

**IN RE: PETITIONS FOR SPECIAL HEARING \* BEFORE THE**  
**VARIANCE \* DEPUTY ZONING**  
W side corner of Overbrook Road and \*  
Regester Avenue, N of Wakeford Circle \*  
9<sup>th</sup> Election District \* COMMISSIONER  
5<sup>th</sup> Councilmanic District \*  
(1214 Overbrook Road) \* FOR BALTIMORE COUNTY

**Douglas and Christine Byerly \* Case No. 2009-0112-SPHA**  
*Petitioners* \*

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the legal owners of the subject property, Douglas and Christine Byerly. The Special Hearing request was filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for approval of an accessory structure (pool) on an empty lot pursuant to Section 400.1.b of the Zoning Commissioner’s Policy Manual (Z.C.P.M.). The Variance request is from Section 400.1 of the B.C.Z.R. to permit an accessory structure (pool) to be located in the side yard in lieu of the requied rear yard and outside of the rear third of the lot farthest removed from both streets. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing and variance petitions were Petitioners Douglas and Christine Byerly, and their attorney, Francis X. Borgerding, Jr., Esquire. Also appearing in support of the requested relief was Bruce Doak with Gerhold Cross & Etzel, Ltd., the registered property line surveyor who prepared the site plan. There were no Protestants or other interested citizens in attendance at the hearing.

Testimony and evidence presented revealed that the subject property is an irregular-shaped property consisting of approximately 16,180 square feet or 0.371 acre, more or less, zoned D.R.5.5. The property is located on the west side of Overbrook Road, approximately one mile east of York Road and about two miles south of Towson in the Idlewylde subdivision in Baltimore County, just north of the City-County line. As indicated in the SDAT printout that was marked and accepted into evidence as Petitioners' Exhibit 2, the property consists of three lots -- Lots 418, 420, and 422 -- in the Idlewylde subdivision. The property is improved with a two-story single-family dwelling that was constructed in 1948. The property also has a driveway that runs along the rear of the property. As shown on the deeds that were marked and accepted into evidence as Petitioners' Exhibits 3A and 3B, Petitioners purchased the property in July 1998.

At this juncture, Petitioners desire to construct a pool on their property. The difficulty is finding a suitable location for the pool, given the property's layout in the subdivision, the topography of the subject property, and its proximity to public roads. A copy of the record plat that was marked and accepted into evidence as Petitioners' Exhibit 4 illustrates the layout of the "Idlewylde" subdivision, which was recorded on December 4, 1942. The subject property is highlighted in yellow and shows Lots 418, 420, and 422 situated at the corner of Regester Avenue and Overbrook Road. Petitioners' home is situated on the middle lot -- Lot 420. Petitioners are requesting special hearing relief to permit construction of the pool on one of the unimproved lots - - Lot 422. They also seek variance relief in order to place the pool in the side yard and outside of the rear third of the lot farthest removed from both streets.

In addition to the frontage on the aforementioned streets, the property also has frontage on the adjacent Wakeford Circle that is parallel to Regester Avenue and leads into a court nearby. The property also has a driveway that runs through the rear yard from Wakeford Circle to Regester

Avenue. Aerial photographs that were marked and accepted into evidence as Petitioners' Exhibits 5A and 5B also provide context for the property. They show that, in addition to being the only property in the neighborhood with street frontage on three sides, it is also filled with lush trees and foliage, providing tremendous buffers to the roads and other properties.

In order to better identify the site constraints that require the proposed pool to be located in the side yard as shown on the site plan, Petitioners' consultant, Mr. Doak, submitted a number of photographs of the property and surrounding properties, which were collectively marked and accepted into evidence as Petitioners' Exhibit 6. Mr. Doak pointed out several unusual characteristics of the property that drive the need to locate the pool as shown on the site plan. First, there is already an existing wood fence that surrounds part of the back driveway, Register Avenue, and part of Overbrook Road. The fence has existed since before Petitioners purchased the property and would serve as the required fencing around the pool should the relief be granted. Second, the property sits up on a hill, with relatively steep grades from the hill to the lower sidewalk areas that surround the property along the three public roads. In fact, a retaining wall is located along Overbrook Road in order to ease the impact of the steep slope. Because of the elevation of the property and the existing fencing, the pool would not be visible to neighbors, other than the neighbor directly behind the subject property; however, this property is buffered by existing trees as well as the fencing.

In further support of the requested relief, Mr. Doak noted the unusual layout of the three lots that comprise the subject property. There is frontage on three public streets, as well as the driveway running the entire length of the rear yard. In addition, rather than the customary layout of other lots in the neighborhood that are long and narrow and front the public road, the subject lots are wide and very shallow. As a result, there is virtually no rear yard, almost all of which is

taken up by the driveway. There is also a tremendous slope upward from the rear yard of the subject property to the property directly behind it. In short, the photographs and the site plan show a property that is large enough to accommodate a pool, but one that also has significant limitations as to where the pool can be located.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comment received from the Office of Planning dated November 24, 2008 indicates that Office does not oppose Petitioners' request provided landscaping is proposed on the exterior of the fence and that said fence is no closer to the public right-of-way than shown on the site plan.

Turning first to the Petition for Special Hearing, I am persuaded to grant Petitioners' request to approve an accessory structure (pool) on an empty lot pursuant to Section 400.1.b of the Zoning Commissioner's Policy Manual (Z.C.P.M.). This section states that if two or more lots are under the same ownership and one lot is improved with a dwelling and an accessory structure is proposed on an adjacent lot, this may be accomplished when the two lots are combined for the purpose of building an accessory structure, the owner has exclusive use of all of the property between the dwelling and the accessory structure, and there are no easements or rights-of-way between the lots. Based on the testimony and evidence presented, I am convinced that Petitioners meet these requirements.

As to the variance request, I am also convinced that this request should be granted. First, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Certainly, the layout of the subject property compared with other properties in the neighborhood, and its wider shape with almost no depth, is unique. The steep topography also places limitations on the space available on the property. Indeed, the lack of

available space in the rear yard is what necessitates the variance relief. I also find that these constraints cause the subject property to be disproportionately impacted by the Zoning Regulations as compared with other surrounding properties, making it virtually impossible for Petitioners to have any accessory structure on their property.

Finally, I find that this variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered by Petitioners, I find that Petitioners' special hearing and variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 27<sup>th</sup> day of January, 2009 that Petitioners' request for Special Hearing relief filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for approval of an accessory structure (pool) on an empty lot pursuant to Section 400.1.b of the Zoning Commissioner's Policy Manual (Z.C.P.M.) be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioners' request for Variance from Section 400.1 of the B.C.Z.R. to permit an accessory structure (pool) to be located in the side yard in lieu of the required rear yard and outside of rear third of the lot farthest removed from both streets be and is hereby GRANTED.

The granting of the relief herein shall be subject to the following:

1. Petitioners may apply for their permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

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

\_\_\_\_SIGNED\_\_\_\_\_  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz