

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6503

PETITION OF ROBERT D. AND LINDA A. YOUNGENTOB

OPINION OF THE BOARD

(Hearing Held: November 2, 2016)
(Effective Date of Opinion: November 21, 2016)

Case No. A-6503 is an application by Robert D. and Linda A. Youngentob (the "Petitioners") for a variance from the requirement in Section 59-4.4.8.B.2.a 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 and related equipment on their Property.

The Board of Appeals held a hearing on the application on Wednesday, November 2, 2016. Mr. and Mrs. Youngentob appeared at the hearing; Mr. Youngentob testified in support of their application. The Petitioners 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 13, Block 19, Edgemoor Subdivision, located at 7400 Glenbrook Road, Bethesda, Maryland, 20814, in the R-90 Zone (the "Property").
2. The subject Property is a corner lot with frontage on two converging rights-of-way, one of which is a curvilinear "paper street" (Hampden Lane) which runs along the west and south side of the Property, resulting in the subject Property having a "front" lot line along its eastern side (Glenbrook Road), a "side street" lot line (along the Hampden Lane paper street), and a "side" lot line, but no "rear building line." The Property is bordered by two residential properties to the north, along the side lot line. See Exhibits 3 and 4. Because the section of Hampden Lane running along this Property was never built, there

are also residential properties to the west and south, across the "paper street." See Exhibit 3.

3. Mr. Ruhlen stated that the "paper street" portion of Hampden Lane was platted in 1910 but was never built. Mr. Youngentob testified that Hampden Lane dead-ends at Glenbrook Road, and then continues on later, but not behind his Property. He testified that the County's Department of Transportation has stated that they have no intention of constructing this unbuilt portion of Hampden Lane. He testified that the paper street is currently used as a walking path; Mr. Ruhlen stated that it is dedicated to public use.

4. The site plan illustrates the unique shape of this property, which somewhat resembles a baseball field with the curved paper street delineating the outfield. See Exhibit 4.

5. Mr. Ruhlen stated that as a technical matter, because DPS does not view this Property as having a rear building line, DPS will not allow the Petitioners to construct a pool behind their home without a variance, since the Zoning Ordinance requires that accessory structures be located "behind the rear building line of the principal building." See Section 59-4.4.8.B.2.a of the Zoning Ordinance.

6. Mr. Youngentob testified that the subject Property contains an existing home and an existing kidney-shaped swimming pool.¹ He explained that he and his wife intended to replace the existing home with a smaller home, and that they wish to replace the kidney-shaped pool with a regularly-shaped pool. He testified that they intend to place the new pool and related equipment behind their new home, further back from the property line than the existing pool. See Exhibit 10. He noted that the new pool will be smaller than the existing pool. Mr. Youngentob testified that it was not until he went to DPS to apply for building permits that he learned that the area between the house and the curved paper street was considered a front yard.

7. The written justification submitted with this variance explains that the functional front of the Petitioners' home, like that of the existing home, will face Glenbrook Road, as follows:

... the architectural front of the new dwelling will face Glenbrook Road, as is the case for the existing structure. The Glenbrook Road orientation of the building is evidenced by the following features:

- The building's front door, which will be located on the eastern façade;
- A planned entrance walkway leading out from the eastern façade, which will provide direct connection to the front door;
- The driveway that will be located in the yard to the south of the dwelling and will provide access from Glenbrook Road to the east; and
- The addressing of the Property, which is from Glenbrook Road.

¹ Mr. Ruhlen stated that the existing pool is not considered nonconforming by DPS.

The western portion of the Property – i.e. the area located opposite to the building's front – will continue to serve as a typical residential rear yard, with a walk-out patio and associated landscaping and a lawn provided in the remainder.

See Exhibit 3 (September 23, 2016 letter). The written justification goes on to state that the grant of a variance will allow the construction of a pool in the "functional rear yard," and that "the proposed pool and its equipment would be located directly behind the main dwelling as shown on the attached plan." See Exhibit 3.

8. The area proposed for the pool and related equipment is "in an area where landscape screening exists and provides a visual buffer, both on-site and off-site. As a result, the proposed swimming pool will be effectively screened from view from confronting properties and will not be adverse to the use and enjoyment of their owners." See Exhibit 3.

9. The Petitioners' next door neighbors to the north at 7402 Glenbrook Road submitted a letter supporting the grant of this variance, as did their confronting neighbor at 7401 Glenbrook Road. See Exhibits 8(a) and (b).

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 unusual not only because of its unique "baseball field" shape, but also 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. The Board further finds that the lack of a rear lot line is caused by, and that this Property is made even more unusual because of, the existence of a "paper street" that borders the south and west sides of this Property. 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 this 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 Board finds that the paper street responsible for the unique characteristics of this Property dates back to 1910, and that the Petitioners, who only recently purchased this Property (2016), 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 the Petitioners are proposing to locate their pool behind their house on the side opposite of its functional front, 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 proposed pool and related equipment are consistent with the residential character of this single-family neighborhood, as evidenced by the longstanding existence of a pool at the existing home on this Property. The Board finds that the proposed variance to allow the Petitioners to have a new pool at their home is entirely consistent with the 1990 Approved and Adopted Bethesda-Chevy Chase Master Plan, which recommends low-density single-family residential development on this Property.

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 and related equipment in the proposed location, behind the architectural rear of the house, will adversely affect the use and enjoyment of abutting or confronting properties. The written justification submitted in connection with this variance states that the proposed pool will be located "in an area where landscape screening exists and provides a visual buffer, both on-site and off-site. As a result, the proposed swimming pool will be effectively screened from view from confronting properties and will not be adverse to the use and enjoyment of their owners." See Exhibit 3. The record also contains letters of support from two of the Petitioners' immediate neighbors. See Exhibit 8(a) and (b).

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 Stanley B. Boyd, with Carolyn J. Shawaker, Chair, Edwin S. Rosado, 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 21st day of November, 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.