

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**100 Maryland Avenue, Suite 217  
Rockville, MD 20850**

**<http://www.montgomerycountymd.gov/boa/>  
(240) 777-6600**

**Case No. A-6864  
PETITION OF RAZA SHAH**

**OPINION OF THE BOARD  
(Hearing Held: May 22, 2024)  
(Effective Date of Opinion: May 31, 2024)**

Case No. A-6864 is an application by Petitioner Raza Shah for two variances needed for the proposed construction of an in-ground swimming pool. The proposed construction requires a variance of three feet, four inches (3'-4") as it is within one foot, eight inches (1'-8") of the left side lot line. The required setback is five feet (5'), in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of one inch (1") as it is within four feet, eleven inches (4'-11") of the rear lot line. The required setback is five feet (5'), in accordance with Section 59.4.4.8.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, May 22, 2024. Petitioner Raza Shah participated in support of the requested variance, assisted by his contractor, Mitchell Kammer. Abutting property owner Brian Eaton also participated.

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

**EVIDENCE PRESENTED**

1. The subject property is Lot 7, Block 6, Burning Tree Valley Section 4 Subdivision, located at 7920 Maryknoll Avenue in Bethesda, Maryland, 20817, in the R-90 Zone. It is a four-sided interior lot, located on the south side of Maryknoll Avenue. The property's front lot line follows the curvature of the street, and as such, is slightly convex, which in turn causes the property's side lot lines to diverge from front to rear, and results in the rear of the property being slightly wider than its front. Per SDAT, the property has an area of 10,951 square feet, and was purchased by the Petitioner in 2022. See Exhibits 4 and 7, and SDAT Printout.
2. The Petitioners' Statement of Justification ("Statement") states that the Petitioner is seeking to construct a 20' x 40' swimming pool in his back yard. The Statement states

that the Petitioner needs variance relief in connection with the proposed construction because of the "current conditions of the back yard." The Statement goes on to state that "[t]here is a retaining wall located directly behind the house that the home builder installed to attempt to maximize the back yard," and that the placement of the proposed pool was determined "in order not to impede on the angle of repose of the wall and to maintain a safe walking distance between the pool and the house," resulting in a "need to encroach on the side property line setback." See Exhibit 3. The Petitioner's Site Plan shows the location of the retaining wall. See Exhibit 4.

3. The Statement details the practical difficulties that denial of the requested variances would cause the Petitioner, stating that:

In the event that the board does not decide to grant this variance and the pool would have to move closer to the existing retaining wall we feel as though the pool could potentially be unbuildable. A certified structural engineer would need assess the wall and pool proximity and give his formal recommendation as how to construct a pool while breaking the angle of repose. Additionally, with the pool being in such proximity to the wall the structural rebar within the wall would need to be located by drilling into the wall and bonding it to the steel structure of the pool to be code compliant.

See Exhibit 3. The Statement notes that this would not only "significantly delay" construction of the proposed pool, but would also cause the Petitioner and his family to incur "additional cost."

4. The Statement states that the proposed pool would not be adverse to the use and enjoyment of the Petitioner's abutting neighbor to the right (west) because that neighbor "has an existing fence as well as a very lush garden full of trees making their yard very private and away from all existing dwellings." The Statement emphasizes that the Petitioner recognizes the importance of adherence to all County regulatory and permitting requirements, including required setbacks, and states that even with the grant of the requested variances, the Petitioner is "confident that [the proposed pool] will not pose any risk or inconvenience to neighboring properties." See Exhibit 3.

5. The Statement states that the Petitioner intends to install a fence on his property that will meet the County requirements for pool fencing prior to completion of the proposed pool. In addition, the Statement states that the Petitioner is "prepared to implement additional safety measures, such as fencing and alarm systems, to ensure the security of the pool area and mitigate any potential concerns raised by the county or neighboring residents." See Exhibit 3.

