

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(6921 Sollers Point Road)</b>		
12 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
Robert L. Poole	*	HEARINGS FOR
<i>Legal Owner,</i>		
Stewart Majerowicz	*	BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	<b>CASE NO. 2016-0184-A</b>
		Building Code Waiver
		No. 16-006-W
* * * * *		

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance and Building Code Waiver on behalf of Robert L. Poole, legal owner of the subject property and Stewart Majerowicz, lessee (“Petitioners”). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) § 427.1.B to permit a residential occupancy fence with a height of 54 inches in lieu of the maximum allowed 42 inches when situated within 10 feet of an adjoining front yard property line. A site plan was marked as Petitioners’ Exhibit 1.

Stewart Majerowicz appeared in support of the Petition. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing. A Zoning Advisory Committee (ZAC) comment was submitted by the Bureau of Development Plans Review (DPR), and will be discussed below.

The subject property is approximately 4,361 square feet and is zoned DR 5.5. The property is improved with a single-family dwelling (1,088 sq. ft.) constructed in 1941. Petitioners constructed a fence around their home to contain their two dogs. They were issued a correction notice by the County, indicating the fence exceeded the 42" height limit. This caused Petitioners to seek zoning relief.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

Petitioners have met this test. The property is on a corner lot bound by two public roadways. As such it is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be required to remove the fence. 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 demonstrated by the lack of Baltimore County and/or community opposition. The Bureau of DPR noted in its ZAC comment that the fence must not obstruct sight lines, and Petitioners explained they reconstructed a portion of the fence at the corner of the property to address this concern.

THEREFORE, IT IS ORDERED, this 14<sup>th</sup> day of April, **2016**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”) § 427.1.B to permit a residential occupancy fence with a height of 54 inches in lieu of the maximum allowed 42 inches, when situated within 10 feet of an adjoining front yard property line, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the request for Waiver pursuant to Part 122 of the Baltimore County Building Code, to permit a fence with a height of 54 inches, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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.

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB/sln