

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
<http://www.montgomerycountymd.gov/boa/>

(240) 777-6600

**Case No. A-6715**

**PETITION OF WALTER C. JONES**

**RESOLUTION TO RE-OPEN RECORD, ACCEPT REVISED SITE PLAN, AND  
ADJUST FRONT LOT LINE VARIANCE**

(Original Opinion Effective: October 27, 2021)  
(Worksession Held December 8, 2021)  
(Effective Date of Resolution: December 17, 2021)

Case No. A-6715 is an application for two variances necessary for the proposed construction of an in-ground swimming pool. The Board first held a (remote) hearing on this application on October 20, 2021, using Microsoft Teams. In a written Opinion dated October 27, 2021, the Board granted the Petitioner a variance of 10.01 feet to allow construction of the proposed pool within twenty (20.00) feet of the front lot line. The required setback is 30.10 feet, in accordance with Section 59-4.4.8.B.2 of the Zoning Ordinance. In addition, the Board granted the Petitioner a variance to allow construction of the proposed pool forward of the rear building line of the principal building.

The Board of Appeals is in receipt of email correspondence with attachments, dated November 22, 2021, from Petitioner Walter Jones, seeking permission to construct his proposed swimming pool five (5) feet further from the street ("5' to the right"), at a distance of approximately twenty-five (25) feet from the front lot line rather than the approved twenty (20) feet. See Exhibit 10. Mr. Jones cites an erroneous Utiliquest survey of his property performed prior to his filing for a variance that failed to identify a gas line very close to the proposed pool location. His correspondence states that a second survey, ordered by the pool company prior to excavation, found a gas line running through the yard "not far from the proposed pool location." Mr. Jones requests that the pool be moved five (5) feet farther from the front lot line to provide additional clearance for this gas line. He states that the proposed new location would still meet the rear lot line setback, and that while the new location will bring the pool closer to the existing berm, "it is believed that the natural rainwater runoff flow would be undisturbed." Mr. Jones's correspondence goes on to state that in addition to providing a greater setback from the street and more closely approximating the setback required by the Zoning Ordinance,

“perhaps most importantly from a safety perspective, [the proposed new pool location would] provide more distance from the gas line.” For the Board’s information, Mr. Jones includes a copy of the Site Plan showing the originally approved pool location with his request, as well as a revised Site Plan showing the proposed new pool location. See Exhibits 10(a)-(b).

The subject property is Lot 12, Block 5, Wheaton View Subdivision, located 11501 Nairn Farmhouse Court in Silver Spring, Maryland, 20902, in the R-90 Zone.

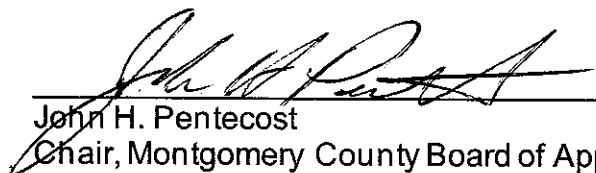
Due to COVID-19, the Board considered the above-referenced email correspondence, along with copies of the original Site Plan and the revised Site Plan, at a remote Worksession held on December 8, 2021, using Microsoft Teams. Petitioner Walter Jones participated in the Worksession. Mr. Jones told the Board that prior to submitting the original variance request, he had contacted Ms. Utility to do a survey of his property, and that that survey did not identify the gas line. He stated that Sylvan Pools had requested another survey on November 12, 2021, prior to starting construction, that identified the presence of the gas line. Mr. Jones stated that he is seeking to shift the location of the proposed pool five (5) feet further from the gas line to allow for additional clearance, and that as a result, the proposed pool would now be approximately 25 feet from the street, as opposed to the originally approved 20 feet, and 11 feet from the rear lot line rather than the 16 feet depicted on the original Site Plan.

Based on Mr. Jones’s representation that the proposed relocation would increase the setback from a previously unidentified gas line and would decrease the encroachment into the front lot line setback while maintaining the functionality of the berm, and noting that all other conditions which justified the initial grant of the requested variances remain valid, after comparing the originally approved location for the pool with the proposed new location, the Board determined to accept the revised Site Plan, which shows the location of the pool as approximately 25 feet from the front lot line and 11 feet from the rear lot line, into the record, and to adopt it as showing the allowable location for the proposed in-ground swimming pool. The previously granted variance from the front lot line is hereby adjusted accordingly. Therefore, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, with Bruce Goldensohn, Vice Chair, Mary Gonzales, and Caryn Hines in agreement:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the record in Case No. A-6715, Petition of Walter C. Jones, is re-opened to receive Mr. Jones’s November 22, 2021, email correspondence with attachments (Exhibits 10 and 10(a)-(b));

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the revised Site Plan submitted with the Petitioner’s November 22, 2021, correspondence (Exhibit 10(b)) shall be substituted for the Site Plan currently in the record at Exhibit 4, and that the front lot line variance previously granted on October 27, 2021, shall be deemed to allow construction in the location and dimensions shown on the revised Site Plan; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original variance grant, except as modified herein, remain in effect.

  
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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 17th day of December, 2021.

  
\_\_\_\_\_  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. 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.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.