

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
(2224 B Tufton Ridge Road)		
8th Election District	*	OFFICE OF ADMINISTRATIVE
2 nd Council District		
Darren J. & Elizabeth B. Sweeney	*	HEARINGS FOR
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2021-0226-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County for consideration of a Petition for Administrative Variance filed by the legal owners Darren J. and Elizabeth B. Sweeney (“Petitioners”) for the property located at 2224B Tufton Ridge Rd., Reisterstown, MD 21136 (the “Property”). Petitioners are requesting Variance relief pursuant to the Baltimore County Zoning Regulations (“BCZR”) §400.1 to approve an accessory structure (pool) in the side left yard in lieu of the required rear yard only. The subject property and requested relief is more fully depicted on the site plan (the “Site Plan”) that was marked and accepted into evidence as Petitioners’ Exhibit 1.

The Zoning Advisory Committee (“ZAC”) comments were received and are made part of the record of this case. A ZAC comment was received from the Department of Environmental Protection and Sustainability (“DEPS”), dated August 18, 2021.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on August 20, 2021, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented. The Petitioners have filed the supporting affidavits as required by Baltimore County Code (“BCC”), §32-3-303.

Based upon the information available, the requested administrative variance must be denied as the Petitioners have not satisfied their burden of proof. 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). While there was no evidence submitted by the Petitioner to show that the Property is unique for zoning purposes, I find based on the shape of the Property, as reflected on the Site Plan, being the shape of a trapezium, meets that part of the test in *Cromwell*.

However, I find that second part of the *Cromwell* test has not been met. The law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id. at 722. Based on the Site Plan and photographs of the Property, I find that any hardship upon the Petitioners here is self-imposed. The location of the pool in the side yard is for convenience and/or preference of the Petitioners. The Property measures 4.679 acres. The Site Plan reveals that there is 157 f.t from the rear deck to the rear Property line, sufficient space for a pool. While a septic reserve area is depicted on the Site Plan on the left side of the rear yard, it is not measured. Even with the septic reserve area, there is sufficient space for a pool on the right hand side of the rear yard, just off the rear deck. The fact that the Petitioners have chosen to locate other items in the

rear of Property such as a trampoline, shed and vegetable garden does not create a practical difficulty or unreasonable hardship to warrant variance relief. Strict compliance with BCZR, §400.1 in this case does not unreasonably prevent the use of the Property for its permitted purpose or render conformance unnecessarily burdensome. *McLean v. Soley*, 270 Md. 208, 214-215 (1973). In addition, I find that the Petition here cannot be granted in strict harmony with the spirit and intent of the area regulations which direct that all pools be located in the rear yard, minimizing sight and sound from surrounding streets and neighboring properties.

THEREFORE, IT IS ORDERED, this 14th day of **September, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from BCZR § 400.1 to approve an accessory structure (pool) in the side left yard in lieu of the required rear yard only, be and is hereby **DENIED**.

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:dlw