yard. The architectural front of the house faces a pipe-stem driveway that fronts on Travilah Terrace; the architectural back of the house is towards River Road [See Exhibit Nos. 3 and 4].

3. The Petitioner purchased the property almost four years ago. She did not build the existing house, and always intended to have a pool.

4. Ms. Cabello Henry stated that five of the eight homes on Travilah Terrace have pools, one with a variance for the pool. She testified that there is another lot in her neighborhood that is bounded by roads on three sides and has a pool.

5. In response to a Board question Ms. Cabello Henry and Mr. Parkinson stated that the lot slopes, with an approximate 24-inch grade change "from the left-hand side toward Esworthy." [Transcript, April 15, 2015, p. 12.]

6. In response to a Board question, Ms. Cabello Henry and Mr. Parkinson said the lot is heavily wooded. Ms. Cabello Henry stated that you cannot see the house from anywhere [off of the lot]. [Transcript, p.13].

7. Mr. Parkinson stated that from a construction standpoint, the proposed location is the only feasible place to locate the pool on this property because of drainage issues due to the topography in the area north of the driveway that would funnel water into the pool, which would then freeze in the winter and cause the pool to crack. Ms. Cabello Henry stated that construction on the lot is further constrained by the presence of a septic field, and Mr. Parkinson added that there were also existing pipes that had to be considered.

## **FINDINGS OF THE BOARD**

Based on the petitioner's 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 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 that the subject property is extremely unusual, being a through lot with seven sides, and no rear.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

Ms. Cabello Henry purchased the property as it is now, and took no actions to create its unusual characteristics.

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;*

Since there is no rear lot line for this property, it is not possible to determine a location "behind the rear building line of the principal building" as the Zoning Ordinance requires for an accessory structure. Thus no accessory structure can be located anywhere on this lot without a variance, which the Board finds is a practical difficulty for the property owner.

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 allowing the Petitioner to have a swimming pool is entirely consistent with the residential uses contemplated for the neighborhood by the master plan. The Petitioner testified that a number of other homes have swimming pools.

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 can find no evidence that locating a pool in the proposed location, behind the architectural rear of the house, will adversely affect the use and enjoyment of abutting or confronting properties. Photographs in the record show, and both Mr. Parkinson and Ms. Cabello Henry testified that the lot is heavily wooded and the house is well set back from the abutting roads and from neighboring properties.

Accordingly, the requested variance to allow construction of a swimming pool in the side yard is **granted**, subject to the following conditions:

1. Petitioner shall be bound by her testimony, the testimony of her witness, and exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion; and

2. Construction shall be according to Exhibit Nos. 4 and 5(a) and (d).

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

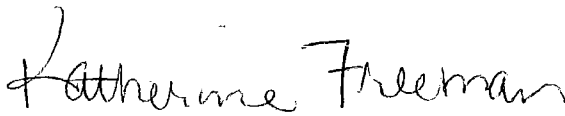
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



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David K. Perdue  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 30<sup>th</sup> day of April, 2015.



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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.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

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