

**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-6463**

**PETITION OF ALTON BARBER**

OPINION OF THE BOARD  
(Hearing Date: May 6, 2015)  
(Effective Date of Opinion: May 29, 2015)

Case No. A-6463 is an application by Alton Barber for a variance to construct a swimming pool in the side yard. Section 59-4.4.8.B.2.a requires accessory structures to be located in the rear yard.

The Board of Appeals held a hearing on the application on May 6, 2015. David DeLean of Allegro Pool Service testified in support of the application. Alton Barber also testified.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 68, Block B, Dunlap Hills Subdivision located at 7911 Rocton Avenue, Chevy Chase, Maryland, 20815, in the R-90 Zone. It is located at the corner of Rocton Avenue and East-West Highway.
2. Mr. DeLean testified that the rear yard of the property slopes steeply upward, away from the house, making it impossible to locate the pool there. In response to a Board question, Mr. DeLean stated that even if the pool could be located in the rear yard, because of the topography, the property would drain into the pool. Exhibit No. 7(b), a topographical map, shows the significant change in elevation from the front to the rear of the property.
3. Mr. Barber proposes to locate the pool in the side yard, in the northeast corner of the lot, along East-West Highway, in conformance with the 40-foot building restriction line. [See, Exhibit Nos. 4(a), 7(c)]. Mr. Barber testified that the pool will not be visible from the street. Along East-West Highway his property is 30 feet

higher than the street, and the right of way is heavily wooded. He also testified that locating the pool in the rear yard, as required by Section 59-4.4.8.B.2.a, would place it closer to the homes on abutting lots 25 and 26 on Brooklawn Terrace. [Transcript, May 6, 2015, p. 11; Exhibit Nos. 4(a), 7(c)].

## 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 rear yard of the subject property slopes severely upward, constraining the ability to locate a pool in the rear yard, and creating the potential for the yard to drain into a pool located there.

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 no evidence that the Applicant created the topographical constraints in the rear yard.

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 because of the rear yard's topography, the pool cannot be located there, creating a practical difficulty for the Applicant. The Board further finds that locating the pool in the side yard, along East-West Highway, in conformance with the 40-foot building restriction line will make it less visible to adjoining properties.

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 pool in the side yard of the residential property is consistent with the residential uses contemplated for the neighborhood, and causes no impairment to the master plan.

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 that according to Mr. Barber's testimony and the exhibits of record, location of the pool in the side yard will make it less visible to abutting or confronting properties than if it were in the rear yard. The pool will not be visible from East-West Highway, which is some 30 feet below the property's side yard, and the right of way is heavily wooded.

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 his testimony, the testimony of his 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(a), and 5(a).

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

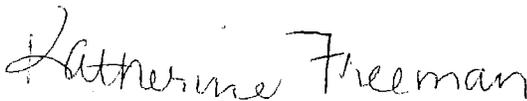
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



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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 29<sup>th</sup> day of May, 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 twelve (12) month period within which the variance granted by the Board must be exercised.