

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(3119 Northwind Road)		
11th Election District	*	OFFICE OF ADMINISTRATIVE
5 th Council District		
Steven Appel and Jackie Appel	*	HEARINGS OF
Legal Owners	*	BALTIMORE COUNTY
Petitioners	*	CASE NO: 2021-0224-A
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by the Petitioners, Steven Appel and Jackie Appel (“Petitioners”) for property located at 3119 Northwind Road, Parkville (the “Property”). Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”), §400.1 to permit an accessory structure (pool) to be located in the rear and side yards (along Maidbrook Rd.) in lieu of the required placement in the 1/3 of the rear yard furthest removed from both roads.

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, Steven Appel appeared at the hearing in support of the Petition along with Ken Scramlin, PE of Frederick Ward & Associates who prepared a site plan (the “Site Plan”). (Pet. Ex. 1). There were no Protestants or interested citizens who appeared 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 10,115 sf, is improved with a 2-story home, and is located on a corner lot at the intersection of Northwind Rd. and Maidbrook Rd. It is zoned Density,

Residential (DR 3.5). Using the Site Plan, Mr. Scramlin explained that, due to the off-center placement of the home closer to the western Property line as well as the size of the Property, the largest size for an in-ground pool which could be located within 50% of the 1/3 of the Property farthest removed from the above intersection, would be only 250 sf. Petitioner indicated that the topography also rises in that corner (as much as a 3ft. change in grade), and therefore construction of a pool there would not be feasible. Additionally, a brick patio and a tree are already located in part of that yard. Photographs of the existing yard were provided which corroborated Petitioner's testimony. Petitioner stated that the proposed pool would be 700 sf, would be located in the rear yard as indicated on the Site Plan, and would meet the required side and rear yard setbacks.¹ The Property is already surrounded by a 6 ft. tall privacy fence.

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 due to the 3 ft. elevated grade change in the corner of the Property and placement of the home closer to the western Property line. Both of these unique features prohibit the construct of a modest (700 sf) pool in the 50% of the 1/3 of the Property farthest removed from the intersection. I find that the Petitioner would suffer a practical difficulty and unreasonable hardship if the proposed setbacks were not granted because he would not be able to construct the proposed pool. I also find that the requested variance relief can be granted in strict

¹ Petition indicates proposed pool would be located in both the rear and side yard. However, Site Plan depicts the pool as being located entirely behind the rear foundation wall of the home.

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 **15th** 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 rear and side yards (along Maidbrook Road) in lieu of the required placement in the 1/3 of the rear yard furthest removed from both roads, be, and it 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.

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

Signed
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm