

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Rockville, MD 20851
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<http://www.montgomerycountymd.gov/boa/>

Case No. A-6684

**PETITION OF DAVID AND ALISON CONDON
by CHELSEA TREVEY**

**OPINION OF THE BOARD
(Hearing Held: March 10, 2021)
(Effective Date of Opinion: March 17, 2021)**

Case No. A-6684 is an application by Petitioners David and Alison Condon for a variance needed for the proposed construction of a swimming pool. In accordance with Section 59-4.4.4.B.2 of the Zoning Ordinance, the proposed construction requires 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 Wednesday, March 10, 2021. All participation was done via Microsoft Teams. Petitioner David Condon participated in support of the requested variance. His wife Alison was also present. The Petitioners were assisted by Chelsea Trevey and Tim Rowan of Rowan Landscape & Pool Company, Inc.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 36, Block B, Foxlair Acres Subdivision, located at 22003 Foxlair Road, Gaithersburg, Maryland, 20882, in the RE-2 Zone. It is an elongated, seven-sided property, with a total area of 3.04 acres. See Exhibit 4.
2. The property is located on the east side of Foxlair Road. It is accessed from a shared driveway that is not located on Petitioners' property, but rather is located north of the "Fleming Property" (22005 Foxlair Road), which abuts the Petitioners' property to the north. The driveway provides access to the subject property near its rear. See Exhibits

3, 4, and 7. The Petitioners' Statement of Justification ("Statement") indicates that the Petitioners are allowed to use the shared driveway through a covenant. See Exhibits 3. The Statement describes the impact of the driveway location on the development of the property as follows:

Based on where the driveway meets our property, the house was located in such a way that the architectural front and rear of our home are situated perpendicular to Foxlair Rd. This results in the "rear" of our home on paper showing as our parking area next to our garage instead of the area at the architectural rear of our home which is where we'd like to place the pool.

The Statement concludes that "[d]ue to being on a shared driveway, the unique layout of our home has made it impossible for us to follow the typical setback requirements for an accessory structure." See Exhibit 3.

3. The Petitioners purchased the property in 2015. The property contains an existing house that was built in 1988 and is set way back on the property, likely because, as the site plan shows, there are numerous impediments to development in the area between the house and Foxlair Road, including utility, ingress-egress, and septic easements, an AT&T right-of-way, and a septic tank and trenches. The existing house is located approximately 41 feet from the property's rear (east) lot line, and, as noted previously, is oriented perpendicular to that lot line and to the property's front (west) lot line, such that the home's architectural and functional front faces the property's side lot lines on the property's northern side, and the home's architectural and functional rear faces one of the property's southern side lot lines. The site plan also shows that there is a well on the property, southeast of the existing house, which would have further constrained the development of the property and likely contributed to the orientation of the house. See Exhibits 3 and 4.

4. The Petitioners would like to locate a pool on their property, behind the architectural and functional rear of their house, but are not able to do so because for zoning purposes, that area is considered a side yard and is not "behind the rear building line" of the house. The Statement notes that the Petitioners' building permit "was recently denied due to the plat not showing enough space in the backyard from house line to rear property line." Their Statement further provides, with respect to the proposed location of the pool, that "[a]lthough there would not be room for a pool where the plat shows the 'rear' of our home to be, there is plenty of room at the architectural rear of our home which is the side yard. This is the area we'd like to place the pool and why we are requesting a variance." See Exhibit 3.

5. The Statement states that "none of [the Petitioners'] neighbors will be impacted by placing a pool in [the] intended location as it'll be mostly obscured from view," noting that "the lots are large enough that the pool would be located a substantial distance from [the] neighbors' homes." See Exhibit 3. The Statement describes the visibility of the proposed pool from the neighboring properties, and concludes that the proposed location of the pool would not have an adverse effect on the Petitioners' neighbors, as follows:

Our neighbor to the north has their house facing the same direction we do so our pool will only be visible from their architectural backyard just as it would be in a normal neighborhood layout. There is also a buffer of trees between our properties that will mostly obscure view of the pool. In addition to that we've spoken to our neighbors of our intent to build a pool and they have no issues with it.

