

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
<b>(15 Meadow Road)</b>	*	OFFICE OF ADMINISTRATIVE
9th Election District	*	HEARINGS OF
2nd Council District	*	BALTIMORE COUNTY
Cynthia Egan	*	<b>CASE NO: 2021-0221-A</b>
Legal Owner	*	
<b>Petitioner</b>	*	
* * * * *		

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by the Petitioner, Cynthia Egan (“Petitioner”) for property located at 15 Meadow Rd., Ruxton (the “Property”). The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (“BCZR”), §400.1 to permit an accessory structure (pool) to be located in the side yard outside of the one third (1/3) of the lot farthest removed from any street.

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 Cynthia Egan appeared at the hearing along with Bruce E. Doak, licensed surveyor of Bruce E. Doak Consulting who prepared and sealed a site plan (the “Site Plan”). (Pet. Ex. 1). There were no Protestants or interested citizens present at the hearing.

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

The Property is approximately 1.25 acres +/- and was created as Lots 48 and 49 on the Plat of Hurstleigh filed in the Land Records of Baltimore County (Liber 12, Folio 5), on July 16, 1937. (Pet. Ex. 3). It is improved with a 2-story, stone residence, stone cabana/pavilion and patio

built in 1942. (Pet. Exs. 5A-5J). The Property is surrounded by stone retaining walls which hold back the upper part of the rear yard. It is zoned Density, Residential (DR 2). (Pet. Ex. 4). An aerial photograph reveals that the home is surrounded by other homes in an established neighborhood with mature trees. (Pet. Ex. 5). The Property is accessed via Meadow Rd. There is also a paper road named Garden Lane which can be seen on both the Plat of Hurstleigh and the Site Plan. (Pet. Ex. 1, 3). However, as explained by the Petitioner and as shown in the aerial photograph, Garden Lane is grass and trees. (Pet. Ex. 5). Mr. Doak discovered that Garden Lane has never been dedicated to the County and has never been the subject of a Road Closing case. Because Garden Lane has never been used as a means of ingress or egress, its measurements are also not clear.

Mr. Doak explained that due to the unique of the shape of the Property as a long, unevenly shaped rectangle, as well as the shape and position of the home on the Property near the rear stone retaining wall, it is not possible to construct a pool in the rear yard. (Pet. Ex. 5J). As reflected in the street view photographs, there is an initial stone wall extending from the home to the cabana/pavilion. It is the area between the first stone wall and the rear stone wall where the Petitioner proposes to construct a 12x20 sf pool. (Pet. Ex. 5J). Thus, from Meadow Rd., the proposed pool is not visible. (Pet. Exs. 5G-5I). The northern side yard is Property has varying degrees of steep grades and rocks and is not suitable for the construction of a 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 Property is unique in that it is an elongated rectangle, with an irregularly shaped of stone home situated farther back in the rear yard, thereby reducing any useable rear yard area. It is also peculiar in that the stone cabana/pavilion spans both Lots. Additionally, on the south side of the Property is a paper lane which has never been used and exists as part of the Petitioner's side yard. The evidence produced confirms that due to the uniqueness of the Property, the Petitioner would suffer a practical difficulty and unreasonable hardship if strict compliance with the location of the pool in the rear yard were required as there is not enough space between the stone home and stone retaining wall for a pool. I find that the proposed location for the pool is ideal in this case because the first stone wall connecting the home to the cabana/pavilion, along with the existing bushes and landscaping completely shields the pool from Meadow Rd. The proposed location gives the illusion of being located in the rear yard.

With regard to the Variance request for the pool being located only in the third of the lot farthest removed from any street under BCZR, §400.1, that location is the northern side of the Property with steep grades and rocks. It is also more visible to neighboring properties. As such variance relief is needed and should be granted due to the uniqueness and practical difficulty as above. In the alternative, I am not convinced that that portion of BCZR, §400.1 applies to Garden Lane as a paper lane which has never been used, and has never been dedicated to the County. Garden Lane was drafted on the 1937 Plat but has only existed as grass and trees. Moreover, BCZR, §101.1 defines 'street' as "a motorway which is not a freeway or expressway but which has a right-of-way more than 20 feet in width." I find that Garden Lane does not meet this definition and therefore, that portion of BCZR, §400.1 does not apply. As such, no Variance relief is needed from that portion of BCZR, §400.1.

I also find that the requested variance relief can be granted in strict harmony with the spirit

and intent of the BCZR and without injury to the health, safety or general welfare, particularly in light of the lack of opposition.

THEREFORE, IT IS ORDERED, this **2nd** day of **November, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR §400.1 to permit an accessory structure (pool) to be located in the side yard outside of the one third of the lot farthest removed from any street is hereby **GRANTED**.

IT IS FURTHER ORDERED THAT, in the alternative, the portion of BCZR §400.1 regarding corner lots does not apply for the reasons set forth herein.

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

Signed  
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MAUREEN E. MURPHY  
Administrative Law Judge  
for Baltimore County

MEM/dlm