

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6868

**PETITION OF CEDARBROOK CLUB, INC.
c/o AMANDA McCARTHY, PRESIDENT**

OPINION OF THE BOARD
(Hearing Held: June 5, 2024)
(Effective Date of Opinion: June 21, 2024)

Case No. A-6868 is an application by Cedarbrook Club, Inc., c/o Amanda McCarthy, President (the "Petitioner"), for a variance needed to allow the Club's bathhouse to encroach into the required setback from the side lot line. The Club is proposing to renovate its existing bathhouse, and to build an addition to the bathhouse. The proposed construction requires a variance of forty-five (45) feet as it is within thirty (30) feet of the side lot line.¹ The required setback is seven-five (75) feet, in accordance with Section 59-G-2.56(a) of the 2004 Zoning Ordinance which requires, in relevant part, that a community swimming pool, "... including the apron and any buildings, must not at any point be closer than 75 feet from the nearest property line"

The Board of Appeals held a hearing on the application on Wednesday, June 5, 2024. Amanda McCarthy, who is President of the Club's Board of Directors, appeared in support of the request, and was represented by Jody Kline, Esquire. Jeff Shannon, who is one of the owners of the abutting residential property that would be closest to the proposed bathhouse addition, also appeared.

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

¹ As indicated in the Statement and confirmed by Mr. Kline at the hearing, the Club is now only seeking a variance of 37.5 feet from the required 75-foot setback established in Section 59-G-2.56(a) of the County Zone Ordinance, rather than the originally requested 45 feet.

SYNOPSIS OF SPECIAL EXCEPTION HISTORY

The Cedarbrook Club operates pursuant to special exception Case No. CBA-1551 [S-482]. The Board granted this special exception to the Cedarbrook Club, Inc., on May 25, 1964, under Sections 104-29(z-4) and 104-29(n) of the Zoning Ordinance (Chap. 104 Mont. Co. Code 1960, as amended) to permit the continued operation of a community swimming pool and the installation of a recreation area. Effective July 18, 1979, the special exception was amended to permit the use of a starting gun and to delineate the hours the pool was open. Effective July 16, 1992, the special exception was amended to permit the construction of a tennis pavilion. Effective July 12, 1996, the special exception was amended to permit replacement of the pool and bathhouse facilities. Effective September 9, 1997, the special exception was amended to permit construction of a storage shed. Finally, and most relevant to the variance case currently before the Board, effective December 27, 2023, the Board modified the special exception to permit an addition to the bathhouse and other changes. The Board understood in granting this latest modification that the proposed addition to the bathhouse would bring it approximately 21 feet closer to the property line than the existing building, which already encroached on the 75-foot perimeter setback required for all pool facilities by Section 59-G-2.56(a) of the 2004 Zoning Ordinance. Due to a misunderstanding, no variance was requested in connection with the 2023 modification of this special exception. The current variance case is intended to address that oversight.

EVIDENCE PRESENTED

1. The subject property consists of approximately 4.3 acres, Block 19, Parcel A Chevy Chase View Subdivision, located at 10150 Cedar Lane, Chevy Chase, Maryland, 20895, in the R-60 Zone. It is a uniquely shaped, irregular, nine-sided property, located on the northwest side of Cedar Lane. See Exhibits 4(a) and 8(a).
2. The Petitioner's Statement of Justification ("Statement") states that the Club has been in operation since 1954, at which time "it was established as a permitted use in the R-60 Zone." The Statement states that the 1964 approval of special exception Case No. CBA-1551 "allowed the club to make improvements to extend the length of the pool and add a ten foot apron." The Statement states that variance Case No. CBA-1552 was granted in connection with the special exception to allow "an encroachment of the new improvements by twenty-four (24) feet into the seventy-five (75) foot minimum setback requirement of Section 104-29(2)(4)(now Section 59-C-2.56(a)), " which required that a swimming pool, its apron, and any associated building not be closer than 75 feet to the nearest property line. See Exhibits 3 and 7(a).
3. The Statement states that it was originally understood that the addition to the bathhouse that was approved in 2023 would extend an additional 21 feet into the setback, bringing the total encroachment to 45 feet. The additional 21 foot encroachment is noted in the Board's December 27, 2023, Resolution, and the need for a 45 foot variance was noted on the Building Permit Denial issued by the Department of Permitting Services and

in the Board's Notice. See Exhibits 6 and 9(b). The Statement states that the extent of the total encroachment was later found to be incorrect, as follows:

Subsequent to the issuance of MCDPS' denial of the building permit application, the Club's architect received a survey from a civil engineer hired to provide base drawings for Cedarbrook's imminent building permit application to construct the facility approved by the Board in December, 2023. After detailed analysis, the engineers concluded that the closest point of the new addition would be located 37.51 feet from the closest property line as shown on the survey provided with this application. In that case, the separation between the proposed addition and the property boundary increased from 30 feet (as originally assumed by the Applicant) to 37.51 feet thus reducing the variance required from 45 feet to 37.49 feet (to be exact).

