

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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

(240) 777-6600

**Case No. A-6654**

**PETITION OF VALDIS AND INARA LAZDINS**

OPINION OF THE BOARD  
(Hearing Date: May 20, 2020)  
(Effective Date of Opinion: May 28, 2020)

Case No. A-6654 is an application by Valdis and Inara Lazdins (the "Petitioners") for a variance from the requirement in Section 59-4.3.4.B.2.d 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 on their property forward of the rear building line.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on May 20, 2020. All participation was done via Microsoft Teams. Petitioner Valdis Lazdins participated in the proceedings, in support of the variance.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 15, Block A, Brighton Knolls Subdivision, located at 700 Brighton Knolls Drive, Brinklow, MD, 20862, in the RC Zone. The subject property is a seven-sided, 2.25-acre pipestem lot. It is improved with a single-family home that has a west-facing front façade and an east-facing rear facade. See Exhibits 3 and 4(b).
2. The Statement of Justification ("Statement"), in the record at Exhibit 3, states that the subject property "is severely constrained by a 50' wide Colonial gas pipeline

easement, making it impossible to locate a pool anywhere else on the property....”  
The Statement later elaborates on this, as follows:

The subject property, 700 Brighton Knolls Drive, is peculiar and severely constrained by a 50-foot-wide Colonial gas line easement, which diagonally traverses the lot east to west. The house was constructed in 1976 and its southeast corner sits less than one foot from the easement, shown in accompanying photographs. Gas pipeline company representatives concur with the proposed pool location on the lot. That area is triangle shaped, limited in size, and located to the rear (east) of the house.<sup>1</sup> This area previously contained an inground pool which was removed when the home was renovated.<sup>2</sup> It was assumed that since a pool, previously approved by County staff, existed at that location that it met all zoning requirements and could be replaced.

\* \* \* \* \*

Easement requirements prohibit driving over the gas pipeline and extending electric through or over the easement, unless necessary to provide residential service. The gas pipeline company does not view providing electric service to a pool as a necessary utility. Therefore, a location to the south of the gas line easement is unworkable and the only practical location for a swimming pool on the property is in a triangle shaped area to the rear of the house.

See Exhibit 3. The gas pipeline easement is shown bisecting the subject property on both the site plan and on the subdivision plat submitted by the Petitioners. See Exhibits 4(b) and 7(b). The Statement concludes that “[g]iven the unique shape of the buildable portion of the lot and the impacts due to a gas pipeline easement that traverses the property, a pool location is limited to a small triangle shaped area to the rear of the house...,” stating that “[a]ll other potential locations have been explored and cannot reasonably accommodate a pool.” See Exhibit 3.

3. The Statement at Exhibit 3 also discusses why locating the proposed swimming pool in compliance with the Zoning Ordinance restrictions (i.e. behind the rear building line of the house), assuming that were possible, would be more impactful than locating the pool as proposed:

Nevertheless, following the existing setback requirements, the south side of the home, located behind the garage, becomes the rear yard. Consequently, a pool can only be located there – behind the south facing wall of the house. However, that area is constrained by the pipeline

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<sup>1</sup> The Board observes that while the Petitioners are referring to the area described as being to the “rear” of the house, the County’s Department of Permitting Services considers this area to be a “side” yard for setback purposes, and instead views the area to the south of this home (i.e. to the side of the house/off of the garage) as the property’s “rear.”

<sup>2</sup> The Statement states elsewhere that this renovation, and the removal of the existing pool for maintenance reasons, occurred in 2013. The Statement notes that the pool had existed in that location for over 35 years. See Exhibit 3.

easement, which diagonally cuts across the rear yard making it impossible to construct a pool, or practically any other structure there. In addition, the rear of the lot, based on the zoning definition, orients toward the front door of the neighboring house at 710 Brighton Knolls Drive. Therefore, even without the constraints of a gas line easement, it would be undesirable to locate a pool in that area because it is visually connected to the front yard of our neighbor's home. A pool located in that area would afford no privacy for either home, and would especially impact our neighbor. Further, both properties share an easement agreement that limits what can be done within 25' of the shared property line. That includes grading, locating a fence and accommodating any structures.

