

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
SW corner of Magnolia Avenue and Winans Avenue	*	DEPUTY ZONING
12 th Election District	*	COMMISSIONER
1 st Councilmanic District	*	FOR BALTIMORE COUNTY
(4617 Magnolia Avenue)	*	Case No. 2010-0005-A
Michael and Charlene Reilly		
<i>Petitioners</i>		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the legal owners of the subject property, Michael and Charlene Reilly for property located at 4617 Magnolia Avenue. The variance request is from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (replace an existing in-ground swimming pool) located in the one third of the lot closest to the street in lieu of the required third of the lot farthest removed from the street. The subject property and requested relief are more particularly described on Petitioners' Exhibit No. 1. Petitioners state in the Affidavit that there is already an existing in-ground pool that has been installed since July, 2005 in this location. Prior to the installation of an in-ground swimming pool there was an above-ground 16 feet x 40 feet pool in the same location for about 17 years. The permit was given to Mitchell Norris of Dolphin Pool who installed the pool without telling the Petitioners that he had indicated the pool would be installed in a different location when he got the original permit.

Petitioners were previously granted Administrative Variance approval in Case No. 06-247-A to permit a 6-foot high fence adjacent to the front yard of an adjoining property in lieu of the maximum allowed height of 3.5 feet. This request was granted by Zoning Commissioner William J. Wiseman, III on December 1, 2005.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated August 5, 2009 which indicates that the rear yard and pool should be screened with an attractive 6-foot high privacy fence.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on August 23, 2009 and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The subject Administrative Variance closed on August 3, 2009 and the required posting date was July 19, 2009. Upon the file being delivered to our Office on August 30, 2009, it was discovered that the required posting was not done. In a telephone conversation with the Petitioner (Mr. Reilly) on August 12, 2009, he stated that the variance was not necessary and he was not going through with the project. Therefore, the file for Case No. 2010-0005-A was subsequently returned to the Zoning Review Office. On May 5, 2010, the subject case file was brought to our Office. The case file now contains a Certificate of Posting for August 23, 2009. In a telephone conversation with Mrs. Reilly on May 13, 2010, she indicated that they have received all their permits and approvals for the existing pool.

The Petitioners have filed the supporting affidavits as required by Section 32-3-303 of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Deputy Zoning Commissioner, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners. I will require that Petitioners' rear yard and in-ground swimming pool be screened with an attractive

6-foot high privacy fence as suggested by the Office of Planning. The photographs submitted with the Petition depict a chain link fence of average height surrounding the rear yard. It appears from the photographs that the chain link fence is the original fencing and that the Petitioners have not installed the 6-foot high fence as requested and approved in their previous administrative variance, Case No. 06-247-A.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 24th day of May, 2010 that a variance from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (replace an existing in-ground swimming pool) located in the one third of the lot closest to the street in lieu of the required third of the lot farthest removed from the street is hereby GRANTED, subject to the following:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The rear yard and in-ground swimming pool shall be screened with an attractive 6-foot high privacy fence.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz