

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6821
PETITION OF SAMER HUSNI KURAISHI**

OPINION OF THE BOARD
(Opinion Adopted September 27, 2023)
(Effective Date of Opinion: October 6, 2023)

Case No. A-6821 is an application for a variance necessary for the proposed construction of an accessory structure (swimming pool). The proposed construction requires a variance to be located in the side yard. Accessory structures are required to be located behind the rear building line of the principal building, in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on September 27, 2023. Petitioner Samer Kuraishi participated in support of the requested variance.

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

EVIDENCE PRESENTED

1. The subject property is Block 8, Lot 11, Glen Echo Heights Subdivision, located at 6406 Dahlonaga Road in Bethesda, Maryland, 20816, in the R-90 Zone. The subject property is a four-sided, interior property located on the south side of Dahlonaga Road. The property has a sharply angled and slightly curved (convex) front lot line. The property's side lot lines are parallel to one another and meet the rear lot line at right angles; the right side lot line is about 1.6 times as long as the left side lot line. The subject property has an area of 11,166 square feet. The variance Application indicates that it was recorded in 1990. See Exhibits 1 and 4.

2. The Petitioner's variance Application cites the subject property's narrowness, shallowness, shape, topography, and other extraordinary situations or conditions peculiar to the subject property as factors that cause the Petitioner a practical difficulty in meeting the requirements of the Zoning Ordinance. The Application states that "[t]he side yard is the only place to put the pool." The Application further states that this causes the

Petitioner a practical difficulty because “[i]f [the] variance is not granted, [the Petitioner] will not be able to put the pool anywhere else on the property.” See Exhibit 1.

4. The Petitioner’s Statement of Justification (“Statement”) reiterates that the property’s narrowness, shallowness, shape, and topography make it unique, and states that placing the pool behind the rear building line of the house, as required by the Zoning Ordinance, “would be excessively difficult and would place undue burden on the homeowner.” The Statement states that the requested variance is the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose on the homeowner due to the conditions on the property. See Exhibit 3.

5. At the hearing, the Petitioner testified that he lives at the subject property with his family, and that he has owned the subject property for six or seven years. He testified that there is parkland behind his house, and a patio that covers the area between the rear of his house and his rear lot line. The Petitioner testified that there is not enough space between his house and the rear property line to construct a pool, stating that after application of the required setbacks, the pool could only be three or four feet wide if it were placed in that area. The Petitioner testified that there is room in his side yard to construct a pool of reasonable size in accordance with the setbacks; he stated that as shown on the Site Plan, there would be eleven (11) feet, four (4) inches between the house and the proposed pool, and between the pool and the property’s left side lot line. See Exhibit 4.

The Petitioner shared photographs of his property with the Board. See Exhibits 9(a)-(e). He testified that the property has angular frontage along the street and a triangular/diamond shape. The Petitioner testified that his front yard slopes up from the street towards the house, which is elevated. The Petitioner testified that there is fencing around both sides of his house that extends around the rear of the property; he estimated that the fencing is six (6) feet tall. The Petitioner testified that because of the fencing and elevation, the proposed pool would not be visible from the street. In addition, he stated that because of the park, there are no neighbors behind his house.

The Petitioner testified that his abutting neighbor to the left has a pool on the left side of his house, and that this inspired him to seek the same. The Petitioner testified that the front of his neighbor’s house does not face Dahlonga Road, but rather that it is the right side of his neighbor’s house that fronts on Dahlonga. The Petitioner further testified that the rear of his neighbor’s house, which is the face of that house that would be closest to the Petitioner’s proposed pool, has no windows.

In response to a Board question asking if he had received any comments from his neighbors about the proposed construction, the Petitioner testified that his neighbor to the left had asked if the proposed construction would affect his home’s foundation, and was told that it would not. The Petitioner stated that this was the only technical comment he received. The Petitioner testified that his family knows their confronting neighbors, and that these neighbors are excited about the prospect of their having a pool.

FINDINGS OF THE BOARD

Based on the binding testimony and 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 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 Application, Site Plan, and testimony of the Petitioner, that the front of the subject property has an unusual shape and significant slope which in turn caused the area behind the rear building line of the Petitioner's house to be unusually shallow and the area to the left side of the Petitioner's house to be disproportionately large. The Board finds that these circumstances constitute an extraordinary condition peculiar to this property, 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;*

The Board finds, based on the Application, that the subject property was recorded in 1990. The Board further finds, based on the testimony of the Petitioner, that he has only owned the property for the past six or seven years. Accordingly, the Board finds that the Petitioner is not responsible for the shape and topography of the subject property, 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, based on the testimony of the Petitioner and the variance Application, that the unusual shape and slope of the subject property, and the resultant shallowness of the property's rear yard, poses a practical difficulty for the Petitioner because his rear yard is not deep enough to accommodate construction of a swimming pool of reasonable width after the application of the required setbacks. See Exhibit 1. The Board further finds, based on the Statement, that the granting the requested variance, to allow the proposed pool to be located in the side yard instead of behind the rear building line of the Petitioner's home, would allow for construction of a reasonably-sized pool in accordance with the required setbacks, and thus is the minimum needed to overcome the practical difficulty posed by full compliance with the Zoning Ordinance, in satisfaction of this element of the variance test. See Exhibit 3.

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 granting of the requested variance will continue the residential use of the home, and thus can be granted without substantial impairment to the intent and integrity of the applicable Bethesda-Chevy Chase Master Plan (1990). Accordingly, the Board finds that this element of the variance test is satisfied.

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.*

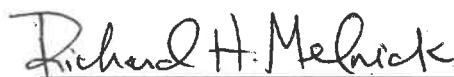
The Board finds, based on the testimony of the Petitioner and the Site Plan, that the location of the proposed swimming pool will meet the required setbacks for an accessory structure other than the requirement that such structures be located behind the rear building line of the principal structure. See Exhibit 4. The Board further finds, based on the testimony of the Petitioner, that the proposed pool will not be visible from the street, and that the neighbor who would be most affected does not have windows on that side of his house. In addition, the Board finds, again based on the testimony of the Petitioner, that the closest neighbor's worry was about the potential impact of the proposed pool on his home's foundation, and that no other neighbors have voiced concerns. Finally, the Board notes that the record contains no opposition to the proposed construction, and that no one appeared at the hearing in opposition to the grant of this variance. On the basis of the foregoing, the Board finds that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance from the requirement that accessory structures be located behind the rear building line of the principal building, necessary for the construction of the proposed swimming pool, is **granted**, subject to the following conditions:

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

Therefore, based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by Caryn Hines, with Laura Seminario-Thornton in agreement and Alan Sternstein opposed, 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.



Richard Melnick, Vice Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 6th day of October, 2023.



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.

