

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/boa/

(240) 777-6600

Case No. A-6553

PETITION OF JOHN O'NEILL, JR.

OPINION OF THE BOARD

(Opinion Adopted March 28, 2018)
(Effective Date of Opinion: April 5, 2018)

Case No. A-6553 is an application for a nineteen (19) foot variance from the side street lot line setback required by Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance, as the Petitioner proposes to construct an accessory structure (swimming pool) within six (6) feet of the side street lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance.

The Board of Appeals held a hearing on the application on March 28, 2018. Petitioner John O'Neill, Jr., appeared and testified in support of the application. He was represented by Jody S. Kline, Esquire, and Somer Cross, Esquire.

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

EVIDENCE PRESENTED

1. The subject property is Lot P67, Block 4, Bradley Hills Section 2 Subdivision, located at 5101 Bradley Boulevard, Bethesda, MD, 20815, in the R-60 Zone. The property is a corner lot, with frontage on Bradley Boulevard to the south and Fairfax Road to the east. It is 8,672 square feet in size, and rectangular in shape. See Exhibit 3.

2. The Petitioner seeks a variance to locate a swimming pool in the area of his property which, per the Statement of Justification, "he and his family consider ... as their backyard and use ... that way." See Exhibit 3. The Statement of Justification explains that the Zoning Ordinance imposes many overlapping restrictions on the permissible location for an accessory structure on this property, including a 60 foot setback from the

front lot line along Bradley Boulevard, a 25 foot setback from the side street lot line along Fairfax Road, a requirement that the structure be located behind the rear plane of the house (i.e. on the north side), and a requirement that it be located set distances from both the rear and side lot lines. The Statement of Justification states that as a result of the application of these setbacks, the area available for the siting of this accessory structure is "very tight" and "an impossibly small amount of space" at only 648 square feet, or 7.45% percent of the total square footage of the property. See Exhibit 3, including Attachment H.

3. The Statement of Justification indicates that the small size of the subject property, coupled with the fact that it is a corner lot that has frontage on two streets, is an extraordinary condition peculiar to this property which causes the Petitioner an undue hardship and practical difficulty in locating his accessory structure in accordance with the setbacks imposed by the Zoning Ordinance, and that the requested variance would overcome this difficulty. It further indicates that the proposed construction will not be inconsistent or incompatible with the traditional development pattern of the surrounding neighborhood, and that consistent with the Bethesda Chevy-Chase Master Plan, it would encourage the preservation of single family detached neighborhoods in close proximity to the Central Business District. See Exhibit 3.

4. The Statement of Justification indicates that the subject property is well-screened, with "large trees that surround the house along the street frontages with breaks in the mature trees only where there are curb cuts to the respective streets." The Statement further notes that the Petitioner intends to install a six-foot, six-inch (6' 6") privacy fence, opaque to a height of six (6) feet, around the remainder of the pool area, including along Fairfax Road, "to enhance the screening of the pool" and to comply with the County's safety and security regulations. It indicates that the proposed fence will "absolutely block any views of the pool and its outdoor activities from adjacent neighbors [and] from pedestrians or vehicles traveling on Bradley Boulevard and Fairfax Road." See Exhibit 3, including Attachments D-G, I.

5. At the hearing, counsel for the Petitioner showed a PowerPoint presentation which began with an aerial view of the subject property and surrounding properties. The aerial photograph shows at least one home in the immediate vicinity along Bradley Boulevard that has a swimming pool, and another with a tennis court. It also shows the apartment buildings on the confronting property across Fairfax Road from the subject property, and the presence of diagonally-stripped parking spaces for those apartments on the east side of Fairfax Road, between the subject property and the apartments. In addition, the aerial photograph appears to show a median on Fairfax Road in front of the subject property. With respect to Bradley Boulevard, the photograph indicates that Bradley is six lanes wide at that location, not including the turn lane for Fairfax Road.

