

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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

[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

**Case No. A-6257**

**PETITION OF ERIC AND PAMELA MORRISON**

(Hearing held July 2, 2008; Worksession held July 23, 2008)

**OPINION OF THE BOARD**

(Effective date of Opinion, September 5, 2008)

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 Sections 59-C-1.326(2)(C), 59-C-1.326(2)(a) and 59-C-1.326(a)(1). The petitioners propose the construction of an accessory structure/swimming pool that requires variances of (a) three and forty-eight hundreds (3.48) feet as it is within one and fifty-two hundreds (1.52) feet of the side lot line setback; (b) thirty-four and thirty-five hundreds (34.35) feet as it is with twenty-five and sixty-five hundreds (25.65) feet of the front lot line setback; and (c) for the accessory structure/swimming pool to be located in front yard. The required side lot line setback is five (5) feet, the required front lot line setback is sixty (60) feet, and accessory structures are required to be located in the rear yard only.

The subject property is Lot 9, Block 3, Westmoreland Hills Subdivision, located at 5219 Westwood Drive, Bethesda, Maryland, 20816, in the R-60 Zone (Tax Account No. 0700545815).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose the construction of 14.6 x 25 foot accessory structure/swimming pool.
2. The petitioner testified that his neighborhood was developed in 1932 and that the typical lot in the neighborhood is rectangular in shape. The petitioner testified that his lot is uniquely shaped and that it is the last lot on a dead-end street. The petitioner testified that his lot has no immediate neighbors to its western boundary and that this area has a WSSC drainage easement. The petitioner testified that the WSSC easement area leads to the Dalecarlia Reservoir and that

the Dalecarlia Reservoir serves as a drain for the area. See Exhibit No. 4(a) [site plan].

3. The petitioner testified that a portion of Jamestown Road is unimproved and a paper road. The petitioner testified that the paved portion of Jamestown Road stops at Jamestown and Abingdon Roads, which is northwest of the subject property. The petitioner testified that the western section of his lot is across from a Montgomery County/Army Corps of Engineers easement that connects to Westwood Drive and that this area is at the end of the drainage area. See Exhibit Nos. 7(d) [photo – rear property line], 8 [zoning vicinity map] and 16 [transmittal from Tom Reise, Montgomery County Department of Transportation].
4. The petitioner testified that his rear yard is severely sloped and the slope is approximately 15-16 feet within a 25 foot distance. The petitioner testified that the rear property line starts with a five foot retaining wall and that the lot's topography is sloping in all directions with severe sloping at the rear of the lot. The petitioner testified that his lot is 6,900 square feet in area.

### **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 Board finds that the petitioner's lot is uniquely shaped in a neighborhood of rectangular lots. The Board finds that the topography of the subject property severely slopes in all directions and that the topography drops 15 to 16 feet at rear of the lot. The Board finds that these are exceptional conditions peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue burden 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/swimming 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 that 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 variances will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variances of (a) three and forty-eight hundreds (3.48) feet from the required five (5) foot side lot line setback; (b) thirty-four and thirty-five hundreds (34.35) feet of the required sixty (60) foot front lot line setback for the construction of an accessory structure/swimming pool; and (c) to permit the accessory structure/swimming pool to be located in the front yard 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 variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and (b) 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.

Board member Wendell M. Holloway was necessarily absent and did not participate in this Resolution. On a motion by Catherine G. Titus, seconded by David K. Perdue, with Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

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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 5th day of September, 2008.

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Katherine Freeman  
Executive Director

**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.

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.