See Exhibit 3. This is reflected on the Petitioner's Site Plan. See Exhibit 4(a). Thus the Petitioner states, in the Statement, that it is "now seeking a lesser variance amount than it had requested in its application to MCDPS," and at present is requesting "a variance of 37.5 feet from the required pool house setback of 75 feet established in Section 59-G-2.56(a) of the County Zone Ordinance." The Statement indicates that because this is less than the variance that had been Noticed, it can be granted without the need for re-Noticing. See Exhibit 3.

4. The Statement states that when this property was originally developed as a community swim club, there were no development standards for this type of use other than the standards otherwise applicable to the R-60 Zone. As a result, the Statement indicates that the Club's bathhouse was placed in the narrowest area of the property, close to the abutting street from which it was accessed, to allow room for the other improvements, as follows:

The original construction of the Cedarbrook Club bathhouse occurred in or around 1954 when there were no applicable development standards other than those imposed by the underlying R-60 Zone. The bathhouse was placed in the eastern end of the property, to be close to the primary entry way on Connecticut Avenue [*sic*],² and to maximize the space in the center and western sides of the property for the pool, parking, tennis courts and surfaced recreation courts. Accordingly, the bathhouse is located at the narrowest part of the subject property and any enhancements to the footprint of the building must be located to the east because of the existence of pool house facilities that have been in place for close to sixty (60) years.

If the club cannot extend its bathhouse to the east, it cannot address and correct the problems that the Board of Appeals acknowledged when it approved Case No. 1551/S-482 in December, 2023.

² The reference to Connecticut Avenue should presumably be to Cedar Lane.

See Exhibit 3. The Statement asserts that these factors make the subject property unique for the purposes of the variance test, and that because of these factors, the strict application of the Zoning Ordinance would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the Club, which owns the subject property.

5. The Statement at Exhibit 3 states that the requested variance is the minimum needed to overcome the exceptional conditions that make the subject property unique and cause the Petitioner a practical difficulty, as follows:

For both design and economic reasons, the Club's architect proposed a simple addition to the eastside of the bathhouse that would accommodate the important functions of Check-in Desk, the Club's "Snack Shack" (with over-the-counter window sales) and a Storage and Lifeguard office. Placing these uses in the modest bathhouse addition allowed for a major reorganization of the existing building including changes in internal circulation to meet current ingress/egress regulations.

6. The Statement states that the Club is a long-standing feature in the community, both "physically and socially," and that "[t]here is nothing associated with the building improvements that are contrary to or inconsistent with the recommendations and intent of the applicable area Master Plan." Thus the Statement states that the requested variance can be granted without substantial impairment to the applicable general or master plan.

7. The Statement states that granting the requested variance will not be detrimental to the use and enjoyment of adjoining and neighboring properties. The Statement states that "[o]nly one property is affected by this variance request," and that the affected property is well-screened by fencing and landscaping, as follows:

Only one property is affected by this variance request. That is the existing residence located northeast of the pool house. The Club has had a comfortable relationship with the owner of that property and their periodic tenants. Enhancements over the years have included planting and landscaping and installation of a fence to provide screening and buffering between the abutting properties. Attached images prepared by the architect are not just illustrative and artistic but the perspectives are reasonably consistent with the condition of vegetation and other features that exist between the bathhouse and the residence to the northeast.

See Exhibit 3. The Statement further states that the area of the bathhouse that would be closest to the affected property is typically an area of less activity when compared with the entrances and exits from the locker rooms, bathrooms, and shower rooms:

The proposed use of the addition that prompts this variance request is relatively benign since it includes a) the check-in counter, b) pick-up of snacks and

drinks and c) passive storage and a “rest area” for the lifeguards. The main activity generators associated with the pool and the bathhouse will be the entrance and exits to the locker rooms and access to the bathrooms and shower rooms and will be on the opposite side of the building from the new addition. Therefore, the proposed addition does not bring an activity generator closer to an offsite residence.

8. At the hearing, Mr. Kline narrated the chain of events that caused the Club not to seek a variance in connection with the administrative modification they requested in late 2023, and apologized for the oversight. Mr. Kline then stated that the amount of variance needed was less than originally thought, explaining that the original determination was based on the architectural drawings, and that a later survey, done by an engineer, indicates that the Club only needs a 37.5 foot variance for the proposed construction.

Mr. Kline stated that if the variance were to be denied, it would pose a hardship for the Club because the full extent of the proposed bathhouse is needed in order to correct the internal circulation and accessibility problems that had been identified in connection with last year’s modification.

Mr. Kline stated that when the bathhouse was built, it was permitted by right and did not need a special exception. He stated that because its construction predated the Zoning Ordinance requirement for a 75 foot setback, the bathhouse was non-conforming from the start. Mr. Kline stated that denial of the requested variance will cause the Club a hardship because they cannot make the necessary improvements to their internal circulation patterns and access without moving the Snack Shack and Check-In station to the proposed addition. Finally, Mr. Kline stated that the bathhouse uses that would be housed in the proposed addition are the more benign/passive uses.

