

IN RE: PETITION FOR VARIANCE
(303 Dale Avenue)
6th Councilmanic District
14th Election District
Donna Reynolds
Petitioner

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2013-0044-A**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by the legal owner, Donna Reynolds. The Petitioner is requesting Variance relief from § 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit an existing accessory structure (swimming pool) located in the front and side yard in lieu of the required rear yard. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support for this case was Glenn Harrison, who resides at the subject premises. There were no Protestants in attendance at the hearing. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

This matter is currently the subject of a violation case (Case No. CO-111757). It should be noted that the fact that a code violation is issued is generally not considered in a zoning case. Zoning enforcement is conducted by the Department of Permits, Approvals, and Inspections, which has the authority to issue Correction Notices and Citations and to impose fines and other penalties for violation of law. On the other hand, the role of the Administrative Law Judge in this matter is to decide the discreet legal issue of whether the Petitioner is entitled to the requested

zoning relief.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. There were no adverse ZAC comments submitted by any of the County reviewing agencies.

Testimony and evidence revealed that the subject property is 3,792 square feet and is zoned DR 5.5. The Petitioner constructed the pool in its present location over seven years ago. Apparently, an anonymous complaint was filed with the Department of Permits, Approvals, and Inspections (PAI) regarding the pool's location, which necessitated this hearing.

Based upon the testimony and evidence presented, I will grant the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioner has met this test. The pool is an existing site condition, and it was constructed over seven years ago and the Petitioner has never received a complaint. In addition, as shown on Exhibit 1, the Petitioner really does not have a rear yard, and thus the side yard is the only available location for the pool.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty and/or hardship. The Petitioner would be required to remove the pool. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of opposition from the community and the lack of negative comments from Baltimore County reviewing agencies.

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

THEREFORE, IT IS ORDERED, this 29th day of October, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 400.1 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to permit an existing accessory structure (swimming pool) located in the front and side yard in lieu of the required rear yard, be and is hereby GRANTED.

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

JEB:dlw

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County