Our neighbor to the west has their backyard situated in front of our home so they wouldn't be able to see the pool since our house would block the view.

Our neighbor to the east has a large field at the back of their property which is what abuts to our backyard and we have a berm with trees between, so they won't have a view of our pool.

6. At the hearing, Petitioner David Condon testified that the subject property is accessed from a shared driveway. He testified that there are four houses that share this driveway, and that there is a property with a 200-year old farmhouse located between his property and the driveway. He testified that the driveway is privately maintained in accordance with a covenant between the property owners.

Mr. Condon testified that his house is set at 90 degrees to Foxlair Road, with its architectural front oriented towards the driveway side of the property. He testified that there is not enough room to locate a pool between the left side of the house, where the garage is, and the rear lot line. Mr. Condon testified that there is plenty of room to locate a pool between the house and the right side of the property, behind the functional rear of the house.

Mr. Condon testified that there are a number of obstructions that limit development on the property, including a septic easement for the abutting farmhouse property, a septic tank and system for the subject property, an AT&T fiber optic line, a well, and Potomac Edison transformer boxes. See Exhibit 4.

7. Tim Rowan, the owner of the Rowan Landscape & Pool Company, testified that due to the proximity of the house to the rear lot line, the ten foot setback applicable to the proposed pool, and the presence of a well in that area, there is not enough room to construct a pool behind the rear building line on this property.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E.2 of the Zoning Ordinance, 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 Statement, Site Plan, and testimony of record, that the area available for development on this elongated, unusually shaped property is severely constrained by the presence of several easements (utility, ingress-egress, and septic), an AT&T right-of-way that traverses the property at an angle, a septic tank and trenches, Potomac Edison transformer boxes, and a well, causing the existing house to be located very close to the property's rear lot line, and likely causing its orientation perpendicular to the property's front and rear lot lines. The Board further finds that the only access to the property from Foxlair Road is at its rear, via a shared driveway that is located a property away from the subject property. See Exhibits 3 and 4. The Board finds that these factors combine to create an unusual condition peculiar to this property that satisfies 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;

The Board finds, based on the Statement, that the Petitioners purchased the subject property in 2015, and that the property was developed in 1998. See Exhibit 3. Thus the Board finds that the special circumstances or conditions applicable to this property are not the result of actions by the Petitioners, in satisfaction of this element of the variance test.

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 unusual conditions peculiar to the subject property constrained its development and resulted in the placement of the existing house at the very rear of the property. See Exhibits 3 and 4. The Board further finds that because of the close proximity of the house to the property's rear lot line and the location of the property's well, there is not enough room to locate a pool behind the home's rear building line, causing the Petitioners a practical difficulty. The Board finds that granting the requested variance, to allow the pool to be constructed behind the architectural and functional rear of the existing house, in the Petitioners' side yard, is the minimum relief necessary to overcome this practical difficulty. Accordingly, the Board finds 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 unique conditions peculiar to this property, in satisfaction of this element of the variance test.

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 granting the requested variance to allow the Petitioners to construct a pool on the subject property, forward of the rear building line but to the functional rear of the existing house, would continue the residential use of the home, and thus the Board finds that this variance can be granted without substantial impairment to

the intent and integrity of the applicable Master Plan, in satisfaction of this element of the variance test.

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.*

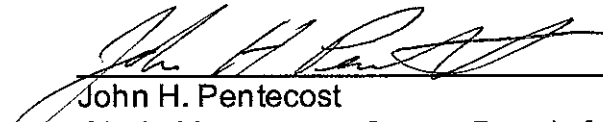
Per the Statement, the Board finds that the proposed pool will be located behind the architectural and functional rear of the existing house, in a location that is well screened from neighboring properties. In light of this, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance to allow 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, to the extent that such testimony and evidence are mentioned in this opinion; and
2. Construction shall be in accordance with Exhibits 4 and 5.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Bruce Goldensohn, Vice Chair, Mary Gonzales, and Richard Melnick 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 March, 2021.



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.