

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6041**

**PETITION OF JODY SCHRADEN**  
(Hearing held January 19, 2005)

**OPINION OF THE BOARD**  
(Effective date of Opinion, March 10, 2005)

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 variances from Section 59-C-1.326(b)(2). The petitioner proposes the construction of an accessory structure (pool) that requires a variance of five (5) feet as it is within seven (7) feet of the rear lot line and a variance of twenty (20) feet as it is within twenty (20) feet of the front lot line (Willow Grove Road). The required rear lot line setback is twelve (12) feet and the required front lot line setback is forty (40) feet.

The subject property is Lot 7, Block 8, Olney Mill Subdivision, located at 4000 Fulford Street, Olney, Maryland, 20832, in the R-200 Zone (Tax Account No. 00742577).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes the construction of a 19 x 36 foot accessory structure/pool.
2. The petitioner testified that he has an irregularly-shaped lot that narrows from front to back and that the majority of the lots in his neighborhood are rectangular in shape. The petitioner testified that the western section of the lot has a two foot drop in its topography. The petitioner testified that the property is located at the intersection of Fulford Street and Willow Grove Road and that the streets wrap around the lot from east to west. See, Exhibit No. 8 [zoning vicinity map].
3. The petitioner testified that a variance would be required wherever the structure were to be located on the property and that the pool could not be placed elsewhere without re-grading or the installation of a retaining wall. The petitioner testified that the property's rear yard is surrounded by a privacy fence and that there will be an additional thirty feet from the pool to street because of the existing right-of-way on Willow Grove Road.

## **FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply 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 petitioner's property is an irregularly-shaped lot, located at the intersection of Fulford Street and Willow Grove Road. These streets wrap-around the subject property from east to west. The Department of Permitting Services (DPS) has determined that Willow Grove Road at the east-to-north boundary of the property and Fulford Street at north-to-west boundary of the property, must both meet front lot line setbacks. The proposed structure will be located at the rear of the existing dwelling and this area is the property's rear yard.

The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the zoning regulations would result in practical difficulties to, and an undue hardship upon the property owner.

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

The Board finds that the variances requested for the construction of an accessory structure/pool are the minimum reasonably necessary.

- (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 Board finds that the proposed construction will continue the residential use of the property and the variances 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 structure will be screened by an existing privacy fence and that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of five (5) feet from the required twelve (12) foot rear lot line setback and of twenty (20) feet from the required forty (40) foot front lot line setback for the construction of an accessory structure/pool are granted subject to the following conditions:

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

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution. Board members Angelo M. Caputo and Wendell M. Holloway were necessarily absent and did not participate in this Resolution.

---

Allison Ishihara Fultz  
Chair, 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 10th day of March, 2005.

---

Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) 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.