

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2247 Redthorn Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Samuel Shafer & Christopher Collazo	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2016-0257-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of Samuel Shafer and Christopher Collazo, legal owners of the subject property (“Petitioners”). Petitioners request variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §427 to permit an existing residential fence that is 6 ft. high within the 15 ft. triangle bounded on 2 sides by a street and alley in lieu of the permitted 3 ft. high fence within the triangle. A site plan was marked as Petitioners’ Exhibit 1.

Christopher Collazo appeared in support of the Petition. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing. A substantive Zoning Advisory Committee (ZAC) comment was submitted by the Department of Planning (DOP).

The subject property is approximately 3,395 square feet and is zoned DR 10.5. The property is improved with an end-of-group townhouse purchased last year by Petitioners. The Petitioners obtained from Baltimore County a permit to construct the fence in question (Permit No. B905189). The permit was issued on February 26, 2016 and the fence was constructed by Lowe’s shortly thereafter. Petitioners then received a code enforcement notice of violation based on an anonymous complaint, and were instructed to obtain a variance.

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).

Petitioners have met this test. The subject property adjoins a public street and an alley, and is subject to particular requirements concerning residential fences. As such the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be required to remove the fence. 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. Several neighbors submitted letters (Ex. 3) of support specifically noting they use the alley for ingress and egress and that sight distance and/or visibility is not obscured by the fence.

In its ZAC comment the DOP suggested that B.C.Z.R. §102.5 (rather than §427) is the applicable regulation. I concur, even though Section 427 is entitled “Fences.” The fact that provisions concerning fences are contained within multiple sections of the B.C.Z.R., as well as the Building Code, makes this a confusing patchwork of regulations. As such, even if variance relief was not granted, I believe Petitioners constructed the fence in good faith reliance upon the issuance of the permit and that the county should be equitably estopped from challenging the permit’s validity in these circumstances. Permanent Financial Corp. v. Montgomery County, 308 Md. 239 (1986).

THEREFORE, IT IS ORDERED, this 15th day of **June, 2016**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore

County Zoning Regulations (“B.C.Z.R) §102.5 to permit an existing residential fence that is 6 ft. high within the 15 ft. triangle bounded on 2 sides by a street and alley in lieu of the permitted 3 ft. high fence within the triangle, be and is hereby GRANTED.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB/sln