

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/Side of Corbett Road, 440' E of the		
c/line of Corbett Village Lane	*	OFFICE OF ADMINISTRATIVE
8 th Election District		
3 rd Council District	*	HEARINGS FOR
(1732 Corbett Road)		
	*	BALTIMORE COUNTY
Charles G. and Ellen J. Pepin		
Petitioners	*	CASE NO. 2011-0292-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by the legal owners of the property, Charles G. and Ellen J. Pepin. The Petitioners are requesting Variance relief under Sections 1A08.6c.2.f and 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- To allow an existing swimming pool, barn and two sheds in the front yard in lieu of the required rear yard, and
- To allow a proposed pool house in the front yard in lieu of the required rear yard, and
- To allow an existing accessory structure (barn) with a height of 30 feet, more or less, in lieu of the maximum permitted height of 15 feet, and
- To allow a proposed accessory structure (pool house) with a height of 20 feet in lieu of the maximum permitted height of 15 feet.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the variance request were Petitioner Charles Pepin, adjacent property owner Richard Moreland, and Bruce E. Doak with Gerhold, Cross & Etzel, Ltd., the professional land surveyor who prepared the site plan. The file reveals

that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance at the hearing.

The Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. Comments were received from the Office of Planning on April 20, 2011 and based on this review, they offer the following comments:

“The Office of Planning has reviewed the petitioner’s request for Variances pertaining to accessory structures on the subject property. The subject property is a contributing structure within the boundaries of the Corbett County Historic District. A proposal for construction of a pool house would need review by and approval from the Landmarks Preservation Commission (LPC). To date, no request has been submitted to the Landmarks Preservation Commission for review”.

ZAC comments were also received from the Department of Environmental Protection and Sustainability (DEPS) dated April 7, 2011 which indicated that the proposed building permits will be (are being currently) reviewed by Groundwater Management and is subject to its approval.

Bruce Doak proffered testimony on behalf of the Petitioner, which was later adopted under oath by him. Mr. Doak presented that the subject property consists of 3.5 acres located in the village of Corbett, it is zoned RC 7, has entrances on Corbett Road, and is improved by an already existing multi-story framed dwelling built in the late 19th century. An existing barn, swimming pool, and two sheds are also presently on the property. The site is served by a private well and septic system.

He placed the plat to accompany the variance petition into evidence. He explained that the dwelling house literally has doors on each side. The only access to and from the property is a driveway from Corbett Road. The adjacent properties to the site are owned by the Petitioner. Nevertheless, the “technical” front of the dwelling is located on the opposite side than that facing Corbett Road; hence rendering the location of the pool, shed, and proposed pool building

technically in the “front” yard of the site, and necessitating therefore the instant variance request.

The plan of the proposed pool house and a separate exhibit showing its elevations was entered into evidence. The structure will be 26’6” x 28’6”. The existing barn is 30 feet high and the proposed pool house is to be 20 feet high. Mr. Doak explained that the existing dwelling, while not historic itself, is a contributing structure within the Corbett County Historic District. The existing structures includes roofs with distinctive steep pitches. In order to “mimic” this existing historic architectural characteristic, the additional 5 feet are structurally and architecturally necessary. He also noted that contact has been made with Karen Brown of the Landmarks Preservation Commission, who has proved of the Petitioner’s intentions. The Petitioner will be submitting to the Commission for formal approval before construction.

Mr. Doak stated that the additional height of the pool house will be solely to accomplish the architectural plan. There will be no actual third floor in the structure, the view internally will go to the roof itself. Further, he related that a percolation test has been applied for construction of the pool house and submissions have already been made for the appropriate approvals.

Mr. Doak proffered that the property in question is unique in view of its novel geographic situation, with its “logical” front facing its only outside access, but its “official” front located on the opposite side of the main building. In addition, he points out that the property was created prior to the advent of zoning regulations. Finally, he points out that the existing pool, well buffered from any adjacent owners, already exists and the pool house should logically be placed near to it.

He alleges practical difficulty as the proposed pool house, in order to comply with the architectural characteristics desired by the Landmarks Preservation Commission, needs the additional height to so conform. Moreover, the topography of the site dictates that the flat nature of the side adjacent to the pool presents to the most efficacious location for the pool house.

Charles Pepin, the Petitioner, testified as to the history of the site, addressed and confirmed the proffer regarding the topography and practical needs to construct the pool house and presented a photograph of the main structure in the late 1900s, as well as photos of the area proposed for the new structure.

Richard Moreland, an adjacent property owner living at 1822 Corbett Road, testified that Petitioner's project "would complete the neighborhood and lot package" and tie the property together. He has no objection whatsoever to the project.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist as to the topography, geographic structure, and unique access situation that are particular to the land or structure which is the subject of the variance request.

I further find that practical difficulty exists, limiting the use of the property for a permitted purpose by the Petitioner if the variance is not granted; and further find that the granting of the relief set forth herein can be accomplished without injury to the public health, safety, and general welfare. Therefore, in all manner and form, I find that the variance requested can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R. as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995). *McClean v. Soley*, 270 Md. App. 208 (1973)

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED, this 19 day of May, 2011 by this Administrative Law Judge that Petitioners' Variance requests from Sections 1A08.6c.2.f and 400.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows:

- To allow an existing swimming pool, barn and two sheds in the front yard in lieu of the required rear yard, and
- To allow a proposed pool house in the front yard in lieu of the required rear yard, and
- To allow an existing accessory structure (barn) with a height of 30 feet, more or less, in lieu of the maximum permitted height of 15 feet, and
- To allow a proposed accessory structure (pool house) with a height of 20 feet in lieu of the maximum permitted height of 15 feet,

be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioners may apply for their building permit and may be granted same upon receipt of this Order, however the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.
2. Petitioners shall comply with the Zoning Advisory Committee (ZAC) comments submitted by the Department of Environmental Protection and Sustainability (DEPS) dated April 7, 2011 and the Office of Planning received April 20, 2011; copies of which are attached hereto and made a part hereof.
3. There shall be no “residential” use of the pool house.

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

Signed _____
 LAWRENCE M. STAHL
 Managing Administrative Law Judge
 for Baltimore County

LMS:pz

Attachment