

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(16007 Trenton Road)		
5 th Election District	*	OF ADMINISTRATIVE
3 rd Council District		
Mindy P. & Anthony S. Johns	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2017-0083-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Anthony and Mindy Johns, owners of the subject property (“Petitioners”). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (B.C.Z.R) to permit a 6 foot high fence in lieu of the maximum 42 inch fence that adjoins the neighboring front yard. A site plan was marked as Petitioners’ Exhibit 1.

Anthony Johns appeared in support of the petition. The adjoining neighbor, Anita McMillan, opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. There were no substantive Zoning Advisory Committee (ZAC) comments received from County review agencies.

The property is approximately 0.450 acres in size and is zoned RC 2. Mr. Johns explained he constructed a 6ft. high fence at his property, and he submitted photos showing its design and placement. Petitioners’ Ex. 2. He was informed by Baltimore County that one section of the fence would require a variance, since a 3 ft. portion thereof adjoined the front yard of the neighbor’s 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).

In this case, no evidence was presented to establish the property is unique or unlike other properties in the community. I wholeheartedly agree with Mr. Johns, who testified the request was “reasonable.” But the law requires more before a variance can be granted.

In a contested case requiring a rigorous application of the variance standard, the petitioner faces an uphill battle. In fact, I was unable to locate a Maryland appellate court opinion from the last twenty years which upheld the grant of a variance. Under Maryland law, variances should be granted “sparingly” since it is “an authorization for [that] ...which is prohibited by a zoning ordinance.” *Cromwell*, 102 Md. App. at 699.

THEREFORE, IT IS ORDERED, this 5th day of December, **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) to permit a 6 ft. high fence in lieu of the maximum required 42 in. fence that adjoins the neighboring front yard, be and is hereby DENIED.

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:slh