

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**100 Maryland Avenue, Suite 217  
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**Case No. A-6862**

**PETITION OF MAHDIS MANSOURI AND RAZIEH JAVAHERI**

**OPINION OF THE BOARD**

**(Hearing Held: May 15, 2024)**

**(Effective Date of Opinion: May 30, 2024)**

Case No. A-6862 is an application by Petitioners Mahdis Mansouri and Razieh Javaheri for a variance needed for the proposed construction of an accessory structure (swimming pool) forward of the rear building line. Section 59.4.4.4.B.2.c of the Zoning Ordinance requires that accessory structures be located behind the rear building line of the principal building.

The Board of Appeals held a hearing on the application on Wednesday, May 15, 2024. Petitioner Mahdis Mansouri participated in support of the requested variance with her husband, Nicholas Goodrich. Ms. Mansouri was represented at the hearing by Jody Kline, Esquire, and Shelly Vallone, Esquire. Stephen Crum, P.E., testified as an expert witness in support of the requested variance.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 2, Mount Prospect Subdivision, located at 12212 McCrossin Lane in Potomac, Maryland, 20854, in the RE-2 Zone. It is an "irregularly shaped" lot, approximately 2.05 acres in size. The property is accessed from the cul-de-sac terminus of McCrossin Lane via a long pipestem driveway, and is located south of the cul-de-sac. See Exhibits 3, 4(a), and 7(a).
2. The Petitioners' Statement of Justification ("Statement") states that the Petitioners purchased the subject property in 2021, and that a single story home is currently being built on it. The Statement states that "[t]he location of the home was dictated by the

location of the existing pipestem driveway, the building setback lines, the alternative well site in front of the home, and the septic building restriction line which takes up most of the southeast side yard.” The Statement states that these factors caused the house to be located in the northeast corner of the subject property. See Exhibit 3.

3. The Petitioners are seeking to construct a swimming pool on their property. The Statement states that the location of their home, which was dictated by the factors set forth in the preceding paragraph, “leaves little area behind the home which is where a swimming pool would normally be located.” The Statement further states that the property has a “substantially restricted area suitable for the construction of a swimming pool because of the lot’s irregular shape, location of the pipestem driveway, setback lines, and septic building restriction lines (‘BRL’),” and that “[t]he proposed swimming pool is proposed to be located in the front side yard of the subject property due to the substantial constraints caused by the location of the existing pipestem driveway, the building setback lines, the alternative well site in front of the home, and the septic building restriction line.” See Exhibit 3.

4. The Statement asserts that the subject property has an exceptional shape and other encumbrances which make it unique for the purposes of satisfying Section 59.7.3.2.E.2.a.i of the Zoning Ordinance, as follows:

The subject property is exceptional in shape and exhibits other conditions peculiar to the subject property. The lot’s irregular shape, as well as the location of the existing pipestem driveway, the building setback lines, the alternative well site in front of the home, and the septic building restriction line necessitate the proposed location of the swimming pool.

See Exhibit 3. The Statement further states that this “unique combination of features inherent to this property result in the side yard being the only viable location for a swimming pool.”

5. The Statement states that “[t]he extraordinary shape and other conditions peculiar to the subject property are not a result of actions by the applicant,” noting that “[t]he Petitioners purchased the property in 2021, after the property was already platted with the location of the pipestem driveway and its irregular shape.” See Exhibits 3. The property was platted in 2017. See Exhibit 7(b).

6. The Statement states that because “there is no other reasonable location on the subject property for the swimming pool to be located,” the Petitioners have “no other options” but to site their pool as proposed. See Exhibit 3.

7. The Statement at Exhibit 3 states that the requested variance can be granted without substantial impairment to the Potomac Subregion Master Plan, as follows:

Granting the requested variance for a swimming pool for a single-family home will not substantially impair the intent and integrity of the Potomac Subregion Master

Plan, which describes the Travilah area, in which the subject property is located, as a “low-density area that acts as a transition from the higher densities of Potomac and North Potomac to lower densities in Darnestown and the natural environment of the Potomac River.” A single-family residence with a swimming pool maintains the residential, low-density nature of the area, and the large lot sizes in the RE-2 zone and in this area provide more separation between residences.

8. The Statement states that granting the requested variance will not be adverse to the use and enjoyment of abutting and confronting properties because “the swimming pool will be properly screened from the view of neighbors through the construction of a fence and landscaping.” In addition, the Statement states that “[t]he Petitioners are preparing a robust landscaping and screening plan to shield the pool from the only surrounding residence (to the northeast) to which it would be proximate.” See Exhibit 3. The Petitioners have included a copy of that Landscape Plan with their submission. See Exhibit 4(b).

