

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
<b>(2024 Middleborough Road)</b>	*	OFFICE OF ADMINISTRATIVE
15th Election District	*	HEARINGS FOR
7th Council District	*	BALTIMORE COUNTY
Elizabeth Sligh	*	<b>CASE NO. 2020-0131-A</b>
<i>Legal Owner</i>		
<b>Petitioner</b>		
* * * * *		

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by Elizabeth Sligh for property located at 2024 Middleborough Road. The Petitioners are requesting variance relief from § 1B02.3.C.of the Baltimore County Zoning Regulations (“BCZR”) to permit a side yard open projection (deck & pool) with a side yard setback of 2 ft. 8 in. in lieu of the required 7.5 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. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1. The subject property is approximately 8,250 square feet and zoned DR 3.5.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection Sustainability (“DEPS”) which indicated the property is located within the Chesapeake Bay Critical Area (“CBCA”) and is subject to Critical Area requirements. In addition, a ZAC comment was received from the Department of Planning (“DOP”) which opposes the variance.

Petitioner, Elizabeth Ann Sligh, appeared in support of the requested relief. Her next door neighbor Harry Horney also attended. A Code Enforcement Complaint was filed and a stop work

notice was issued on April 16, 2020. The Code Official stayed the case pending resolution of this variance request. Ms. Sligh testified that she placed the pool in the side yard because there is a large mature tree in the middle of her back yard, as depicted in Petitioner's Exhibit 2. Further, as shown in Petitioner's Exhibit 3, there is a central air conditioning unit at the side of her house that prevented her from meeting the 7.5 foot side setback. These and the other photographs submitted also show that there is a six foot privacy fence that shields the entire pool and yard from view. Ms. Sligh's husband testified that he has chronic back problems and that he uses the pool for therapy and pain relief.

Their neighbor, Mr. Horney, testified that he owns the house next door but does not live there. His son and grandson do. He testified that they too have a pool and that they have no objection to the Sligh's pool other than the occasional noise from the pool activities at night, because his grandson's bedroom window is only about 12 feet from the pool.

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 subject property is unique because the large tree in the back yard necessitates the placement of the pool in the side yard. Petitioner would suffer practical difficulty if the variance were denied because they would be unable to have the pool, which they use for physical therapy and pain relief. Petitioners agreed to plant evergreen shrubs along the fence line next to the pool in order to create a sound buffer. They also agreed to refrain from playing music or making any noise beyond conversation while using the pool after 8 p.m.

Based on the record evidence, and with these conditions, I believe that the variance relief can be granted within the spirit and intent of the BCZR and without harming the public health, safety, or welfare.

THEREFORE, IT IS ORDERED, this **2nd** day of **November, 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to (“BCZR”) § 1B02.3.C. to permit a side yard open projection (deck & pool) with a side yard setback of 2 ft. 8 in. in lieu of the required 7.5 ft. is hereby **GRANTED**, subject to the following conditions:

1. Petitioner shall plant evergreen shrubs at least 5 feet tall along the fence line adjoining the Horney property, and spaced so that they create a continuous buffer.
2. Petitioner shall not play music or make noise above a conversational level in the pool area after 8 p.m.

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

\_\_\_\_\_  
Signed  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM/dlm