

<b>IN RE: PETITION FOR ADMIN. VARIANCE</b>	*	BEFORE THE
<b>(8400 Summit Avenue)</b>		
2 <sup>nd</sup> Election District	*	OFFICE OF
4 <sup>th</sup> Councilmanic District		
Laverne Kennedy-Suggs	*	ADMINISTRATIVE HEARINGS
Petitioner	*	FOR BALTIMORE COUNTY
	*	<b>Case No. 2013-0112-A</b>

\* \* \* \* \*

**ORDER AND OPINION**

This matter comes before the Office of Administrative Hearings for Baltimore County as a Petition for Administrative Variance filed by the legal owner of the subject property, Laverne Kennedy-Suggs, for property located at 8400 Summit Avenue. The variance request is from the Baltimore County Zoning Regulations (“B.C.Z.R.”), as follows:

- (1) Section 102.5- To permit the increase in height of 6 ft. to an existing sign/fence situated at the corner of two streets and a triangular area with a distance of 15 ft. from the point of intersection in lieu of the maximum allowed 3 ft. that maintains a triangular area with 25 ft. from the point of intersection.
- (2) Section 1A04.4.D.3- To permit an existing fence with a setback of 3 ft. along a public right-of-way in lieu of the required 50 ft.
- (3) Section 427.1.B.1- To permit modifications and additions to an existing fence to have a height of 6 ft., adjoins a public road, and located in the rear property that adjoins a front property in lieu of the maximum allowed 42 in., not adjoining a public road, and situated no closer than 10 ft., respectively.
- (4) To amend the Final Development Plan to The Preserve at Brice Run, Lot 13 only.
- (5) Waiver-Building Code, Section 122- To permit a fence in the front yard of a single family dwelling 6 ft. high in lieu of the maximum allowed 42 inches.

The subject property and requested relief are more particularly described on Petitioner’s Exhibit No. 1.

This matter was originally filed as an Administrative Variance, with a closing date of December 10, 2012. On November 29, 2012, The Preserve at Brice Run HOA requested a formal

hearing on this matter. The hearing was subsequently scheduled for Thursday, January 4, 2013 at 1:30 PM in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson.

There were no substantive adverse ZAC comments submitted from any of the County reviewing agencies.

Appearing at the public hearing in support for this case was LaVerne Suggs and Steve Bowers, from the Long Fence Company. Lin Taylor, on behalf of the HOA, attended the hearing and opposed the petition.

Testimony and evidence revealed that the subject property is 1 acre and is zoned RC 5. The property is situated at the corner of Windsor Mill Road and Summit Avenue. The Petitioner's son is a well known sports figure, and would like to construct a fence circling the property so that onlookers and autograph seekers will not disturb the family and children.

Based upon the testimony and evidence presented, I will grant the request for variance relief, although not the exact same relief as sought in the petition. Specifically, with respect to that portion of the proposed fence along Summit Avenue and Windsor Mill Road, the Petitioner must not disturb or dismantle the existing 5' aluminum fence and stone pillars, which were erected and are owned by the HOA. The 6' fence must be constructed on the Petitioner's property to the inside of the 10' wide fence and easement area conveyed to the HOA.

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 of hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

The Petitioner has met this test. The property is of irregular dimensions and is situated along a busy roadway, which makes it unique. The Petitioner would experience a practical difficulty if the regulations were strictly enforced, since she would be unable to install the privacy

fencing to protect her family. The Petitioner testified that on several occasions she has looked out her window and discovered people trespassing on her property, presumably to obtain an autograph or speak with her son.

I do not believe the grant of relief would be detrimental to the health, safety and welfare of the community. I am not unmindful of the concerns expressed by Mr. Taylor that he (and others) bought a home in this attractive community because they liked the “openness” and expansive views. But the Petitioner’s home is the most visible (and therefore vulnerable) in the community, and the reality is that the other homes further back into the community are more insulated and protected from both curious onlookers and trespassers.

Mr. Taylor also submitted a set of covenants concerning the Preserve at Brice Run Homeowners Association. The witness indicated the document prohibited the type of fence proposed by Petitioner, and that prior approval of the HOA’s Architectural Review Committee was required in any event. As I explained at the hearing, Maryland law prohibits a hearing officer in a zoning case from considering and interpreting such covenant agreements, which represents a contract between the HOA and the lot owners in the community. Blakehurst v. Baltimore County, 146 Md. App. 509, 521 (2002).

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence, I find that Petitioner’s variance request should be granted.

THEREFORE, IT IS ORDERED, by the Administrative Law Judge for Baltimore County, this 5th day of March, 2013, that a Variance from the Baltimore County Zoning Regulations (“B.C.Z.R.”), as follows:

- (1) Section 102.5- to permit the construction on Petitioner’s property (to the inside of the 10' wide HOA fence and easement area) of a fence 6' in height, situated at the corner of two streets and a triangular area with a distance of 15 ft. from the point of intersection

- (2) Section 1A04.4.D.3- to permit the construction on Petitioner's property (to the inside of the 10' wide HOA fence and easement area) of a fence with a setback of 3 ft. along a public right-of-way in lieu of the required 50 ft.
- (3) Section 427.1.B.1- to permit the construction on Petitioner's property (to the inside of the 10' wide HOA fence and easement area) a fence to have a height of 6 ft., adjoining a public road, and located in the rear property that adjoins a front property in lieu of the maximum allowed 42 in., not adjoining a public road, and situated no closer than 10 ft., respectively.
- (4) To amend the Final Development Plan for The Preserve at Brice Run, Lot 13 only, in accordance with the terms of their Order,

be and is hereby GRANTED, subject to the following:

- The Petitioner may apply for any appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln