

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(7049 Greenbank Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Donald and Karen Lombardi	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0480-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Donald and Karen Lombardi, legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from Section 427.1 of the Baltimore County Zoning Regulations (“BCZR”) and Building Code 122.1: (1) to permit a 6 ft. high residential fence which adjoins the neighboring front yard in lieu of the required 10 ft. setback of the adjoining property line; and (2) to permit a 6 ft. residential fence located in the front yard in lieu of the maximum height of 42 inches. A site plan was marked as Petitioners’ Exhibit 1.

Donald and Karen Lombardi appeared in support of the petition. Jennifer R. Busse, Esq. represented Petitioners. The next door neighbor, Matt Rookard attended the hearing and voiced his opposition to the requested relief. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”).

The site is approximately 22,995 sq. ft. in size and is zoned DR 5.5. Mr. Lombardi testified that he wants to build the 6 foot high fence in question in order to shield his view of Mr. Rookard’s adjoining property, and to limit interactions with Mr. Rookard as much as possible due to a series of confrontations they have had. Lombardi submitted a series of photos of the

street and these two properties, which were admitted as Petitioners' Exhibit 2. In addition to describing past confrontations with Mr. Rookard, Mr. Lombardi testified that Mr. Rookard often has parties in the front yard and that he does not like the appearance of a gazebo in Mr. Rookard's yard, and those are additional reasons that he wants to build the 6 foot fence. Ms. Busse asked to amend the Petition because the Lombardis now wish to build the 6 foot fence only up to the front of their house, as opposed to all the way to their front property line, as depicted on the Site Plan. This amendment was allowed.

Mr. Rookard testified that some of the photos in Petitioners' Exhibit 2, that show the property in a state of disrepair and neglect, are from when he first purchased the property a couple years ago. He testified that he has gone to great effort and expense to clean the property up and make various improvements. He pointed out that the other photos in this Exhibit demonstrate that the property is no longer in such disrepair. Mr. Rookard stated that he opposes the construction of a 6 foot high fence adjacent to his house because it would feel claustrophobic and would obstruct his view. He pointed out that because of the angle of Greenbank Road the front of his house is situated behind the Lombardi home relative to the street, and therefore a 6 foot fence would be particularly obstructive. Rookard testified that the street has a rural feel and that one of the reasons he bought his house was because of the mature trees in the neighborhood and its proximity to the water. He believes the requested 6 foot high fence in the front yard would not be in keeping with the feel of the neighborhood. Finally, Mr. Rookard stated that he has strictly complied with all County zoning restrictions, including when he constructed his fence, and that he feels that the Lombardis should be required to do the same.

The general rule is that variances are not favored because "citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations." *Salisbury Bd.*

Of Zoning Appeals v. Bounds, 240 Md. 547, 555-56 (1965). Indeed, the very essence of zoning is “to preserve various types of neighborhoods, be they residential, commercial or historical. *Mueller v. People’s Counsel for Baltimore County*, 177 Md. App. 43, 68 (2007). Therefore, under BCZR Sec. 307, and Maryland common law, in order to be entitled to variance relief the Petitioners must satisfy a two-step legal analysis, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and it is that uniqueness or peculiarity that necessitates the requested 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 addition, even if these factors are met, under BCZR Sec. 307 the requested variance relief must conform to the spirit and intent of the BCZR and may not be injurious to the public health, safety, and welfare.

The lot in question is long and narrow and the street it faces, Greenbank Road, cuts at an angle across the front property line. As such the property is arguably unique. The hardship described by the Petitioner is that they have an acrimonious relationship with their next door neighbor and therefore want to build this taller fence along the entire side of their property up to the front of their house in order to minimize interactions with their neighbors. In closing, Ms. Busse suggested that “good fences make good neighbors.” While this may at times be true, I do not believe that the evidence in this case supports a finding of hardship. If evidence of a neighbor dispute were sufficient to establish hardship justifying variance relief then variances could be granted in a myriad of scenarios. However, as noted above, variances are not favored because they permit what is prohibited by ordinance. And in this case, even if the two *Cromwell* factors were met I do not believe that this proposed 6 foot fence in the front yard would be in keeping with the rural feel of the neighborhood, and therefore would not be in harmony with the spirit and intent of

the BCZR.

In sum, the only variance relief requested, and the only relief that will be denied, is the Petitioners' request to erect a 6 foot fence in lieu of the permitted 42 inch fence adjacent to their neighbor's front yard. A 6 foot fence is permitted by right from the Petitioners' rear property line up to the point that it adjoins their neighbors' front yard, and from that point forward a 42 inch fence is permitted.

THEREFORE, IT IS ORDERED, this 9th day of **December, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Section 427.1 of the Baltimore County Zoning Regulations ("BCZR") and Building Code 122.1: (1) to permit a 6 ft. high residential fence which adjoins the neighboring front yard, and zero setback in lieu of the required 10 ft. setback from the adjoining property line, be and is hereby DENIED.

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

Signed
PAUL M. MAYHEW
Managing Administrative Law Judge
For Baltimore County

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