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| IN RE: PETITION FOR VARIANCE | * | BEFORE THE OFFICE |
| (8 Hillside Avenue) | | |
| 8 th Election District | * | OF ADMINISTRATIVE |
| 3 rd Councilman District | | |
| Doris and Nancy Williams | * | HEARINGS FOR |
| Petitioners | | |
| | * | BALTIMORE COUNTY |
| | | |
| | * | CASE NO. 2014-0193-A |

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Doris and Nancy Williams, the legal owners of the subject property. The Petitioners are requesting variance relief from §§ 1B01.1 and 427 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a 6’ high fence in the side yard of an existing dwelling with a 3” setback that is in the front yard of a neighboring dwelling in lieu of a 42” high fence within a 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.

Appearing at the public hearing in support of the request was Nancy Williams. The neighbors at 14 Hillside Avenue attended the hearing and opposed the relief. The Petition was advertised and posted as required by the B.C.Z.R

There were no substantive Zoning Advisory Committee (ZAC) comments received. Testimony and evidence revealed that the subject property is approximately .475 acres and is zoned DR 3.5. The property is improved with a single family dwelling. The Petitioners constructed a fence on their property, and the neighbors filed a complaint with the County’s Code Enforcement Bureau. The Petitioners were told by the County that they needed a variance, since the fence was higher than 42”.

Based upon the testimony and evidence presented, I will deny the petition for variance.

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).

Here, there was no evidence or argument presented regarding the uniqueness of the property. As such, I believe the petition for variance must be denied.

But that is not the end of the matter, because I do not believe the Petitioners required a variance in the first instance. Part of the problem arises with the phrasing of the Petition; it sought permission for a fence that “is in the front yard of a neighboring dwelling.” But the B.C.Z.R. only restricts to 42” the height of a fence “which **adjoins** the front yard of another on which a residence has been built.” B.C.Z.R. §427.1.B.1 (emphasis added).

The regulations define “front yard” as a “yard extending the full width of the lot between the front lot line and the front foundation wall of the main building.” B.C.Z.R. §101.1. In this case, as shown on the site plan, the “front yard” of #14 Hillside does not “adjoin” (or touch) the side yard of #8 Hillside in which the fence is constructed. That is because #8 and #14 Hillside are separated by a 20' wide “Private Use Easement” described in a Declaration of Easement marked and admitted as Protestants Exhibit #1. The “front lot line” of #14 adjoins the Private Use Easement, but not the side yard of #8. Since the fence in question is not within 10 feet of the “front yard property line” of #14 Hillside Avenue, a variance is not required. B.C.Z.R. § 427.1.B.2.

THEREFORE, IT IS ORDERED, this 29th day of May, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from §§ 1B01.1 and 427 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a 6' high fence in the side yard of an existing dwelling with a 3" setback that is in the front yard of a neighboring dwelling in lieu of a 42" high fence within a 10' setback, be and is hereby DENIED, as unnecessary.

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

JEB:sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County