9. At the hearing, the Board accepted Stephen Crum, P.E., as an expert in civil engineering and site design. Mr. Crum introduced a Revised Site Plan, which he used for his presentation. See Exhibit 9. He testified that the subject property is a “flag” lot that is accessed from the cul-de-sac at the end of McCrossin Lane. Mr. Crum testified that when the lot was subdivided, it had two approved septic reserve areas. See Exhibit 7(b). He testified that the original septic reserve area that was approved with the record plat is shown in grey on the northwest side of the property, and that the second septic reserve area is shown on the southern portion of the property. Mr. Crum testified that the original septic reserve area had trenches that were connected in series. He testified that DPS changed the regulations pertaining to these areas, and now they are required to be connected in parallel. Mr. Crum testified that while it is easy to connect septic trenches in series, connecting them in parallel is more difficult, and requires that the trenches be more aligned with one another. In addition, Mr. Crum testified that today, the property is required to have an initial septic area and three reserve areas. He testified that the initial septic system and first replacement system will be on the northwest corner of the property, and that the third and fourth systems will be located on the southern portion of the property, as shown on Exhibit 9. Mr. Crum testified that as a result of these changes to the County’s regulations, the cross-hatched area shown on Exhibit 9, which is behind the house and extends south from the originally approved (i.e. grey) septic reserve area, has been added to the original septic reserve area in order to accommodate the required parallel trenches and additional reserve area.<sup>1</sup> Mr. Crum testified that as a result of these regulatory changes, there is no longer adequate space behind the rear building line of the Petitioners’ house to accommodate the proposed swimming pool and meet the required setbacks from the septic reserve area.

In response to a Board question asking if any pool could fit behind the rear building line of the house, Mr. Crum testified that if a pool were to be located in that area, it would either have to be extremely small, or it could not have a deck and would have to be located

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<sup>1</sup> Mr. Crum testified that no changes were needed to the originally demarcated southern septic reserve area as it was sufficient to accommodate the new requirements and two reserve areas.

immediately adjacent to the house because of the required setbacks from the septic reserve area. Placing a piece of paper that was cut to the size of the proposed pool on the Revised Site Plan, Mr. Crum showed the Board members that there was insufficient room to accommodate the proposed pool anywhere behind the rear building line of the house. In response to a Board question asking Ms. Mansouri what size pool could fit behind the rear building line of the house with a pool deck, Mr. Crum testified that the length of the proposed pool would have to be reduced by about a third, and that there would have to be a "substantial reduction" in its width. In response to a Board question asking why the proposed pool was pushed so far forward of the rear building line, Mr. Crum testified that the setbacks for the third and fourth septic reserve areas that are located on the southern portion of the property precluded the siting of the pool any further back on the property. He further testified that there are also other restrictions on the development of this property, including the standard accessory structure setbacks, the necessary setbacks from the well, and a forest conservation easement. Mr. Crum testified that most of the available area on this property is located southeast of the driveway, and that this is where the pool is proposed.

Mr. Crum testified that the subject property is located in a semi-rural area and is partially forested. He testified that several adjacent properties have already been improved with dwellings, and that some have outdoor amenities such as a pool or tennis court. Therefore, Mr. Crum testified that the proposed swimming pool, which he noted is a residential use, would not be out of character with the area. Mr. Crum testified that as shown on Exhibit 4(b), the Petitioners are planning extensive landscaping that will be green all year and will screen any view of the proposed swimming pool. He testified that the septic reserve areas will be grass.

In response to a question asking if he believed this property was unique for the purposes of satisfying Section 59.7.3.2.E.2.a.i of the Zoning Ordinance, Mr. Crum testified that the subject property is a "very unique lot." In support of this, he cited the fact that the subject property is an unusually shaped flag lot that is encumbered with multiple septic reserve areas, which he went on to explain must be placed where the property "percs." He testified that in addition to the required setbacks from the septic reserve areas, the property is also served by a well, which also has setback requirements. In response to Board questions asking about the view of the proposed pool from surrounding properties, Mr. Crum testified that the proposed landscaping would screen the view of the pool, and further testified that the proposed pool would be lower in elevation than the homes to the north, near the driveway.

10. Ms. Mansouri testified that she purchased the subject property in late 2020 or early 2021 with her mother, Razieh Javaheri. She testified that it was her dream when she purchased the property to construct a home where her aging parents could live with them. Ms. Mansouri testified that when they looked at the property, the proposed pool fit on the property without the need for a variance. She testified that she wanted a rectangular pool so that her parents could engage in low impact exercise like swimming laps, adding that her young child would also enjoy the pool. Ms. Mansouri testified that a year ago, they had a pool designed to fit behind their house, signed a contract to have the pool

constructed, and put down a deposit. She testified that the pool now has to be relocated because of a change in the County's policies and regulations pertaining to on-site sewage disposal. Ms. Mansouri testified that this change to the County's policies and regulations has caused her a hardship. She testified that the requested variance is the minimum needed to permit the proposed construction to move forward. Ms. Mansouri testified that they will plant trees and make the area around the pool beautiful, and that as shown on the Landscaping Plan, the proposed planting will screen any view of the proposed pool and provide privacy for those using the pool. Ms. Mansouri testified that the proposed plantings will be green all year.