In addition, the Statement notes that "[t]he area to the south of our existing driveway is also constrained by utilities serving our home and our neighbor's – electric and cable." See Exhibit 3.

4. The Statement states that locating the proposed pool behind the functional rear of the home would substantially comport with the established historic or traditional development pattern in this neighborhood, noting that "[t]he location of the proposed pool behind our home is consistent with the locations of nearby, eleven within approximately ¼ mile, neighboring private swimming pools. All are located in rear yards – behind the homes." See Exhibit 3.
5. The Statement states that the Petitioners are not responsible for the design of their subdivision, which was platted in the 1970s, and did not agree to have a gas line easement across their property. See Exhibit 3.
6. The Statement describes the size of the proposed pool as "modest," and states that it is consistent with or smaller than neighboring pools. The Statement further states that the Petitioners have "worked with Colonial pipeline representatives," who in turn have identified the proposed location as "workable to accommodate a swimming pool." Accordingly, the Petitioners assert in their Statement that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would entail due to the unusual or extraordinary situation or condition on their property. See Exhibit 3.
7. Discussing the impact that the grant of the variance would have on neighboring property owners, the Statement states that the grant of the variance would have "no adverse impact of surrounding properties," and notes that the proposed location is in the same area of the property as the previous pool, which, as previously noted, was there for over 35 years. See Exhibit 3. The Statement further notes that the proposed location "is consistent with the location of our direct neighbor's pool, which is located behind their house," and that the grant of the variance would allow the Petitioners to locate their proposed pool "where all other neighbors have built their swimming pools – behind their homes." See Exhibit 3. The photographs submitted with the variance application depict significant tree

cover in multiple directions as one moves away from the house, except along the gas line easement. See Exhibits 5(a)-(d). Finally, the Statement states that notwithstanding the gas line easement and private covenant, if a pool was able to be located as required by the Zoning Ordinance, it would be "near the front door of our neighbor's home" and "detrimental to the enjoyment of neighboring properties," making such a location undesirable. See Exhibit 3.

8. At the hearing, Mr. Lazdins testified in support of the requested variance. He reiterated the points made in the written Statement, emphasizing that the presence of the gas pipeline easement makes his property peculiar and testifying that it severely constrains the area available for the placement of the proposed swimming pool.

Mr. Lazdins testified that he and his wife purchased the property in 2013, and removed the existing pool, which he testified was positioned where the patio is currently located, immediately at the bottom of four stairs exiting the house, such that anyone who tripped on the stairs would fall into the pool. He testified that the gas pipeline easement is one foot from the southeast corner of the house, and that the only location available for a swimming pool is the triangular area behind the functional rear of the house, in what the Zoning Ordinance considers a side yard. Mr. Lazdins testified that the area south of the garage, where construction would be allowed by the Zoning Ordinance, could only accommodate a kiddie pool before encountering the easement for the gas pipeline, and that if the pool were to be placed south of the easement, which he later explained it could not be because of the inability to run utilities across the easement, it would be at his neighbor's front door.

Mr. Lazdins testified that the proposed placement of the pool substantially conforms with the placement of eleven other pools located within a quarter-mile radius of his property, all of which are located "behind" their respective houses. He testified that he and his wife have minimized the size of the proposed pool so that it is smaller than many neighboring pools. He testified that the proposed location is the only available place for the pool.

Finally, Mr. Lazdins testified that he has met with all of his confronting and adjacent neighbors, and that none oppose his proposed construction.

