

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

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

**Case No. A-5668**

**PETITION OF CHARLES C. MCLAUGHLIN**

(Hearing held October 31, 2001)

**OPINION OF THE BOARD**

(Effective date of Opinion, December 14, 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)(2)(c)(4). The petitioner proposes to construct an accessory structure (pool enclosure) that requires a 16.50 foot variance as it is within 0.50 feet of the side lot line. Section 59-C-1.326(a)(2)(c)(4) requires increased side or rear yard setbacks from the minimum requirement of the zone for accessory structures which are greater than twenty-four (24) feet in length, at a ratio of one (1) foot for every two (2) feet that the dimension exceeds twenty-four (24) linear feet.

Mark McNeil, the petitioners' landscape and maintenance contractor, and Roger Wilks, the petitioners' builder, attended the public hearing with the petitioners, Charles and Ann McLaughlin. Shahrar Amiri from the Montgomery County Department of Permitting Services (DPS) also attended the public hearing.

The subject property is Lot 10, Block 11, Chevy Chase Section 4 Subdivision, located at 6702 Maple Avenue, Chevy Chase, Maryland, in the R-60 Zone (Tax Account No. 00464525).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to replace an existing air-inflated pool cover with a plexiglas structure of the same dimensions at the same site.
2. Mr. McLaughlin testified that he and his wife both had polio in 1955 and that as a result they have post polio flare-up. The petitioner testified that per the advice of their physician, Dr. Santini, regular swimming exercise is a medical necessity for the petitioners. See, Exhibit No. 11.
3. The petitioner testified that the existing pool cover has been in use for the last 30 years and that the current structure is easily damaged in high winds and collapses whenever there is a power failure. See, Exhibit Nos. 12.1 through 12.4. The petitioner testified the current pool cover encroaches into the side yard setback. The current cover is inflated using a blower, and has a natural gas heating system.

4. The petitioner testified that the plexiglas replacement structure would not require the noisy blower and would be a more attractive, quiet and energy efficient structure. See, Exhibit Nos. 13.1 through 13.4. The petitioner testified that the variance is only required at the southeast corner of the structure to allow space for the footing, as shown on Exhibit No. 4.
5. Mr. McNeil testified that it is difficult for the petitioner to get in and out of the current structure and that the replacement cover would be a more acoustical and aesthetic structure for the neighborhood. Mr. McNeil testified that he has spoken with the petitioners' neighbors on both sides, the Smiths and the Hymans, and that the neighbors were very pleased with the replacement structure.
6. Mr. McNeil testified that the petitioners' lot is very private, with a 6-foot, wooden fence, and has shrubs, bushes, Holly trees and other vegetation that exists year round that border the lot.
7. Mr. Wilks testified that the petitioners' property is a uniquely shaped lot, and the shape of the lot necessitates the request for the variance. Mr. Wilks testified that pool enclosure will have the same dimensions as the prior cover, and will be the same height. Mr. Wilks testified that the structure will be a residential-sized enclosure. See, Exhibit No. 14.
8. Mr. Amiri testified that the applicants qualify as a "qualified applicants" under the ADA for the purpose of application of Americans with Disability Act and that, in his opinion, it is reasonable to assume that certain accommodations are needed because of the petitioners' medical conditions.
9. Mr. Amiri testified that as a result of his review, the only problem that exists with the proposed construction is that when a structure is less than three feet from the property line, it must be fire-resistant rated.
10. In response to Mr. Amiri's statement, Mr. Wilks stated that the pool enclosure would be an aluminum structure and would be completely fire-proof compatible. Mr. Wilks further stated that the petitioner had expressed an interest in making the wall closest to the property line of solid material, and that a fire-proof rating would not be a problem.

### **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-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 irregular shaped lot. The proposed construction would replace a structure that has existed on the property for 30 years. The replacement structure would use the same footprint and have the same dimensions as the existing structure. The Board finds that the exceptional shape of the lot, coupled with the 30-year existence of a similar structure, is an exceptional circumstance that is peculiar to the property.

The Board observes that this finding is consistent with the policy set forth in Courts and Judicial Proceedings Article, Section 5-114, which bars the government from proceeding against a structure, in violation of the setback restriction, which has been in existence for more than 3 years.

Accordingly, the requested variance of 16.50 feet from the required seventeen (17) foot side lot line setback for the construction of an accessory structure (pool enclosure) is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their 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. 5(a) through 5(d), 12 and 15.

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

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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 14th day of December, 2001

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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.

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.