In response to a Board question asking if they had received any input about the location of the proposed pool from the owners of the developed property to the east of the subject property, Ms. Mansouri testified that they sent those neighbors a gift basket but had not spoken with them. She testified that the distance between the proposed pool and that house was "quite far." In response to a Board question asking if the proposed pool would be forward of the front of that house, Ms. Mansouri testified that the proposed pool would be to the side of that house.

In response to a Board question asking why the size of the proposed pool was the minimum necessary, Ms. Mansouri testified that she was told by the pool contractors that this was a standard size, and that it would meet their needs. Ms. Mansouri proceeded to testify that the proposed pool would have fit behind the rear building line of their house before the change in regulations. In response to a Board question asking what size pool and pool deck could be located behind the rear building line of the house at present, Ms. Mansouri replied that it might be possible to fit a small lap pool, but that she was not sure. In response to a Board question asking if the proposed pool would be fenced, Ms. Mansouri testified that there would be a fence around the property, and around the pool if needed. She testified that the pool would have an automatic cover.

## **FINDINGS OF THE BOARD**

Based on the binding testimony and the evidence of record, the Board finds that the requested variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59.7.3.2.E.2 of the Zoning Ordinance, 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, based on the Statement, Site Plan, Revised Site Plan, and the testimony of Mr. Crum, that the subject property has a very unusual shape, and that in addition to the application of the required building setbacks, the area of the subject property that is available for development is notably constrained by the setbacks from the

property's <sup>Septic</sup> setback reserve areas, in addition to being constrained by the location of the property's pipestem driveway, the location of the property's alternative well site and the required buffer around that site, and a forest conservation easement. See Exhibits 3, 4(a), and 9. The Board finds that these factors combine to create an unusual condition peculiar to this property that satisfies 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, based on the Statement and record plat, that the unusual shape of the subject property and other constraints on the property, including the location of its driveway, wells, forest conservation easement, and some of the septic reserve areas, were established prior to the Petitioners purchase of the subject property. See Exhibits 3 and 7(b). The Board further finds, based on the Revised Site Plan and the testimony of both Mr. Crum and Ms. Mansouri, that changes to the County's policies and regulations pertaining to on-site sewage disposal that occurred subsequent to the platting of this property have caused additional space to have to be dedicated for use as a septic reserve area, adding to the existing constraints on the property. See Exhibit 9. Thus the Board finds that the special circumstances or conditions applicable to this property are not the result of actions by the Petitioners, 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, based on the Statement, the Revised Site Plan, and the testimony of Mr. Crum and Ms. Mansouri, that the afore-mentioned unusual conditions peculiar to the subject property, including its unusual shape, the location of its pipestem driveway, the location of its alternate well, the forest conservation easement, and the building restriction lines for its expanded septic reserve areas, constrained the property's development and resulted in the placement of the Petitioners' house in a location that ultimately left insufficient room for the location of a swimming pool behind its rear building line. See Exhibits 3, 4(a), 7(b), and 9. The Board further finds, based on the Statement and testimony of record, that the substantial constraints placed on the development of this property by its pre-existing conditions were increased as a result of changes to the County's septic policies and regulations which necessitated an increase in the size of the property's septic reserve areas, precluding the ability of the Petitioners to locate the proposed swimming pool on their property in accordance with the locational restrictions of the Zoning Ordinance and causing them a practical difficulty. See Exhibit 3. Finally, the Board finds that the requested variance, which would allow construction of the proposed pool forward of the property's rear building line, is the minimum needed to overcome the practical difficulty caused the unique features of the subject property and the constraints they place on the property as a whole, and notably on the area behind the rear building line of the house. Accordingly, the Board finds that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would entail due to the unique conditions peculiar to this property, in satisfaction of this element of the variance test.

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; and*

The Board finds, in accordance with the Statement, that granting the requested variance to allow the Petitioners to construct a pool on the subject property in a location forward of the rear building line is consistent with the anticipated low-density, residential use of this property. See Exhibit 3. Accordingly, the Board finds that this variance can be granted without substantial impairment to the intent and integrity of the applicable Potomac Subregion Master Plan, 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.*

Per the Statement and the testimony of Mr. Crum and Ms. Mansouri, the Board finds that the proposed swimming pool will not adversely impact the use of neighboring properties. The Board finds, based on the Statement, landscape plan, and testimony of Mr. Crum and Ms. Mansouri, that the proposed pool will be “properly screened” by fencing and landscaping, and that the Petitioners are “preparing a robust landscaping and screening plan to shield the pool from the only surrounding residence (to the northeast) to which it would be proximate.” See Exhibits 3 and 4(b). Finally, the Board notes that the property was properly posted, and that the record does not contain any objections to the requested variance. In light of this, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance to allow construction of a swimming pool forward of the rear building line is **granted**, subject to the following conditions:

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

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Alan Sternstein, and Amit Sharma 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.

  
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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 30th day of May, 2024.



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**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.