9. Mr. Shannon testified that his family has owned the abutting property at 10204 Summit Avenue since 1958. He testified that his family has enjoyed the pool, and that he believed his family and the pool had been good neighbors to each other. Mr. Shannon testified that he has no problem with the grant of the requested variance and the proposed construction as long as he and the Club continue their conversation about what will be built next to his property. The focus of his concerns was on the varying amounts of concrete/impervious surface that were shown near his property on some of the Petitioner’s Exhibits. Mr. Shannon made clear his desire that the use of such surfaces be minimized, especially near the shared property line.

10. Mr. Kline stated that the Club is committed to doing what it can to minimize the imperviousness of the areas around the proposed addition that are close to Mr. Shannon’s property. He suggested that blocks could possibly be used instead of concrete slabs for standing areas, that the expanse of concrete surfacing around the addition could potentially be reduced and pulled closer to the addition, and that the Club would endeavor to minimize the overall amount of impervious surfaces and to keep them as far away from Mr. Shannon’s property as possible.

11. Ms. McCarthy testified that the proposed addition to the bathhouse is on the narrowest part of the property. She testified that this is the only location on the property for the addition because the Club is confined to this space for the bathhouse. Ms. McCarthy testified that one reason for the renovation of the bathhouse was that it is inaccessible to many members and visitors, including those in wheelchairs. She testified that the Club is seeking to correct those problems and wants everyone to be able to access their facilities.

Ms. McCarthy testified that with the proposed addition, there will be no change to the function of the building, but that it will allow more space for the Club to conduct the activities that are currently taking place in that building.

FINDINGS OF THE BOARD

Based on the binding testimony and 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 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 and Site Plan, that the subject property has a unique, multi-faceted shape that constrains the area available for development. The Board finds that the area available for development is further constrained by the need for the pool and associated buildings to adhere to a 75-foot setback from all property lines. Finally, the Board finds that the development of this property is constrained by the original placement of the bathhouse and other improvements on the property, which occurred prior to the need for a special exception for this use, and which are located less than the requisite 75 feet from the property lines. See Exhibits 3 and 4(a). 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 that there is nothing in the record to indicate that the Club is responsible for the unusual shape of the subject property. The Board further finds, based on the Statement and the representations of Mr. Kline, that for a brief period when the existing pool and bathhouse were developed, community swimming pools were allowed by right in the R-60 Zone, and thus the Board finds that the existing features of the Club were sited on the property without regard to the 75-foot perimeter setback that was later made applicable when the Zoning Ordinance was changed to require that community swimming pools in this Zone have a special exception. See Exhibits 3 and 7(a). Finally,

the Board finds that the Club was not responsible for this change to the Zoning Ordinance. Thus the Board finds that the special circumstances or conditions applicable to this property 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, based on the Statement, the testimony of Ms. McCarthy, and the representations of Mr. Kline, that, as detailed in the Statement and in the related special exception modification, the Club cannot make necessary improvements to their bathhouse, needed to meet current ingress/egress regulations, without the proposed addition, and the proposed addition cannot be built without variance relief, causing the Club a practical difficulty. The Board further finds that the area selected for the addition is the only location on the property available for the addition because the Club is confined to this space for its bathhouse. See Exhibit 3. The Board finds that the requested variance is the minimum needed to overcome the practical difficulty caused by the unique shape and unusual zoning/development history of the property, and to allow the proposed construction to proceed. 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, per the Statement, that “[t]here is nothing associated with the building improvements that are contrary to or inconsistent with the recommendations and intent of the applicable area Master Plan.” See Exhibit 3. The Board notes, in this regard, that this Club has been a community fixture since 1954. Thus, the Board finds that the requested variance can be granted without substantial impairment to the intent and integrity of the Kensington-Wheaton Master Plan, which seeks, among other things, to “protect and stabilize the extent, location, and character” of existing land uses. 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.*

Per the Statement, the testimony of Mr. Shannon, and the representations of Mr. Kline, 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. In support of this, the Board finds, per the Statement, that the view of the proposed addition to the bathhouse would be screened by plantings, landscaping, and a fence. See Exhibit 3. The Board further finds that Mr. Shannon, who is one of the owners of the residential property nearest the proposed addition, has testified that he supports the grant

of the variance and the proposed construction as long as the Club agrees to do what it can to minimize concrete and other impervious surfacing near his property. Finally, the Board finds that Mr. Kline, on behalf of the Club, has represented that the Club is committed to minimizing the use of impervious surfacing around the proposed addition, so that this type of surfacing extends no closer to Mr. Shannon's property than is reasonable and necessary. The Board notes that Mr. Kline has agreed to submit a revised Site Plan showing the final design once that is determined.

Accordingly, the Petitioner's revised variance request of 37.5 feet from the required setback of 75 feet is **granted**,³ subject to the following conditions:

1. Petitioner 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)-(b), except as noted herein to address Mr. Shannon's concerns about impervious surfacing.

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.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st day of June, 2024.



Barbara Jay
Executive Director

³ The Board reiterates at this juncture that the Petitioner has correctly stated that the Board may grant a lesser variance than was noticed, and that in accordance with the written request of the Petitioner, the Board in this case is granting a 37.5 foot variance from the 75-foot setback, rather than the noticed 45 foot variance. See Exhibit 3.

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.