6. At the hearing, Mr. Kammer testified that property's topography in the rear makes it unique for the purposes of granting the requested variances. He testified that the subject property slopes up behind the house, causing the builder who redeveloped the property to install a two-tiered retaining wall on the property to hold

back the neighboring (uphill) yard, and to allow more flat space behind the house. Mr. Kammer testified that the presence of the retaining wall limits the available building area, and as a result, the size and shape of the pool. He testified that the proposed location of the pool is intended to provide space for the footer of the retaining wall, so as not to impinge on the angle of repose of the wall. Mr. Kammer testified that from an engineering and warranty standpoint, it is not advisable to have the pool constructed right up against the retaining wall. He testified that if the variances were granted and the pool and wall were able to be separated as proposed, if the pool were to shift, it would not affect the soundness of the wall.

Mr. Kammer testified that the automatic pool cover would be located on the right (west) side of the pool, and that it was more the pool cover than the actual pool that would encroach on the setbacks. He testified that he had tried many different ways to locate this pool on the Petitioner's property, and that the only way to accommodate it was to seek variances to allow it to encroach on the setbacks.

In response to a Board question, Mr. Kammer testified that the back edge (i.e. southeast corner) of the proposed pool would be four feet, eleven inches (4'-11") from the rear property line. He testified that this measurement was to the edge of the concrete for the pool, which he stated is about one foot (1') thick, and that the actual pool "water" would be approximately five feet, eleven inches (5'-11") from the rear property line.

In response to the concerns expressed by Mr. Eaton about the excavation for the pool, recounted below in paragraph 9, Mr. Kammer testified that the proposed pool was going to be between four and four and a half feet (4' to 4.5') deep, not eight feet (8') deep as was shown on the Construction Details. In light of this, he testified that excavation at the deep end of the pool would be less than six feet (6'). In response to a Board question asking about supportive excavation, Mr. Kammer testified that they have done that before, explaining that it entails asking the building inspector if they can "flash spray" the newly excavated hole immediately after excavation to hold back the earth until the rebar and gunite (concrete sprayed at high velocity) can be installed. Mr. Kammer testified that a finished pool has twelve inch (12") thick concrete walls that are reinforced with rebar. He testified that it usually takes about 10 days to install a pool after excavation is complete.

7. The Petitioner testified that he purchased the house with the retaining wall already built, and made it clear that he was not responsible for its installation. He testified that the previous owner of the property (i.e. the builder/developer) built the retaining wall. In response to a Board question asking if he had received any feedback about the proposed pool from his neighbors, he stated he had not.

8. In response to a Board question asking if the size of the pool was the minimum needed, the Petitioner testified that with the number of persons expected to use the pool and the ways in which they intend to use the pool, that was the minimum recommended dimension. Mr. Kammer then testified that a forty foot (40') long pool

is the minimum recommended length for lap swimming, adding that the Petitioner has children on the swim team who would like to be able to practice, and that once the children leave the house, the Petitioner would also like to be able to use the pool for laps.

9. Mr. Eaton testified that his property abuts the subject property to the rear, near the area where the proposed pool would be constructed. He testified that there is about a six foot (6') grade change from the subject property to his property, and that his property is above the subject property. Mr. Eaton testified that he has a gravity block wall on his property and a stockade fence. He testified that because there would be little room between the proposed pool and his gravity block wall, he wanted assurances that support systems would be used in connection with the excavation for the proposed pool, stating that it would be a "disaster" for him to have his gravity block wall come down if the excavation were to fail. He suggested that a condition be added to the variance requiring the contractor to use supportive excavation when building the pool.

In addition, Mr. Eaton testified that the property to the right (west) of the subject property has two large trees that are located close to the property line. He expressed concern that the excavation for the pool might harm these trees, and suggested that some kind of supportive excavation might help preserve them as well.

Finally, Mr. Eaton noted that Mr. Kammer had testified that the proposed pool would only be between four and four and a half feet (4' to 4.5') deep instead of eight feet (8') deep, and he suggested that Exhibit 5(a) be corrected to reflect the revised pool depth.

## **FINDINGS OF THE BOARD**

Based on the 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 59.7.3.2.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, based on the Statement, Site Plan, and the testimony of Mr. Kammer, that the builder constructed a two-tiered retaining wall behind the Petitioner's house to manage the slope of the property and maximize its usable rear yard. See Exhibits 3 and 4. The Board finds that the topography of the property and presence of a retaining wall constitute an unusual or extraordinary condition peculiar to the subject 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, based on the Petitioner's testimony and the SDAT Printout, that the Petitioner purchased the subject property in 2022, and is not responsible for the topography of the property or for the installation of the existing retaining wall, both of which predate his purchase. Thus the Board finds that this element of the variance test is satisfied.

