

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/S Malvern Road, 30' E of c/line of		
Ruxton Road	*	ZONING COMMISSIONER
(1304 Ruxton Road)		
9 th Election District	*	OF
2 nd Council District		
	*	BALTIMORE COUNTY
Anthony O'Brien, et ux		
Petitioners	*	Case No. 2011-0047-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Anthony O'Brien and his wife, Eva Simmons-O'Brien. The Petitioners request variance relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (swimming pool) and ancillary uses in the front and side yards in lieu of the required rear yard and in lieu of the third of the rear yard farthest removed from any street. The subject property and relief requested are more particularly described on the site plan(s) submitted which was accepted and marked into evidence as Petitioners' Exhibits 1 and 2.

Appearing at the requisite public hearing in support of the request were Petitioner Anthony O'Brien and James D. Grammer, on behalf of McKee & Associates, Inc., the consultants who prepared the site plan. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is a rectangularly shaped corner lot located on the northeast corner of Malvern and Ruxton Roads in the Murray subdivision of Towson. The property consists of 1.24 acres (54,014 square feet), more or less, zoned D.R.2 and is improved with a 2-½ story brick dwelling built in 2007. Petitioners

purchased the property in May of this year. In addition to the dwelling, the property also features a detached garage, approximately 24' x 36' in dimension located in the northwest corner of the rear yard. The developable area of the property is impacted by substantial Forest Conservation and Forest Buffer Easement(s) on the eastern portion of the property and occupy approximately one third of the lot restricting improvements in that area. The topography in the third of the rear yard farthest removed from the street is steeply sloped.

As noted, the subject of the variance request relates to the placement/location of a swimming pool and hot tub. B.C.Z.R. Section 400.1 pertains to accessory structure locations and states:

“Accessory buildings in residence zones, other than farm buildings (Section 404) shall be located only in the rear yard and shall occupy not more than 40% thereof. *On corner lots they shall be located only in the third of the lot farthest removed from any street and shall occupy not more than 50% of such third.* In no case shall they be located less than 2 1/2 feet from any side or rear lot lines, except that two private garages may be built with a common party wall straddling a side interior property line if all other requirements are met. The limitations imposed by this section shall not apply to a structure which is attached to the principal building by a covered passageway or which has one wall or part of one wall in common with it. Such structure shall be considered part of the principal building and shall be subject to the yard requirements for such a building.”
(Emphasis Added)

The issue presented is whether there is some unique characteristic of the property which creates a practical difficulty in complying with the zoning regulations. *Cromwell v. Ward*, 102 Md. App. 691 (1995). In addressing this issue, factors such as environmental conditions, topography and lot configuration are relevant.

The location and orientation of the existing dwelling and topography on this site are very real issues. The forest buffer generates a setback of 35 feet. There is a negligible rear yard for an accessory structure. There is literally no place in the rear of the dwelling where a pool could be placed without intruding into the adjacent neighbor's privacy. The house is situated on

the lot to face Malvern Avenue but as the many photographs submitted (Petitioners' Exhibits 3A through 3I) demonstrate it is oriented to front on Ruxton Road. The GIS aerial photograph (Exhibit 4) confirms this layout and shows a driveway and walkway leading from Ruxton Road to the home. The Maryland Department of Assessments and Taxation (MDAT) Real Property records maintain a mailing address of 1304 Malvern Avenue, however, the post office address, as noted above, is 1304 Ruxton Road. The facts presented here are similar to those found in *Swoboda v. Wilder*, 173 Md. App. 615 (2007). While the front door faces towards Malvern Avenue, it is my opinion the home with its distinctive features is oriented toward Ruxton Road. While this Malvern orientation severely limits the depth of the rear yard, it is nonetheless a distinction without a difference. The lot is bordered by two (2) streets and a forest buffer easement, and the house is skewed to all of them. The rear yard is small and has topographical limitations. I find the imposition of zoning on this property disproportionately impacts it as compared to others in the zoning district.

Based on my review of the site plan, the elevations of the pool and ancillary uses shown on Exhibit 2, as well as testimony offered, I find that the subject property is so constrained that it causes a unique condition that creates a practical difficulty in the strict adherence to Section 400.1 of the B.C.Z.R. I also find that the relief sought is within the spirit and intent of the zoning regulations and indeed, without the relief sought, an accessory pool would lack the proportionality and design characteristics that create the desired harmony with the primary structure. In this area of Towson, justifiably one of the finer residential areas in the metropolitan area, it is important that the structures be well placed and well proportioned in order to maintain the character of this neighborhood. The improvements have been designed to provide the least impact to the surrounding neighbors and community. The elevation from

Malvern Avenue to the pool's location rises up some 16 feet. The entire area is well buffered with mature trees. The Office of Planning has made a very positive comment on the proposed variance but would like assurances that the wooded buffer along Malvern be maintained and a dark colored security fence be utilized around the pool.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 13th day of October 2010 that the Petition for Variance seeking relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (swimming pool) and ancillary uses in the front and side yards in lieu of the required rear yard and in lieu of the third of the rear yard farthest removed from any street, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED subject to the following restrictions:

1. The Petitioners may apply for their permit and 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 the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. Compliance with the ZAC comments submitted by DEPRM, dated September 8, 2010, and the Office of Planning, dated August 30, 2010. Copies of those comments have been attached hereto and made a part hereof.

Any appeal of this decision shall be entered within thirty (30) days of the date hereof.

WJW:dlw

SIGNED _____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County