

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(3019 Cotter Road)		
6 th Election District	*	OFFICE OF ADMINISTRATIVE
3 rd Council District		
Daniel & Julianne Poindexter	*	HEARINGS OF
Legal Owners	*	BALTIMORE COUNTY
Petitioners	*	CASE NO: 2021-0189-A
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by the Petitioners, Daniel and Julianne Poindexter for property located at 3019 Cotter Road. The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”) § 400.1 to permit an accessory structure (pool) to be partially located in the side and rear yards in lieu of the rear yard only

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.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”). These agencies did not oppose the requested relief, subject to proposed conditions, which will be incorporated into the Order. There were no protestants or interested citizens that appeared at the hearing.

The Petitioners, Daniel and Julianne Poindexter appeared at the hearing. Bruce E. Doak from Bruce E. Doak Consulting also appeared and assisted the Petitioners at the hearing. The subject property is approximately 3.1 acres and is split zoned RC7 and RC8. Mr. Doak explained

the site plan and the need for the variance relief. With references to the site plan, Mr. Doak pointed out that the site has very steep topography. As a result, the dwelling, which was constructed in 1901, was built partially into the wooded slope to the east (rear). The proposed pool will be built to the left (south) of the house and upon the only relatively flat area of the lot. Mr. Doak noted that this location will allow for the least degree of grading possible. Finally, with reference to Petitioner's Exhibit 2, an aerial photo, Mr. Doak pointed out that there are no neighboring homes that will be impacted by the proposed pool due to the presence of mature forest all around the subject property.

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).

As explained above, the site is unique in that it is long and narrow with steep topography. These unique features necessitate the proposed location of the pool. If the variance were denied the Petitioners would suffer practical difficulty and hardship because they would be unable to construct the pool. The variance relief will allow them to construct the pool in the manner that will cause the least environmental disturbance.

THEREFORE, IT IS ORDERED, this 30th day of **September 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 partially located in the side and rear yards in lieu of the rear yard only is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

- 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.
- Petitioners shall comply with the DEPS ZAC comment, which is 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.

Signed

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm