

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(13 Ryan Frost Way)</b>		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
Tracy & Ryne Laxton	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	<b>CASE NO. 2016-0165-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of Tracy and Ryan Laxton, legal owners of the subject property (“Petitioners”). Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §427.1.B.1 to permit a 6 ft. high privacy fence in the rear and side yard of the property which adjoins the front yard of an existing residence in lieu of the permitted 3.5 ft. fence. A site plan was marked as Petitioners’ Exhibit 1.

Tracy and Ryne Laxton appeared in support of the Petition. An adjoining neighbor attended the hearing and opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. No substantive Zoning Advisory Committee (ZAC) comments were received.

The subject property is approximately 6,250 square feet and is zoned DR 3.5. The property is improved with a single family dwelling which Petitioners purchased in 2014. Petitioners have a young child, and they wanted to enclose their yard for privacy and safety. They visited the county zoning and permits offices and were issued in October 2015 a permit for a fence 6 ft. in height. The fence was constructed shortly thereafter, and within a month Petitioners were issued a zoning violation notice citing (among other things) B.C.Z.R. §427, which provides a height limit of 42” for any fence in the rear of a single family dwelling that adjoins the front yard of another

single family dwelling.

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 not met this test. No evidence was presented which would establish the subject property is unique, and under Maryland law variances should be granted “sparingly” and “only under exceptional circumstances.” *Cromwell*, 102 Md. App. at 703.

But that is not the end of the story. I believe Baltimore County should be estopped from denying the validity of the fence permit which it issued to Petitioners on or about October 13, 2015. Petitioners sought and were granted a permit, and in reliance upon that permit they purchased materials and constructed the fence. No evidence was presented to show that such reliance was not reasonable, and Petitioners incurred significant expense to install the fence.

A similar case was considered by Maryland’s highest court in *Permanent Financial v. Montgomery County*, 308 Md. 239 (1986). In *Permanent Financial*, a developer obtained a permit from the county to construct a four story commercial office building, with a fifth story “penthouse” that would mainly house mechanical equipment. The zoning regulation contained a height limitation of 35 feet, although it also provided that any non-inhabitable structures (i.e., a spire) may extend up to 8 feet beyond the height limitation. The developer constructed the building 43 feet high, believing that 8 feet of that total would be attributable to a non-inhabitable space (i.e., a fifth-floor penthouse). The County initially agreed, although it later issued a violation notice alleging the building exceeded the height requirements. The primary dispute was whether the

penthouse constituted un-inhabitable space. The court held the County was estopped from enforcing the height limitation because the developer constructed the building in reliance upon the County's interpretation of the regulation, after receiving from the County a building permit, and in accordance with the plans approved by the County.

I believe the facts in this case are at least as compelling as those in *Permanent Financial*. Indeed, that case involved a sophisticated developer whom one would assume would have some proficiency in interpreting zoning and building regulations. The same cannot be said for Petitioners, who are young first-time home buyers. Petitioners constructed the fence in reliance upon the permit issued by the County, and I believe it would be inequitable at this juncture to require the fence to be removed.

THEREFORE, IT IS ORDERED, this 23<sup>rd</sup> day of **March, 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.1 to permit a 6 ft. high privacy fence in the rear and side yard of the property which adjoins the front yard of an existing residence in lieu of the permitted 3.5 ft. fence, be and is hereby DENIED.

IT IS FURTHER ORDERED that Baltimore County shall be estopped from claiming the fence at issue exceeds the height limitation set forth in the B.C.Z.R. and/or Building Code.

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