

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

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([www.co.mo.md.us/council/board.html](http://www.co.mo.md.us/council/board.html))

**Case No. A-5800**

**PETITION OF LAWRENCE S. AND STEPHANIE L. BARKER**

(Hearing held September 18, 2002)

**OPINION OF THE BOARD**

(Effective date of Opinion, October 25, 2002)

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 a variance from Section 59-C-1.326(a)(1). The petitioners propose to construct an accessory structure (pool) in the side yard that requires a variance. Section 59-C-1.326(a)(1) requires accessory structures to be located in the rear yard only.

John Copland, of Maryland Pools, appeared with the petitioners at the public hearing.

The subject property is Lot 40, Block K, Great Falls Estates Subdivision, located at 9304 Belmart Road, Potomac, Maryland, in the RE-2 Zone (Tax Account No. 02906554).

Decision of the Board: Requested variance **denied.**

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to construct a pool in the eastern side yard.
2. Mr. Copland testified that the structure could not be located in the rear yard because this area has existing structures and that structures in the rear yard would have the most impact on the neighboring properties.
3. The petitioner testified that the property has an existing septic system and that the lot is located on a cul-de-sac. The petitioner testified that the tennis court in the rear yard was built by a prior owner and that if the pool were to be located in the rear yard, the structure would be a great distance from the residence.

**FINDINGS OF THE BOARD**

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) 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.*

The Board finds that the petitioner's lot has no exception topographical or other conditions peculiar to the property and that while the petitioner's lot is distinctive, the lot does not differ significantly from other properties in the neighborhood. See, Exhibit No. 8 (zoning vicinity map). The Board notes that the petitioner has the option of removing the existing tennis court.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements set forth in that section for the grant of a variance. Accordingly, the requested variance to permit the construction of an accessory structure (pool) in the side yard is denied.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, 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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Donald H. Spence, Jr.  
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 25th day of October, 2002.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

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.