

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
SW/side of Country Farm Road, 30' W		
of c/l of Red Lion Road, NW corner	*	OFFICE OF ADMINISTRATIVE
11 th Election District		
5 th Council District	*	HEARINGS FOR
(5710 Country Farm Road)		
	*	BALTIMORE COUNTY
Boycutt F. and Tocarra K. Frederick		
Petitioners	*	CASE NO. 2012-0242-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by the legal owners, Boycutt F. and Tocarra K. Frederick. The Petitioners are requesting Variance relief from §§ 427.1.B.1 and 427.1.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed fence 6' in height (in lieu of the maximum allowed 42") to be located in the rear yard that adjoins a front yard and within 10' of the adjoining front yard property line. 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.

Appearing at the public hearing in support of the variance request were Petitioners Boycutt F. and Tocarra K. Frederick. There were no Protestants or other interested parties in attendance. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

Testimony and evidence revealed that the subject property is 16,580 square feet (0.381 acres) and split-zoned DR 3.5 and M.L. Petitioners testified theirs is the only home in the subdivision that has a rear yard abutting the front yard of an adjoining dwelling.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. There were no adverse 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 structure which is the subject of the variance request. Indeed, as noted above, the Petitioners' home is the only dwelling in the entire subdivision whose rear yard abuts the front yard of another dwelling – that pre-dated the Red Lions Farm subdivision. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners. In this regard, Petitioners testified the neighbor who resides in the dwelling abutting the rear of their home has threatened and harassed them repeatedly. Apparently, that neighbor lived in the area for many years and is angry that this new subdivision was constructed, and his behavior became so threatening that the developer secured a peace order against the gentleman. See Zoning Petition attachment.

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).

Petitioners have met this test.

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. This is amply demonstrated by the support of the adjacent neighbors, as well as the absence of comments by County reviewing agencies. See Petitioners' Exhibit 2.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, 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 24 day of May, 2012, by this Administrative Law Judge that Petitioners' Variance request from §§ 427.1.B.1 and 427.1.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed fence 6' in height (in lieu of the maximum height of 42") to be located in the rear yard that adjoins a front yard and within 10' of the adjoining front yard property line, be and is hereby GRANTED.

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

JEB:pz

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County