

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
(3601 Bay Drive)		
15 th Election District	*	OFFICE OF ADMINISTRATIVE
6 th Council District		
Michael L. and Sandra M. Peregoy	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0223-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by the legal owners of the property, Michael L. and Sandra M. Peregoy. The Petitioners are requesting Variance relief from §§1A04.4.D.3 and 427 of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows: (1) To permit a 6' high fence that is 6' from the public right-of-way in lieu of the permitted 50' setback, and (2) To permit a 6' high fence with a 6" setback in the side yard of a family dwelling that is in the front yard of the neighboring single family dwelling in lieu of the permitted 10' setback. 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.

In addition to the zoning relief requested, the Petitioners need waiver relief to construct a fence higher than allowed in accordance with Part 122.1 of the Baltimore County Building Code. This issue is usually determined by the Baltimore County Buildings Engineer. However, when the request is made in conjunction with zoning relief, the matter comes to the Office of Administrative Hearings for resolution, pursuant to the delegation of authority found in Part 122.4 of the Baltimore County Building Code.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse ZAC comments received from any of the County reviewing agencies. In addition, it is to be noted that a letter of support was received from Manuel Pospisil, the adjoining neighbor at 3609 Bay Drive who had no objection to the requested relief.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on April 13, 2013, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by Section 32-3-303 of the Baltimore County Code (B.C.C.). Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

The Baltimore County Building Code provides that the maximum height for a residential fence in a front yard is 42". The Petitioners would like to construct a 6' tall fence, to safely contain their two dogs that can jump a fence 4' in height. This is sufficient justification to grant the waiver, in that it will prevent the dogs from bothering the neighbors in the community or becoming a hazard to motorists.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance and building code waiver should be granted. With respect to the side yard setbacks for the fence, I believe the fence should be positioned at least 18" from the property boundary to allow room for repairs or maintenance of the fence.

THEREFORE, IT IS ORDERED, this 9th day of May, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance from §§1A04.4.D.3 and 427 of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows: **(1)** To permit a 6' high fence that is 6' from the public right-of-way in lieu of the permitted 50' setback, and **(2)** To permit a 6' high fence with a 18" setback in the side yard of a family dwelling that is in the front yard of the neighboring single family dwelling in lieu of the permitted 10' setback, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the waiver to construct a fence 6' in height, in accordance with Parts 122.1 and 122.4 of the Baltimore County Building Code, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioners may apply for their appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners 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.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw