

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

CLARK AND JULIE MARTZ
c/o Michael Condo
Appellants

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Appeal No. AP2009-18

OPINION

This action is a request for a variance from the minimum 25' front yard setback to 8' for placement of a 21'-diameter above-ground swimming pool. The subject property is located at 10906 Bower Avenue, Hagerstown, Maryland, is owned by the Appellants, and is zoned Residential Urban.

A public hearing was held before the Board on April 29, 2009. The Appellant offered evidence and testimony in support of the appeal. No opposition was presented to this appeal.

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 erect an above-ground swimming pool in their front yard.
2. The pool will be 18' in diameter.
3. The subject property is a corner lot (therefore, per the Ordinance, it has two "front" yards).
4. The lot is long and narrow, and of uneven topography.
5. Given the shape and topography of the lot, and the placement of existing structures thereon, no alternative location is available for placement of the pool.
6. No one testified in opposition to this request.

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).

Appellants' proposed use is a reasonable accessory use of the subject. Strict compliance is unnecessarily burdensome and impractical given the size and shape of the lot and the location of existing structures thereon. The lot is unusually long and narrow. 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. Failing to grant this variance would serve no public purpose, and it would deny Appellants a reasonable and customary accessory use to their dwelling. As the proposal does not engender any opposition from Appellants' neighbors and the proposed placement of the structure is the most logical given the features of the lot, we feel that the grant of this request advances 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 by a vote of 5-0.

BOARD OF APPEALS
By: Bert Iseminger, Chair

Date Issued: May 26, 2009