

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
& ADMINISTRATIVE WAIVER (FENCE)	*	OFFICE OF ADMINISTRATIVE
(2701 Maurleen Court)	*	HEARINGS FOR
3 rd Election District		
2 nd Council District	*	BALTIMORE COUNTY
Aron Herschel & Hanna Leah Schnur	*	CASE NO. 2015-0115-A &
Petitioners	*	WAIVER NO. 14-034W

* * * * *

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, Aron Herschel and Hanna Leah Schnur. The Petitioners are requesting Variance relief from § 427.1.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a 6 fence which adjoins the front yard of another property on which a residence exists, in lieu of the permitted fence height of 42. 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.

It is to be noted that this administrative variance case closed on December 15, 2014 but was not received by OAH until January 8, 2015; the whereabouts of the case file between these dates is unknown.

In addition to the zoning relief requested, the Petitioners need administrative waiver (fence) relief to construct a fence higher than allowed in accordance with Part 122.1 of the Baltimore County Building Code. This issue has been delegated to the Office of Administrative Hearings on behalf of the Baltimore County Buildings Engineer, 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.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on November 24, 2014, 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 (2) children from a Tier III sex offender (highest level), who sexually abused a minor, and lives 217' from their residence. This is sufficient justification to grant the waiver, in that it will allow the children to play in an enclosed area and shielded from the predator's view.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations (B.C.Z.R.), and for the reasons given above, the requested variance and building code administrative waiver (fence) should be granted.

THEREFORE, IT IS ORDERED, this 12th day of January, 2015, by the Administrative Law Judge for Baltimore County, that the Petition for Variance from § 427.1.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a 6' fence which adjoins the front yard of another property on which a residence exists, in lieu of the permitted fence height of 4' , 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:

- Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject 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