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, Site Plan, and the testimony of Mr. Kammer, that because of the presence and location of the existing retaining wall, there is insufficient room in the Petitioner's rear yard to construct the proposed pool without variance relief, causing the Petitioner a practical difficulty. In support of this, the Board finds, based on the Statement and the testimony of Mr. Kammer, that at worst, moving the proposed pool any closer to the existing retaining wall would compromise the integrity of that wall and render the pool "unbuildable," and that at best, moving the proposed pool any closer to the retaining wall would require analysis by and a formal recommendation from a structural engineer regarding how to construct a pool while breaking the angle of repose of the existing retaining wall, if that is even possible, and other significant construction/engineering measures. In addition, the Board finds, per the Statement, that the pool must be located far enough away from the house to allow a safe walking distance between the house and the pool. Finally, the Board finds, per the Statement and the testimony of Mr. Kammer and the Petitioner, that the requested variances are the minimum necessary to allow the construction of a pool of the size necessary for lap swimming in the Petitioner's rear yard, in an area that will not compromise the existing retaining wall and will allow for a safe walking distance between the house and pool. See Exhibits 3 and 4. 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; and*

The Board finds that construction of the proposed swimming pool would continue the residential use of the property, consistent with the recommendations of the Bethesda Chevy Chase Master Plan, which generally seeks to "[p]rotect the high quality residential communities throughout the Planning Area." Accordingly, the Board finds that this element of the variance test is satisfied.

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.*

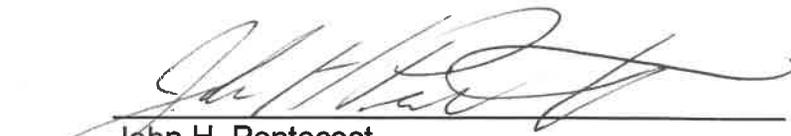
The Board finds, per the Statement, that the proposed swimming pool will not adversely impact the use of neighboring properties. In support of this, the Board finds, based on the Statement, that the Petitioner's abutting neighbor to the right (west), who shares the side property line from which variance relief is requested, "has an existing fence as well as a very lush garden full of trees making their yard very private and away from all existing dwellings." In addition, the Board notes that the concerns expressed by one of the Petitioner's abutting neighbors to the rear were not about the presence or location of the proposed pool, but rather were about the need for the use of safeguards during construction of the pool. The Board further finds, again per the Statement, that the Petitioner intends to fence the area and is committed to addressing all safety concerns of his neighbors. See Exhibit 3. 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 variances of three feet, four inches (3'-4") from the left side lot line, and one inch (1") from the rear lot line, needed to construct the proposed in-ground swimming pool, are **granted**, subject to the following conditions:

1. The Petitioner shall be bound by the testimony and exhibits of record, except as noted herein;
2. The Petitioner shall submit updated Construction Details (Exhibit 5(a)) for the pool showing that the proposed pool will be between four and four and a half feet (4' to 4.5') deep instead of eight feet (8') deep;
3. The Petitioner shall submit an updated Existing Conditions Plan (Exhibit 5(b)) that shows the footprint of his current home; and
4. Construction shall be in accordance with Exhibits 4 and 5(a), except that the pool, as constructed, shall only be four to four and a half feet (4' to 4.5') deep instead of the eight feet (8') deep shown on Exhibit 5(a), in accordance with the testimony of Mr. Kammer.

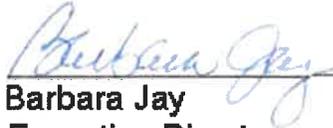
Therefore, based upon the foregoing, on a motion by Richard Melnick, Vice Chair, seconded by Amit Sharma, with John H. Pentecost, Chair, and Alan Sternstein in agreement, and with Caryn Hines necessarily absent, the Board adopted the following Resolution:

**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 31st day of May, 2024.



---

**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.