

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

SCOTT & DONNA MOSER
13625 Creek View Drive
Hagerstown, MD 21740

Appeal No. AP2007-056

Appellants

OPINION

This action is a request for a variance from minimum 15' left side setback to 11' for an in-ground swimming pool. The subject property is located at 13625 Creek View Drive, Hagerstown, MD 21740, is owned by the Appellants, and is zoned Environmental Conservation.

A public hearing was held before a full Board on July 11, 2007. The Appellants offered evidence and testimony in support of the appeal. Neither opposing testimony nor evidence was presented to the Board.

FINDINGS OF FACT

The following findings of fact are made by the Board, based upon the testimony given and all data and other evidence presented, and upon a study of the specific property involved, as well as the neighborhood:

1. Appellants seek to construct an in-ground swimming pool that is already under construction.
2. This variance is necessitated due to a survey error; the first survey showed no encroachment, but the pool is now too close to the property line.
3. The size and shape of the lot, and the placement of the residence thereon, contribute to the need for this variance.
4. The Appellants presented exhibits consisting of a photo of the pool and the plot plan.
5. Received and filed with the Board was a memorandum from Kathy A. Kroboth, Washington County Zoning Coordinator, advising that the appeal is consistent with the Comprehensive Plan.

6. No opposition was presented to this appeal.

RATIONALE

This Board has authority to grant a variance upon a showing by the Appellant of practical difficulty or undue hardship. Sections 25.2(c) and 25.56, Zoning Ordinance for Washington County, Maryland. "Practical Difficulty" may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variances would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. Section 25.56(a).

In the instant appeal, Appellants propose installation of a swimming pool. Appellants' proposed use is a reasonable accessory use of the property, and this variance is necessitated by the size and shape of the property. No evidence was presented that the proposed use was incompatible with the neighborhood; disruptive of neighbors' quiet enjoyment of their properties; detrimental to surrounding property values; generative of excessive odors, dust, gas, smoke, fumes, vibrations, or glare; generative of traffic that would exceed the capacity of existing infrastructure; or that the proposal was an inappropriate use of land or structure. Strict compliance would be unduly burdensome as it would require removal of the partially-constructed pool, at great expense and inconvenience to Appellants. A maximum setback would not provide any added safety or aesthetic benefits, and would fail to advance the spirit and purpose of the Ordinance.

Based upon all of the testimony and evidence presented, this Board finds that the subject request does not adversely affect the public health, safety, security, morals, or general welfare, nor does it result in dangerous traffic conditions, or jeopardize the life and property of neighborhood residents. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED this 10th day of August, 2007.

BOARD OF APPEALS

By: Bert Iseminger, Chair