Following the initial aerial photograph, the PowerPoint proceeded to illustrate, incrementally, how the imposition of the various setbacks required by the Zoning Ordinance for the location of an accessory structure on the subject property acts to severely limit the buildable area available for such a structure. Counsel noted that

although it has been improved, the slate patio shown on the location drawing used in the PowerPoint, in the area of the allowable buildable envelope, existed when the Petitioner purchased the property. Finally, the PowerPoint included photographs of the existing trees and bushes on the property which would serve to screen the location of the proposed accessory structure from the street, as well as a photograph of the existing privacy fence. See Exhibit 10.

6. Counsel for the Petitioner stated that the proposed pool is not oversized, and that it has been located to minimize the variance needed, adding that the proposed location for the accessory structure would meet the required side yard setback if this were not a corner lot. He stated that an existing six-foot, six-inch (6' 6") fence would be extended along Fairfax Road and back to the house to further screen any view of the pool and to comply with County safety regulations. The fence would be inside the existing landscaping, which he described as "robust" and indicated would hide the fence along Fairfax Road.

7. The Petitioner testified that the fence would be inside of the treeline, several feet away from the road, and would not harm the existing trees. He testified that there are similar trees along his northern property line, and that the tree line would block the view of the proposed pool from both roads. He testified that he had discussed his proposed swimming pool with his abutting neighbors to the north (Mr. Begelman) and to the west (Mr. Smith), and that neither objected to the grant of the variance. Both neighbors submitted emails to this effect for the record. See Exhibits 9(a) and (b).

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 although the subject property meets the minimum lot size for the zone, it is not large. The Board further finds that the application of the required accessory structure setbacks to the subject property results in an allowable building area that is uniquely constrained, consisting of less than 7.5 percent of the property's total square footage. The Board finds that this constitutes an extraordinary condition peculiar to this property.

Section 59.7.3.2.E.2.a.v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

Based upon the aerial photograph contained in the PowerPoint at Exhibit 10, the Board finds that the proposed accessory structure (swimming pool) would substantially conform with the established historic or traditional development pattern along Bradley Boulevard, since at least two of the other seven homes along Bradley Boulevard that are shown in the aerial photograph have recreational facilities, including one that has an accessory structure (tennis court) in its front yard.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioner is not the original owner of the subject property, and is not responsible for its size or shape, or for the unusually constrained area available for the placement of accessory structures that results from the application of multiple setbacks imposed by the Zoning Ordinance on the location of accessory structures on this property. The Petitioner is similarly not responsible for the construction of recreational facilities on neighboring properties.

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 the application of the setbacks to this corner lot creates an extremely constrained buildable area for accessory structures—less than 7.5 percent of the lot's total square footage—creating a practical difficulty for the Petitioner. The Board notes that part of this available area was already occupied by an existing improvement (patio) when the Petitioner purchased the property. The Board finds that the requested variance of nineteen (19) feet into the side street lot line setback is the minimum needed to overcome this practical difficulty and allow the proposed construction.

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;*

The Board finds that the proposed accessory structure continues the single-family residential use of the home, and is consistent with the Bethesda Chevy-Chase Master Plan, which encourages the preservation of single family detached neighborhoods in close proximity to the Bethesda Central Business District.

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 notes that the Petitioner has discussed his proposed construction with his abutting neighbors to the north and west, and that neither objects to the construction or the grant of the variance, as reflected in Exhibits 9(a) and (b). Furthermore, the Board finds, based on the Statement of Justification, the testimony of record, and the photographs contained in the PowerPoint, that the proposed location is well-screened by


existing trees and shrubs, and that this screening will be further bolstered with the installation of a privacy fence. Finally, the Board notes that there is diagonally-striped parking for the confronting apartments across Fairfax Road, between the subject property and those apartments, and that Bradley Boulevard in front of the subject property is six lanes wide (seven if you count the turn lane). Thus the Board finds that granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance of nineteen (19) feet, to allow an accessory structure within six (6) feet of the side street lot line is **granted**, subject to the following condition:

1. The Petitioner shall be bound by his testimony and exhibits of record, and by the representations of his counsel, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.

Therefore, based upon the foregoing, on a motion by Edwin S. Rosado, Vice Chair, seconded by Bruce Goldensohn, with Stanley B. Boyd and Katherine Freeman in agreement, and with John H. Pentecost, Chair, necessarily absent, 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.



Edwin S. Rosado
Vice Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 5th day of April, 2018.



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-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.