

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5516

PETITION OF CARL E. AND MARGARET M. ZWISLER
(Hearing held January 24, 2001)

OPINION OF THE BOARD
(Effective date of Opinion, February 27, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(b)(1). The petitioners propose to construct an accessory structure (pool) that requires a six (6) foot variance as it is within six (6) feet of the side lot line and an accessory structure (pool equipment) that requires a seven (7) foot variance as it is within five (5) feet of the side lot line. The required setback for both accessory structures is twelve (12) feet.

The subject property is Lot 34, Block 4, Hillmead-Bradley Hills Subdivision, located at 6400 Hillmead Road, Bethesda, Maryland, in the R-200 Zone (Tax Account No. 01816914).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 20 x 38 foot pool and a pool equipment structure in their rear yard.
2. The petitioners testified that they have an irregularly shaped lot that is located on a cul-de-sac. The petitioners testified that the terrain of the property is very uneven, with a severe drop-off in the rear yard. See, Exhibit Nos. 12(a) through 12(g).
3. The petitioners testified that the pool and the pool equipment structure would be located in the only level area of the rear yard. The pool would be screened by the existing vegetation and trees. The petitioners testified that the site for the proposed structures would not require the removal of any of the existing vegetation or trees.
4. The petitioners testified that the rear of the lot backs up to a ravine and that the proposed construction would not materially impact the view of the adjoining and neighboring properties. The petitioners testified that the amount of the requested variances diminishes from back to front and that the proposed structures would not be visible from the front of their property.

FINDINGS OF THE BOARD

Based on the petitioners' 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-G-3.1 as follows:

(a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

1. The Board finds the shape of the lot, the uneven terrain of the property and the ravine located at the rear of the lot are unique and exceptional conditions that impact the property's buildable envelope and restrict new construction on the site.
2. The Board finds that the proposed construction could not be located elsewhere on the property and that the proposed location of the structures would not require the removal of the existing vegetation and trees.

(b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions*

The Board finds that the requested variances for the construction of 20 x 38 foot pool and pool equipment structure are the minimum reasonably necessary to overcome the unique and exceptional conditions of the property.

(c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction would continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The record contains no testimony or correspondence in opposition to the requested variances. The Board finds that proposed construction would not be visible from the front of the property and that the proposed structures would be screened by the existing vegetation and trees. The Board further finds the variances would not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of six (6) feet from the required twelve (12) foot side lot line setback for the construction of an accessory structure (pool) and of seven (7) feet from the required twelve (12) foot side lot line setback for the construction of an accessory structure (pool equipment) are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) and 5(b).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Vice Chairman, in agreement, and with Mindy Pittell Hurwitz, in opposition, the Board adopted the foregoing Resolution. Board Chairman Donald H. Spence, Jr. was necessarily absent and did not participate in this Resolution.

Donna L. Barron
Vice Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 27th day of February, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). 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.