

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6500

PETITION OF ASHFAQ A. AND SHAGUFTA A. DAWOOD

OPINION OF THE BOARD

(Hearing Held: September 7, 2016)

(Effective Date of Opinion: September 22, 2016)

Case No. A-6500 is an application by Ashfaq A. and Shagufta A. Dawood (the "Petitioners") for a variance from the requirement in Section 59-4.4.4.B.2.c of the Zoning Ordinance that accessory structures be located behind the rear building line of the principal building. The Petitioners wish to locate a swimming pool in their yard.

The Board of Appeals held a hearing on the application on Wednesday, September 7, 2016. Mr. and Mrs. Dawood appeared and testified in support of their application. They were represented at the hearing by Christopher M. Ruhlen, Esquire, of Lerch, Early & Brewer, Chtd.

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

EVIDENCE PRESENTED

1. The subject property is Lot 189, 0039 Subdivision located at 12715 Split Creek Court, Gaithersburg, Maryland, 20878, in the RE-2 Zone.
2. The subject property is a through lot with frontage on two roadways: Split Creek Court to the south and Turkey Foot Road to the north. There is a continuous 10-foot wide public utility easement which precludes access from the property to Turkey Foot Road. See Exhibit 3.
3. The subject property "is accessed from the south via a pipe stem driveway to Split Creek Court, where one of the Property's front lot lines is located." The property contains a single family house, which was built in 1988. The architectural front of the house "is oriented to the driveway that runs to the west and south through the pipe stem portion of the property, to Split Creek Court." This westward orientation of the house is

evidenced by (1) the front door, which is located on the house's western façade; (2) a walkway leading out from the western façade and providing a direct connection to the front door; (3) a driveway loop located west of the house which emphasizes the western façade and front door as the destination for residents and visitors; and (4) a fence which extends from the garage on the house's southern façade, and which screens the view of the rear yard for visitors arriving at the residence. In addition, the property is addressed on Split Creek Court, and has its mailbox there. See Exhibit 3.

4. The property contains mature trees and other plantings which provide screening to the north, east, and south of the property, and which "effectively shields views into the rear yard from the immediately abutting RE-2 lots and from Turkey Foot Road, providing privacy while also reinforcing the western side of the lot as the functional front of the Property." See Exhibit 3.

5. The Petitioners are seeking to construct a swimming pool directly behind and east of the house and existing rear patio, on the eastern portion of this lot. DPS considers this property to have two front lot lines and multiple side lot lines. Because the property is not considered to have a rear lot line and because the methodology employed by DPS to determine a property's "rear building line" is dependent on the location of the rear lot line, DPS "lacks a point of reference by which to confirm that the proposed pool is located behind the rear building line," as required by the Zoning Ordinance, and has indicated that the proposed pool requires a variance to be located "on a lot with no rear." See Exhibits 3 and 6.

6. Numerous properties within the immediate neighborhood and in the general vicinity have swimming pools. Counsel for the Petitioners notes that "[o]f these, at least two (2) immediately proximate properties – 12721 Split Creek Court and 12716 Split Creek Court – are through lots with swimming pools located between the architectural rear of the principal structure and Turkey Foot Road." See Exhibit 3, Attachment F.

7. The record contains letters of support for the proposed construction from several immediate neighbors. See Exhibit 3, Attachment G.

8. At the public hearing, Mr. Ruhlen stated that without a variance, the Petitioners would be unable to locate any accessory structures on their property. He presented an aerial photograph showing the location of the property, backing to Turkey Foot Road, and explained that a public utility easement runs along that road. See Exhibit 10. Mr. Ruhlen also presented a drone photograph of the house on the subject property which reinforced his written descriptions regarding the front façade of the house and the adequacy of screening. See Exhibits 10 and 11.

FINDINGS OF THE BOARD

Based on the Petitioners' 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 a six-sided through lot, with multiple side yards and two front yards; one of this property's front yards has no street access because of a public utility easement. The Board further finds that this lot is unusual because as a technical matter, it has no rear lot line and no rear yard, as those terms are understood by the County's Department of Permitting Services, even though as made clear by the evidence, there is a functional front of this house, and, by extrapolation, a functional rear yard. Because this property lacks a rear lot line, DPS is unable to determine whether the proposed accessory structure, a swimming pool, is located behind the rear building line, as required by the Zoning Ordinance, and will not allow the construction of any accessory structures on the property without a variance.

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

The Petitioners purchased the property in 2015, 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;*

Even though this property has a functional rear yard, because 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 Petitioners.

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 Petitioners to have a swimming pool is entirely consistent with the residential uses contemplated for the neighborhood by the master plan. The written justification submitted with this variance indicates that a number of other homes in this neighborhood have swimming pools, and that at least two homes in the immediate vicinity have pools located in what a lay person would consider the rear yard of the relevant property, but in an area which DPS would not consider a rear yard because of its location between the house and Turkey Foot Road. See Exhibit 3.

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.*

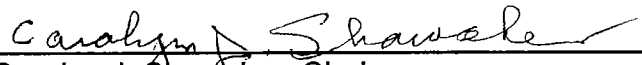
The Board can find no evidence that locating a pool in the proposed location, behind the architectural rear of the house, will adversely affect the use and enjoyment of abutting or confronting properties. The Statement submitted in connection with this variance requests describes mature trees and landscaping which obscure the view of the area in which the pool is proposed. See Exhibit 3. This is corroborated by the large aerial photographs of the neighborhood and house. See Exhibits 10 and 11. The record also contains letters of support from four neighbors. See Exhibit 3, Attachment G.

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

1. Petitioners shall be bound by their testimony and that of their counsel, and by exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice Chair, seconded by Edwin S. Rosado, with Carolyn J. Shawaker, Chair, Stanley B. Boyd, and Bruce Goldensohn 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.



Carolyn J. Shawaker, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 22nd day of September, 2016.



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.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

