

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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

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

**Case No. A-6270**

**PETITION OF MARY M. CASCO**

(Hearing held November 19, 2008, Worksession December 17, 2008)

**OPINION OF THE BOARD**

(Effective date of Opinion, February 6, 2009)

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)(A). The petitioner proposes the construction of an accessory structure (swimming pool) that requires a variance of fifty-three (53) feet as it is with twenty-seven (27) feet of the front lot line. The required front lot line setback is eighty (80) feet.

Daniel Casco, the petitioner's husband, and Doug Parkinson of Anthony Sylvan Pools, appeared with the petitioners at the public hearing.

The subject property is Lot 33, Block F, Needwood Estates Subdivision, located at 7304 Deer Lake Lane, Derwood, Maryland, 20855, in the RE-1 Zone (Tax Account No. 02754053).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose the construction of an accessory structure/swimming pool in the northwest section of the subject property.
2. The petitioners testified that they have resided in the house for over 19 years and that they were unaware that the property was must meet two front yard setbacks. The petitioners testified that they have spoken with their neighbors regarding the proposed construction and that the neighbors voiced no opposition.
3. The petitioners testified that their lot is comparable in size to the neighboring lots, but the majority of their land is in their front yard, while the neighboring lots have the majority of their land behind their homes. The petitioners testified that their lot has a very shallow rear yard and that the topography in the eastern section of

their lot slopes downward more than 45 degrees. The petitioners testified that the topography in the northwest section of the rear yard has a flat area and that this area is where the proposed pool would be located. See Exhibit Nos. 4 [site plan] and 7 [zoning vicinity map].

4. The petitioners testified that the location proposed for the pool was chosen because it would not require the removal of a mature Pin Oak tree located in the northeast section of their rear yard. Mr. Parkinson testified that when excavating for a pool, the construction must adhere to a 15 to 20 foot drip line from the base of any existing trees. Mr. Parkinson testified that a pool could be constructed in the northeast section of the subject property, but that any new construction would require the removal of the existing trees in that area.

### **FINDINGS OF THE BOARD**

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) 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 subject property is not constrained by either its shape or its topography and that that lot has no exceptional or extraordinary conditions that are peculiar to the subject property. The Board finds that the petitioners' lot is similar in size and shape to the neighboring lots. The Board finds that for purposes of evaluating a petition for a variance that uniqueness or peculiarity of a property does not refer to the extent of the improvements on the property or the location of the house. *Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 324, 653 A.2d 532 (1995).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of fifty-three (53) feet from the required eighty (80) foot front lot line setback for the construction of an accessory structure/swimming pool is denied.

The Board adopted the following Resolution:

Board member Carolyn J. Shawaker was necessarily absent and did not participate in this Resolution. On a motion by Catherine G. Titus, seconded by Allison Ishihara Fultz, Chair, and with David K. Perdue and Walter S. Booth, in agreement, 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.

---

Catherine G. Titus  
Vice 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 6th day of February, 2009.

---

Katherine Freeman  
Executive Director

**NOTE:**

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 the 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.