## **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 encumbered by 50-foot wide gas line easement which bisects the property and extends to within a foot of the Petitioners' house. The Board further finds that easement requirements "prohibit driving over the gas pipeline and extending electric through or over the easement, unless necessary to provide residential service," and that "[t]he gas pipeline company does not view providing electric service to a pool as a necessary utility." The Board finds that the restrictions imposed on the property by this easement greatly constrain the area available for the construction of a swimming pool on this property, particularly the area that is "behind the rear building line," as is required by the Zoning Ordinance. The Board finds that this is an extraordinary condition peculiar to this property, in satisfaction of this element of the variance test.

*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 on the Statement and the testimony of Mr. Lazdins, the Board finds that construction of a swimming pool in the location proposed is consistent with the location of 11 other private pools within a quarter-mile radius of the subject property, including that of an immediate neighbor, and is in the same area of the property where a pool was located for over 35 years. Accordingly, the Board finds that the proposed development substantially conforms with the established historic or traditional development pattern of this street or neighborhood, in satisfaction of this element of the variance test.

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

Per the Statement, the Petitioners are not responsible for the subdivision of their property (and thus its shape), or for the location of the gas line easement across their property. In addition, per the testimony of Mr. Lazdins, the Petitioners have owned the property since 2013, and accordingly are not responsible for the orientation of the house, which was built in the 1970s, relative to its front, side, and rear lot lines as established for zoning purposes. Furthermore, the Board finds that the Petitioners are not responsible for the development pattern in the surrounding neighborhood with respect to the traditional placement of pools. Thus the Board finds that the special circumstances or conditions pertaining to this property are not the result of actions taken by the Petitioners.

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, based on the Statement and the testimony of Mr. Lazdins, that the location of the gas line easement and the restrictions associated with that easement severely constrain the area available for construction of the proposed swimming pool in compliance with the restrictions of the Zoning Ordinance, and in the area where a pool

has historically been located on this property. The Board further finds that the location identified for the pool has been approved by gas line representatives, and is consistent with the established pattern in the immediate area of placing pools behind the functional rear of the associated house. Finally, the Board finds, based on the Statement and on the testimony of Mr. Lazdins, that the size of the proposed pool has been minimized so that it is smaller than many neighboring pools. Thus the Board finds that the requested variance, to allow construction of the proposed pool forward of the rear building line, in the location shown on Exhibits 4(a) and (b), is the minimum necessary to overcome the practical difficulties imposed by compliance with the locational restrictions of the Zoning Ordinance.

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 construction of the proposed pool continues the residential use of the home, and is consistent with the recommendations of the Olney 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.*

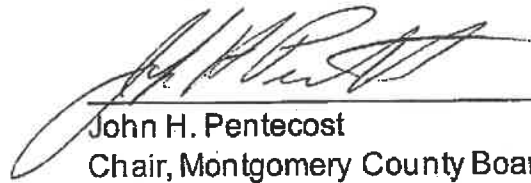
The Board finds, per the Statement and the testimony of Mr. Lazdins, that the grant of this variance will not be adverse to the use and enjoyment of neighboring properties. The Board notes in support of this that granting the variance will allow the construction of a swimming pool in an area of the property where a swimming pool existed for over 35 years. The Board further finds that granting the variance would allow construction in a location that is behind the functional rear of the house, which is consistent with the location of other pools in the area, as well as in a location that is not near the front door of the Petitioners' neighbor's home, as would be required if the pool were placed in accordance with the Zoning Ordinance requirements. The Board notes that Mr. Lazdins has testified that he met with his confronting and adjacent neighbors, and none oppose the proposed construction. Finally, the Board observes that as shown on the photographs in the record at Exhibits 5(b)-(d), the area around the subject property is largely treed, which should help screen any view of the proposed pool. Accordingly, the Board finds that this element of the variance test is satisfied.

Accordingly, the requested variance to allow the construction of a swimming pool forward of the rear building line is **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 Richard Melnick, with Bruce Goldensohn, Vice Chair, Katherine Freeman, 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.

  
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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 28th day of May, 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.

