

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(631 W. Timonium Road)</b>		
8 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
3 <sup>rd</sup> Councilman District		
W. Kyle & Paula Gore	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2013-0294-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Bruce E. Doak, on behalf of the legal owners, W. Kyle and Paula Gore. The Variance was filed pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) Sections 400.1 and 400.3: (1) to allow an accessory structure (pool) to be located in the side yard in lieu of the rear yard; and (2) to allow an accessory structure (pool house) to have a height of 19’ in lieu of the required 15’. 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 of the requests were Paula Gore and Harry Geschwilm. Bruce E. Doak from Bruce E. Doak Consulting, LLC, also appeared in support of the Petition. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (DEPS) dated July 1, 2013 and the Department of Planning (DOP) dated July 2, 2013. Department of Environmental Protection and Sustainability

indicated that the development of this property must comply with the Forest Conservation Regulations. The Department of Planning does not oppose the requested variance, but noted that the accessory structure should not contain any sleeping quarters, living area, or kitchen facilities and that the accessory building shall not be used for commercial purposes.

Testimony and evidence revealed that the subject property is approximately 6.279 acres and zoned RC 5. The Petitioners are constructing a new home on the lot, and would like to include a pool and pool house on the property. Variance relief is required before they can do so.

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).

Petitioners have met this test. The subject property is large and irregularly shaped, and is thus unique.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty, since it would be unable to construct the proposed pool and pool house. 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 absence of County and/or community opposition.

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

THEREFORE, IT IS ORDERED, this 12<sup>th</sup> day of August, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to

Baltimore County Zoning Regulations (“B.C.Z.R”) Sections 400.1 and 400.3: (1) to allow an accessory structure (pool) to be located in the side yard in lieu of the rear yard; and (2) to allow an accessory structure (pool house) to have a height of 19' in lieu of the required 15', be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for appropriate permits 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, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- The Petitioners or subsequent owners shall not convert the subject accessory structure (pool house) into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities. The pool house shall not be used for commercial purposes.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB: sln