

IN RE: PETITION FOR VARIANCE (200 Hopkins Lane) 3rd Election District 2nd Council District Kevin F. McAllister & Julia Martin McAllister Legal Owners Petitioners * * * * * * * * *	* * * * * * * * *	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS OF BALTIMORE COUNTY CASE NO. 2021-0058-A
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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Kevin F. McAllister and Julia Martin McAllister (the “Petitioners”) for the property located at 200 Hopkins Lane, Greenspring Valley (the “Property”). The Petitioners are requesting variance relief from Baltimore County Zoning Regulations (“BCZR”) §400.3 to permit the height of an accessory structure (pool house) of 23 ft. in lieu of the required 15 ft.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Petitioner Kevin McAllister appeared at the hearing along with Charles Patterson, architect. Bruce E. Doak of Bruce E. Doak Consulting, LLC also appeared and prepared a site plan (the “Site Plan”). (Pet. Ex. 1). There were no opposing parties or interested citizens in attendance.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and from the Department of Environmental Protection and Sustainability (“DEPS”) which agencies did not oppose the requested relief.

Mr. Doak explained that the Property is 3.556 acres +/- and is improved with a 2-story dwelling built in 1891, an old barn, a pool and a shed. (Pet. Exs. 1, 2). It is located in the Greenspring Valley Historic District. As reflected in the Site Plan, the Property is an elongated,

irregularly shaped parcel which is accessed by a driveway on the western side. (Pet Ex. 1). The Property is primarily zoned Rural Residential (RC 5) with a small area zoned Agricultural (RC 2). (Pet. Ex. 3). Mr. Doak explained that there are significant changes in grade with steep slopes in the front, flat where the home is located, and less severe slopes in the rear. (Pet. Exs. 1, 4). As seen in the photographs provided, there is an abundance of mature trees and other vegetation that serve as a natural screen. (Pet. Exs. 6A -6I). The closest residence is to the north located behind the pool house.

In Case No.: 2020-0087-A, the Petitioners proposed to construct a detached garage and requested a height variance of 25 ft. in lieu of the required 15 ft. in order to match the roof pitch of the house. The Property was found to be unique and the variance relief was granted.

In this case, the Petitioners desire to construct a 2-story pool house in the rear of the Property which will be built into the rear slope providing a walk-out from the ground floor. (Pet. Ex. 1). Charles Patterson, the architect who designed the pool house, was accepted as an expert in architecture. Mr. Patterson explained that the additional roof height is the result of the front roof peak on the proposed pool house. (Pet. Ex. 1). This roof peak is intended to match the proposed garage and house. Without the proposed roof peak on the pool house, the structure would look flat.

The proposed pool house will have two (2) bathrooms: one on the ground level and one on the first floor. Mr. McAllister testified that they recently increased the septic system capacity as well as the electrical/utility service in the home in anticipation of the proposed garage and the pool house.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate

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

Cromwell v. Ward, 102 Md. App. 691 (1995).

The Property was previously adjudicated to be unique due to its elongated and irregular shape and relatively steep topography. As a result, that factual finding is applicable to this case under the doctrine of collateral estoppel. *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. 359, 368 (2016). (See also *Colandrea v. Wilde Lake Community Ass'n, Inc.*, 361 Md. 391 (2000); *Washington Suburban Sanitary Commission v. TKU Associates*, 281 Md. 1, 18-19 (1977)). I also find that the Petitioners would suffer a practical difficulty if the variance relief is not granted because they would not be able to construct the proposed structure (pool house) with the height needed for the front roof peak which will match both the house and the garage. Based on the RC5 Performance Standards, the design of the pool house, as well as the materials to be used, must be complimentary of the existing structures. I further find that the requested height variance is within the spirit and intent of the BCZR and will not harm the public health, safety, and welfare, particularly in light of the lack of opposition.

THEREFORE, IT IS ORDERED, this 17th day of **June 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR §400.3 to permit the height of an accessory structure (pool house) of 23 ft. in lieu of the required 15 ft. is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

2. Petitioners and subsequent owners shall not convert the accessory structure (pool house) into a dwelling unit or apartment. The accessory structure (pool house) shall not contain any sleeping quarters, living area, or kitchen. The two (2) proposed bathroom facilities shall be used for residential purposes.

3. The accessory structure (pool house) shall not be used for commercial purposes.

4. The accessory structure (pool house) shall not have a second utility/electrical connection and shall use the utility/electrical connection in the house.

5. Petitioners must comply with the DEPS comment dated March 9, 2021 and DOP ZAC comment, dated March 26, 2021; a copies of which are attached hereto and made a part hereof.

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



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm