

IN THE MATTER OF
JAMES A. WEIMER - APPLICANT
4116 BEACHWOOD ROAD

15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

RE: FENCE HEIGHT WAIVER
(*Building Code* § 122.4)

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-15-002

* * * * *

OPINION

This matter is before the Board on an appeal from a decision of the Building Engineer dated April 23, 2015. The Building Engineer granted/re-affirmed a request for a waiver of the Building Code Fence Height Limitations in order for the Applicant, Mr. Weimer, to construct a 6-foot high fence in the front yard of 4116 Beachwood Road.

A hearing was held before the Board on July 1, 2015. Mr. Weimer was represented by Wendell H. Grier, Esquire. Appellant/Protestant, William Titus, appeared pro-se. Interested party, Rondalyn Lotz, was not present.

This matter was originally before the Board on October 15, 2014. By Order dated October 30, 2014, the Board remanded this matter to the Building Engineer due to lack of compliance with § 122.4 of the Baltimore County Building Code, which requires "...a finding of fact setting forth and specifying reasons for making such variances."

Facts

Applicant, James Weimer, resides at 4116 Beachwood Rd., in Dundalk, Maryland 21222. Interested party, Rondalyn Lotz, owns 4118 Beachwood Rd., but resides in Florida. Appellant/Protestant, William Titus, resides at 4114 Beachwood Rd. All the aforementioned properties are narrow, waterfront properties. The parties have a history of disputes, some resulting

in legal proceedings concerning property issues. Applicant Weimer's lot lies between the Lotz and Titus properties.

Applicant, James Weimer, filed a request for waiver to build a fence in his front yard greater than 42" inches high. The property was properly posted as per §122.4 of the Baltimore County Building Code (BCBC). A hearing was not requested, however written notes of objection were submitted to the Building Engineer from Mr. Titus and Ms. Rondalyn Lotz.

Applicant Weimer's reason for the waiver request was essentially to build a higher fence to buffer his view of 4114 Beachwood Road (Titus property) and 4118 Beachwood Road (Lotz property). He cited debris in Mr. Titus' yard, as well as a dog that could scale the existing fence. He further cited an unkempt condition of the Lotz property. (See Application for Administrative Waiver of Building Code Fence Height Limitations in record.)

Protestant Titus submitted notes of objection to the Building Engineer citing concerns that the fence would be a safety issue, would obstruct his view, etc. Protestant Lotz submitted notes of objection as well. Ms. Lotz also submitted decisions by the Court of Special Appeals, as well as the county zoning commissioner, from prior disputes. The Building Engineer did not comment on these notes prior to his April 23, 2015 decision.

Waiver was granted without hearing, and applicant Weimer erected a 6 foot opaque fence in reliance of said waiver. The matter was appealed to the Board. Upon remand from this Board, the Building Engineer notified parties, and a hearing date was set. This date was postponed due to Protestant Titus living out of state in the winter months. Applicant Weimer objected to the postponement, but the Building Engineer found the request to be reasonable.

On April 9, 2015, a hearing was held before Building Engineer Donald Brand. Protestant Titus, represented by Charles E. Yankovich, Esquire, testified that the Weimer fence blocked his

view from his living room window of the water and trees. Mr. Titus stated that he had a view of the water and trees prior to the 6 foot fence going up. It should be noted that this is a window on the side of Mr. Titus' home, in the front portion of same. Mr. Titus introduced a picture taken from this location, noting that it is his favorite spot, and he spends most of his time there. The picture shows an obstructed view. Mr. Titus did not testify about any of the items listed as a basis for Mr. Weimer's waiver request.

Mr. Weimer testified regarding the reasons for the waiver request. He mentioned stacks of wood and debris, as well as trees on protestant Titus' property which were propped up by 2X4s. He further testified that his view into both neighboring properties was of unkempt yards. Mr. Weimer indicated that interested party Rondalyn Lotz lives in Florida year-round. Ms. Lotz did not appear for the April 9, 2015 hearing.

After the April 9, 2015 hearing, the Building Engineer made a site visit to 4114, 4116, and 4118 Beachwood Road. He noted that there were front yard fences greater than 42 inches in height nearby (one of which was found at 4118 Beachwood Road). He noted that Protestant Titus' yard had been cleaned up. He also noted that Mr. Titus still had a view from his front window, but that his side view was partially blocked.

At the hearing before this Board, held July 1, 2015, it was explained to the parties that no new testimony would be admitted. Protestant Titus appeared pro-se, and reiterated much of his testimony from the April 9, 2015 hearing. He also noted that he had difficulty hearing what was going on at said hearing. Nothing appeared in the record regarding same.

Decision

Section 122.4 of the Baltimore County Building Code governs Fence Waivers. It states:

Any person may apply for a waiver to the height limitation requirements of parts 122.1 and 122.2. The Building Official or Designee is hereby empowered to Grant

such waivers, provided public notice has been given and a public hearing has been held before the Building Official or Designee if requested. Public notice shall consist of posting the property for a period of 15 days. Anyone living within 1000 feet of the subject property may request a public hearing, or may submit written comments for consideration. If no public hearing is requested, the Building Official or Designee may grant a waiver containing any appropriate conditions or limitations. If a public hearing is requested, notice shall be further provided by posting the property for an additional 15 days. Such notice shall include the date, time, and location of the hearing.

Section 122.4 of the *Baltimore County Building Code*, in effect at the time of appeal, states:

“Any appeal from the decision of the Building Official or his designee will be pursuant to §32-4-281 of the *Baltimore County Code 2003*.”

Section 32-4-281 of the *Baltimore County Code* sets forth the procedure for the Board to hear appeals from the hearing officer with respect to development plans. That section states in part:

- (c) *Hearing procedures.* The Board of Appeals shall hear the appeals in accordance with the rules of procedure adopted by the Board of Appeals.
- (d) *Conduct of hearings.*
 - (1) The Board of Appeals shall conduct a proceeding under this section by:
 - (i) Hearing oral argument of the parties; and
 - (ii) Receiving written briefs, if requested by any party to the proceeding.
 - (2) At the Board’s discretion, additional evidence and testimony may be allowed.
- (e) *Actions by Board of Appeals.*
 - (1) In a proceeding under this section, the Board of Appeals may:
 - (i) Remand the case to the Hearing Officer;
 - (ii) Affirm the decision of the Hearing Officer; or
 - (iii) Reverse or modify the decision of the Hearing Officer if the decision:
 - 1. Exceeds the statutory authority or jurisdiction of the Hearing Officer;
 - 2. Results from an unlawful procedure;
 - 3. Is affected by any other error of law;
 - 4. Is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - 5. Is arbitrary or capricious.

None of the criteria for reversal just mentioned have been found. The record indicates that the Building Engineer granted the waiver pursuant to BCBC §122.4. No hearing was requested

by Protestants initially. Upon remand by the Board, the Building Engineer considered the initial comments for consideration, held a hearing at which testimony was taken from all parties in attendance, and conducted a site visit. He then issued his findings of fact and ruling.

Therefore, we find that the decision of the Building Engineer dated April 23, 2015 is supported by competent, material and substantial evidence in light of the entire record.

ORDER

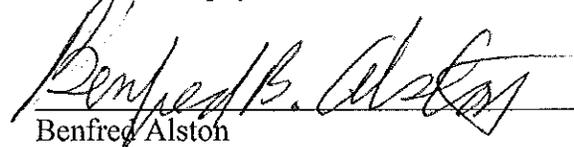
IT IS THIS THEREFORE, this 19th day of August, 2015 by the Board of Appeals of Baltimore County

ORDERED that the decision of the Building Engineer dated April 23, 2015, re-affirming the request to allow a 6-foot high fence in the front yard of 4116 Beachwood Road is hereby **AFFIRMED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen Murphy, Chairman


Benfred Alston


Jane Hanley



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

August 19, 2015

Wendell H. Grier, Esquire
2225 St. Paul Street
Baltimore, Maryland 21218

William Titus
4114 Beachwood Road
Baltimore, Maryland 21222

RE: *In the Matter of: James A. Weimer*
Case No.: CBA-15-002

Dear Messrs. Grier and Titus:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: James Allen Weimer
Rondalyn Lotz
Lawrence Stahl, Managing Administrative Law Judge
Donald Brand, Building Engineer/PAI
Arnold Jablon, Director/PAI
Carl Richards, Zoning Supervisor/PAI
Nancy C. West, Assistant County Attorney
Michael Field, County Attorney