

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5665

PETITION OF MARSHA BAUMGARNER

(Hearing held October 31, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, November 30, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(a)(1). The petitioner proposes to construct an accessory structure (swimming pool) in the side yard. Section 59-C-1.326(a)(1) requires accessory structures to be located in the rear yard only.

The subject property is P250, located at 22000 Davis Mill Road, Germantown, Maryland, in the RE-2 Zone, (Tax Account No. 00016938).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a swimming pool in the eastern section of the property.
2. The petitioner testified that her property is a 5½ acre parcel of rolling hills located approximately 250 feet from Davis Mill Road. The property is surrounded by other large lots. The petitioner testified that the swimming pool would be located in the only flat area on the property and that the pool would not be visible from the neighboring lots.
3. The petitioner testified that the property is oddly shaped and that the topography drops approximately 70 feet from one end to the other.
4. Aaron Browning, the petitioner's contractor, testified that the residence faces west and that the pool would be located in the eastern rear yard. The Department of Permitting Services (DPS) designated the property's side yards as front and rear yards.
5. Mr. Browning testified that the proposed siting for the pool would not require the removal of the existing trees or extension excavation on the site.

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-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The property is an oddly shaped lot, with topography that drops approximately 70 feet from one end to the other. The Board finds that the unique grade of the topography and the odd shape of the lot are conditions that are peculiar to the property and would result in unusual practical difficulties for the petitioner were the variance to be denied.

The Board further finds that the pool, as proposed, would be located in the property's rear yard.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variance requested for the construction of an accessory structure/swimming pool is the minimum reasonably necessary to overcome the property's unique conditions.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The proposed construction would continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the proposed construction would not be visible to the neighboring homes and would not be detrimental to the use and enjoyment of the neighboring and adjoining properties. The record contains no correspondence or testimony in opposition to the variance request.

Accordingly, the requested variance for the construction of the accessory structure (swimming pool) in the side yard is granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of her witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) and 5(b).

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.

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 30th day of November, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.