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| <b>IN RE: PETITION FOR ADMIN. VARIANCE</b> | * | BEFORE THE                  |
| N/west of Philadelphia Road, 2,850' SW     |   |                             |
| of Allender Road                           | * | OFFICE OF ADMINISTRATIVE    |
| 11 <sup>th</sup> Election District         |   |                             |
| 5 <sup>th</sup> Council District           | * | HEARINGS FOR                |
| <b>(11440 Philadelphia Road)</b>           | * | BALTIMORE COUNTY            |
| Richard P. and April Lynn Naill            | * | <b>CASE NO. 2011-0351-A</b> |
| <i>Petitioners</i>                         | * |                             |
| * * * * *                                  |   |                             |

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Administrative Variance filed by Richard P. and April Lynn Naill, legal owners of the above property. The Petitioners are requesting Variance relief under Section 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an existing accessory structure (pool) to be located in the side yard in lieu of the required rear yard only. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

This matter was originally filed as an Administrative Variance, with a closing date of July 4, 2011. On July 6, 2011, Lawrence M. Stahl, Managing Administrative Law Judge, called for a formal hearing on this matter based on a review of the file. As is policy, properties with outstanding zoning/code enforcement violations are not handled as Administrative Variances. The hearing was subsequently scheduled for Wednesday, August 3, 2011 at 10:00 AM in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland. In addition, a sign was posted at the property and an advertisement was published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing.

It should be noted that this matter came before me as a result of a complaint registered with the Code Enforcement Division of the Department of Permits and Development Management.<sup>1</sup> A Code Inspections and Enforcement Correction Notice was issued to Petitioners on May 26, 2011, for misrepresentation of pool location in the application. Hence, Petitioners filed the instant variance request.

Appearing at the public hearing in support of the variance request were Petitioners Richard P. and April Lynn Naill. There were no Protestants or other interested persons in attendance.

Testimony and evidence revealed that the subject property is a single family detached dwelling with a garage and shed in the rear yard. The Petitioners engaged C&D Installers to construct an above ground pool at their home. When the crew was installing the pool, Mr. Niall testified that they told him if the pool was situated in the rear yard, the stormwater runoff from the adjoining properties at the rear of lot (which sit at a higher grade) would be diverted onto the property at Franklin and Anna Sheppard, who live at 11444 Philadelphia Road. As such, Mr. Niall told the crew to install the pool at its current location on the side of the home. Mr. Niall testified he had no intent to deceive or misrepresent anything; in fact, he knew the County would conduct a post-construction inspection, and he intended to explain the scenario to the inspector. According to tax records, the dwelling was constructed in 2009 and contains approximately 2,039 square feet.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. There were no adverse ZAC comments received from any of the County reviewing agencies.

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. I find special circumstances or conditions exist that are peculiar to the land or

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<sup>1</sup> CO-0092581

structure which is the subject of the variance request. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners.

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md 53, 80 (2008).

The Petitioners have met this test when the subject property is compared to the other lots in this area, since their rear lot configuration essentially dictated the pool be installed in the side yard.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty and/or hardship, in that the pool would need to be removed.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare, as demonstrated by the lack of opposition to the Petition.

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

THEREFORE, IT IS ORDERED, this 9th day of August, 2011 by this Administrative Law Judge that Petitioners' Variance request from Section 400.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an existing accessory structure (pool) to be located in the side yard in lieu of the required rear yard only, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioners may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason this Order is reversed, the Petitioners will 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.

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:pz