

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6649

PETITION OF ADRIAN AND JANET HATHERELL

**OPINION OF THE BOARD
(Opinion Adopted April 8, 2020)
(Effective Date of Opinion: April 17, 2020)**

Case No. A-6649 is an application for two variances necessary for the proposed construction of an in-ground swimming pool. A variance of one (1) foot is needed because the proposed construction is within eleven (11) feet of the right side lot line. The required setback is twelve (12) feet, in accordance with Section 59-4.4.7.B.2 of the Montgomery County Zoning Ordinance. In addition, also in accordance with Section 59-4.4.7.B.2, the proposed construction required a variance to be located forward of the rear building line.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on April 8, 2020. Petitioners Adrian and Janet Hatherell participated via Microsoft Teams in support of the requested variances. The Hatherells were assisted by Doug Parkinson of Anthony Sylvan Pools, who also participated via Microsoft Teams.

Decision of the Board: Variances **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 26, Block F, Allanwood Subdivision, located at 2112 Drury Road, Silver Spring, Maryland, 20906, in the R-200 Zone. This five-sided property has front, left side, and rear lot lines that are set at right angles to one another. The shorter, northern portion of the right side lot line is also set at a right angle to the front lot line, but the longer, southern portion of that lot line is set at a sharp angle between the right side and rear of this property, causing the property to narrow substantially to the rear. Indeed, as shown on the Site Plan, the subject property is 150.00 feet wide at the front lot line, but only 56.96 feet wide at the rear lot line. See Exhibit 4(a).

2. The Petitioners submitted two Statements in support of the requested variances, in the record at Exhibits 3(a) and (b). Exhibit 3(b) indicates that the subject property has a "narrow sloped backyard with a well and drainage issues." It further indicates that the property also contains a septic system, and that Petitioners "didn't want to squeeze the swimming pool in between the Septic and the Well." Exhibit 3(a) states that the subject property "is only 56 feet in the rear yard" and is "unique when compared to the lots on both sides, which have much wider backyards." It further states that the backyard has topography issues that would make building a pool difficult, including a "large swale on the back right side" and a "3 foot slope from front to back" on the back left side, both of which funnel water towards neighboring properties. The Statement notes that building the pool in the backyard would "create even more issues with water run off."

3. The Statement notes that the proposed location "will have little to no impact on the neighboring properties," stating that it is "over 90 feet from the street and will be screened with trees, landscaping and a 5 foot high fence." See Exhibit 3(a). The Petitioners have provided photographs that show the tree cover in the proposed area. See Exhibit 5(d).

4. At the hearing, Mr. Parkinson testified that the proposed location is the only suitable spot on the property for a swimming pool, noting that it has no drainage issues, has sun, and is easily accessible from the house. Mr. Parkinson testified that due to their topography, both the rear and the left side of the subject property have substantial drainage issues which would be exacerbated by the placement of a pool in either of those locations. With respect to the rear yard, Mr. Parkinson testified that the pool would have to be constructed on a downhill slope and would have to be squeezed between the well and septic system, neither of which were advisable. With respect to the left side yard, he testified that the pool would be downhill from the septic system, and that you cannot place a pool downhill from a septic system.

Mr. Parkinson testified that the proposed pool would be surrounded with plantings and by a 5-foot black aluminum fence, and would be attractive to the neighborhood. He testified that the pool equipment would be located close to the house to minimize visibility.

5. Petitioner Janet Hatherell testified that she and her husband eventually hope to construct a ramp on the right side of their house, stating that the other side has steep stairs because the property slopes severely to the left. She testified that the septic system is also on the left hand side of the house, and that the well is in the rear, on the right side. In response to a Board question asking about Outlot A, which abuts the subject property on the right side, Ms. Hatherell testified that that property is vacant, is approximately 0.1 acre in size, and is treed. In response to a second question, asking Ms. Hatherell if she and her husband had received any feedback from their neighbors, Ms. Hatherell testified that several of their neighbors had inquired about their proposed construction, and that none objected.

FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the requested variances can be granted. The requested variances comply with the applicable

standards and requirements set forth in Section 59-7.3.2.E.2 of the Zoning Ordinance,¹ 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, based on the Site Plan in the record at Exhibit 4(a), that the subject property narrows considerably from front to back, limiting the buildable area available behind the house for the construction of an accessory structure such as a pool. The Board further finds, based on the Site Plan and the Statements in the record at Exhibits 3(a) and (b), that the rear of the subject property is encumbered by a slope and a swale that cause drainage/runoff issues, as well as the property's well, which combine to further limit the buildable area available behind the rear building line. See Exhibit 4(a). The Board finds that taken together, the narrowness of the rear yard, coupled with its sloping nature and the presence of the well, constitute an extraordinary condition peculiar to this property, in satisfaction of this Section.

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 Petitioners are not responsible for the shape, slope, or drainage issues on their property, nor are they responsible for the location of their well or septic field, in satisfaction of this Section.

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;*

Because the area behind the rear building line of this property is unusually narrow and constrained by its slope, drainage issues, and the presence of a well, the Board finds that the proposed accessory structure cannot be located behind the rear building line, as would otherwise be required by the Zoning Ordinance. In addition, the Board finds, based on the testimony of record and as shown on the Site Plan at Exhibit 4(a), that the subject property's larger left side yard is encumbered with a slope and septic field, and is therefore also not available for the proposed construction, causing the Petitioners to seek to locate the proposed construction in their right side yard. The Board notes, by way of observation, that the proposed side yard location is behind the front building line of the

¹ The Board notes that the Petitioners have also presented evidence and sought approval of the requested variances pursuant to the Fair Housing Amendments Act of 1988 and under Title II of the Americans With Disabilities Act, as amended by the ADA Amendments Act of 2008. Because the Board has determined that the requested variances can be granted under Section 59.7.3.2.E of the Zoning Ordinance, there is no need to recount that evidence or to go through the FHAA/ADA analysis in this Opinion.

house. The Board finds that this location would better comply with the spirit of the Zoning Ordinance than would construction of a pool in the front yard, but that because of the narrow (and narrowing) nature of the right side yard, owing to its sharply angled lot line, in addition to the variance needed to allow construction forward of the rear building line, a one-foot variance is needed to provide relief from the right side lot line setback. The Board finds that because the constraints posed by the extraordinary conditions peculiar to this property preclude the location of the proposed construction in accordance with the development standards set forth in the Zoning Ordinance, that the requested variances are the minimum needed to overcome the practical difficulty that would otherwise be imposed by compliance with the Zoning Ordinance, in satisfaction of this Section.

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 the requested variances, necessary to allow the construction of the proposed accessory structure, would continue the residential use of this property and can be granted without substantial impairment to the intent and integrity of the Aspen Hill Master Plan (1994), which seeks, among other things, to protect and reinforce the integrity of existing residential neighborhoods.

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, based on the Statement in the record at Exhibit 3(a) and the testimony of Ms Hatherell, that granting this variance would not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this Section. Per the Statement, the proposed pool will be over 90 feet from the street and will be screened with trees, landscaping, and a five-foot fence.

Accordingly, the requested variances are **granted**, subject to the following conditions:

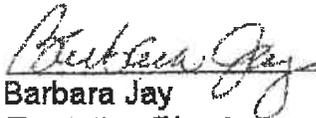
1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4(a)-(b) and 5(a).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Bruce Goldensohn, Vice Chair, and Mary Gonzales 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.


John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 17th day of April, 2020.


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.
Board must be exercised.