

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue, Suite 217
Rockville, Maryland 20850
(240) 777-6600
www.montgomerycountymd.gov/boa/**

Case No. A-6728

PETITION OF TARA LEE

OPINION OF THE BOARD

(Public Hearing Date: January 12, 2022)
(Effective Date of Opinion: January 26, 2022)

Case No. A-6728 is an application by Petitioner Tara Lee for a variance needed for the construction of an accessory structure (two-car garage). The proposed construction requires a variance of seven (7) feet as it is within five (5) feet of the side lot line. The required setback is twelve (12) feet, in accordance with Section 59-4.4.7.B.2 of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, January 12, 2022. All participation was done via Microsoft Teams. Petitioner Tara Lee participated in support of the requested variance, assisted by her architect, Karen Pitsley, AIA.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 3, Block C, Oakhurst Subdivision, located at 14905 Athey Road in Burtonsville, Maryland, 20866, in the R-200 Zone. The Property is a through lot with frontage on Athey Road to the west and Columbia Pike to the east. It has four sides and is generally rectangular in shape. The property has an area of 21,275 square feet, and slopes downward from front to rear, dropping approximately 16 feet. Finally, the property contains a house, built in 1961, that faces and is addressed on Athey Road. See Exhibits 3 and 4, and SDAT data sheet.

2. In addition to a house, the subject property contains an existing inground pool that was installed before the Petitioner and her husband purchased the property.¹ The Petitioner's Justification Statement ("Statement") states that the location of the pool

¹ SDAT indicates that the Petitioner has owned the property with her husband since 2000.

behind the house "places a restriction of 7'-10" +/- from the pool edge to the proposed [garage] foundation. A 45-degree measurement defines the nearest location of where the proposed foundation can be built as to not undermine the existing pool wall." The Statement further notes that the garage "cannot be located further toward Athey Road, more adjacent to the ex. house, due to the steep slope to the back." See Exhibit 3.² Exhibit C to the Petitioner's Statement shows that the area of the property between the swimming pool and Columbia Pike is encumbered with a 16-foot wide telephone right of way, which traverses the property at an angle, and an 18-foot wide drainage easement. See Exhibit 3(c).

3. The Statement states that "several homes with addresses in the same neighborhood and in the R-200 zoning district have conditions where garages are provided to the existing home." The Petitioner provides photographs of these homes and a map showing their locations of relative to the subject property as Exhibit A to her Statement. The map indicates that most of the homes on the stretch of Athey Road that runs parallel to Columbia Pike, where the Petitioner's home is located, have garages. See Exhibit 3(a).

4. The Statement indicates that the amount of the variance requested is the minimum needed to allow the requested garage given the location of the (pre-existing) pool and the slope of the subject property, and states that the proposed garage "substantially increases the property's value and visual beauty, which mutually benefits the property's neighbors and the surrounding community," adding that "[a]s seen in the building elevations provided, the character of the proposed addition coincides with the essential character of the house and the neighborhood." See Exhibits 3 and 3(d). The Petitioner has provided letters of support for the grant of the requested variance from her abutting neighbors to the left and to the right, and from both of her confronting neighbors. See Exhibit 3(b).

5. At the hearing, Ms. Pitsley testified that the subject property has a large slope from front to back, and that while the shape of the property is not unusual, its topography is. She testified that beyond the swimming pool, there is a drainage easement and then Route 29. Ms. Pitsley testified that the proposed garage cannot be moved any farther from Route 29, and cannot be moved any closer because of the pool, noting that digging a foundation near the pool would undermine its integrity. She testified that 16 of 26 homes on this stretch of Athey Road have garages, and stated that the Petitioner has provided a map showing the location of these homes.

6. Ms. Lee testified that she and her husband have lived in their home for 20 years. She testified that she believes the garage will add value to her property and the neighborhood, and answered Board questions about the appearance of the garage.

FINDINGS OF THE BOARD

² The Board notes here that in addition to the slope asserted by the Petitioner, the proposed accessory structure presumably could not be located any closer to Athey Road without variance relief because that would place its location forward of the rear building line.

Based on 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 59-7.3.2.E, as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the subject property has a steep downward slope from front to rear, and is burdened by a telephone right of way and a drainage easement. The Board further finds that the subject property has an in-ground pool that was installed by previous owners, and finds, based on the Statement, that excavation cannot be undertaken within of 7'-10" +/- feet of the pool's edge. See Exhibits 3, 3(c), and 4. The Board finds that these circumstances, taken together, limit the area available for construction of the proposed garage and constitute an unusual condition specific to this property, in satisfaction of this element of the variance test.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the Petitioner, who purchased this property in 2000, is not responsible for the presence or location of the existing swimming pool, which per the Statement was constructed by previous owners, and is not responsible for the property's steep slope or the telephone right of way and drainage easement. Thus the Board finds that the special circumstances or conditions are not the result of actions by the Petitioner, in satisfaction of this element of the variance test.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the requested variance is the minimum necessary to overcome the practical difficulties associated with the construction of the proposed accessory structure on this property due to the constrained nature of the property's available building area arising from its topography and existing encumbrances, including but not limited to the presence of the swimming pool and the setbacks associated with it. Accordingly, the Board finds that this element of the variance test is satisfied.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that construction of the proposed garage will continue the residential use of the home, and thus finds that the requested variance can be granted without substantial impairment to the intent and integrity of the applicable Fairland Master Plan (1997), in satisfaction of this element of the variance test.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

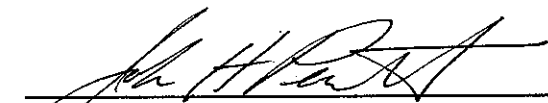
The Board finds, per the letters of support received from the Petitioner's neighbors, that the proposed garage will not "change the street view appearance of the neighborhood," will not "obstruct the current view of any neighbor," and will "add value to [the] neighborhood." In addition, the Board finds, in accordance with these letters, that the Petitioner's abutting and confronting neighbors "fully support" the Petitioner's project and urge the Board to grant the requested variance. See Exhibit 3(b). Finally, the Board finds, per the Statement and the testimony of the Petitioner, that the proposed garage will be an improvement to the subject property and neighborhood. See Exhibit 3. In light of the foregoing, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance needed to allow construction of an accessory structure (two-car garage) is **granted**, subject to the following conditions:

1. The Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 3(d), 4, and 5(a)-(b).

Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, with Bruce Goldensohn, Vice Chair, Mary Gonzales, and Caryn Hines 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.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 26th day of January, 2022.



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.