

IN THE MATTER OF
ANTHONY AND MINDY JOHNS
16007 Trenton Road
5th Election District; 3rd Councilmanic District

RE: Petition for variance relief from Baltimore
County Zoning Regulations § 427.1.B.2
to permit a 6 foot high fence in lieu of the
maximum 42 inch fence that adjoins the
neighboring front yard

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 17-083-A
*

* * * * *

OPINION

This matter comes to the Board of Appeals on appeal by Anthony and Mindy Johns (the “Petitioners”) of the Opinion and Order issued by John E. Beverungen, Administrative Law Judge for Baltimore County, dated December 5, 2016 denying Petitioners’ request for variance relief from the Baltimore County Zoning Regulations (“BCZR”) to permit a six-foot high fence, in lieu of the maximum allowed 42 inches, for the portion of the fence adjoining the neighboring front yard.

In the proceedings before the Board, Mindy Johns appeared *pro se* on behalf of the Petitioners. Petitioners’ neighbor, Anita McMillan, attended the hearing and opposed the request for variance relief.

A hearing was held before the Board on March 29, 2017, and the Board conducted a public deliberation on April 26, 2017.

STATEMENT OF FACTS

The Petitioners are the owner of the property located at 16007 Trenton Road, Upperco, Maryland 21155-9522 (the “Petitioners’ Property”). Anita McMillan owns the property next door to the Petitioners located at 16009 Trenton Road, Upperco, Maryland 21155-9522 (the “McMillan Property”). Along the boundary line between the Petitioners’ Property and the McMillan Property

is a line of ten large Norway spruce trees that, for many years, have served as a natural barrier and visual screen between the adjoining lots. Based on a survey conducted by Leon A. Podolak and Associates, LLC in November 2014, nine of the ten Norway spruce trees along the boundary line between 16007 and 16009 Trenton Road are located on the McMillan Property. The single tree in proximity to the property line belonging to the Petitioners is located near the rear of their lot.

In October 2014, the Petitioners hired a tree service company to trim the lower branches of several of the Norway spruce trees owned by Ms. McMillan. The removal of these lower branches left a swath of bare tree trunks in the area between the driveways of the adjoining lots, eliminating the natural screening that previously had existed between the Petitioners' Property and the McMillan Property. It is clear that the removal of these branches by the Petitioners' contractor has caused significant tension between the Petitioners and Ms. McMillan.

In or around June 2015, the Petitioners' erected a fence, six feet tall, on their property to cover the bare space left by the removed spruce limbs between the Petitioners' Property and the McMillan Property. While nearly all of the Petitioners' fence borders the back yard or side yard of the McMillan Property, the fence also extends for several feet along the border of the front yard of the McMillan Property. After the Petitioners erected the fence, Ms. McMillan contacted Baltimore County Code Enforcement in November 2015 to determine whether the Petitioners' fence complied with the zoning laws of Baltimore County. Code Enforcement determined that a small portion of the Petitioners' fence did not comply with the height restrictions of the BCZR and required the Petitioners to remove the offending section of fencing.

In this case, the Petitioners seek a variance to allow for them to maintain the full length of the six-foot high fence that they installed. For the reasons that follow, the petition for variance relief is denied.

DECISION

There is an old adage that “good fences make good neighbors.” In Baltimore County, such fences must comply with the height restrictions set forth in the BCZR. BCZR § 427.1.B, in particular, provides as follows:

1. A residential occupancy fence may not be erected in the rear or side yard of a lot which adjoins the front yard of another on which a residence has been built, except in accordance with the provisions of this section.
2. The fence may not exceed 42 inches in height if situated within 10 feet of the adjoining front yard property line.
3. Any person may request a variance from the requirements of this subsection.

BCZR § 427.1.B makes clear that, without a variance, the portion of the Petitioners’ fence that adjoins the front yard of the McMillan Property “may not exceed 42 inches in height.” Thus, the Petitioners seek a variance to allow for a section of fencing that is six feet in height – rather than 42 inches – for a length of 54 inches along the property line that adjoins the front yard of the McMillan Property. Pursuant to BCZR § 307.1, the Board has the power to grant a variance from the BCZR’s height regulations “only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.”

The Court of Special Appeals has set forth the analytical framework for considering a request for a variance:

[I]t is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is – in and of itself – unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless

there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists.

Cromwell, 102 Md. App. at 694-95, 651 A.2d at 426.

The *Cromwell* court emphasized that “[t]he need for a variance must be due to the unique circumstances of the property and not to the general conditions in the neighborhood.” *Id.* at 717, 651 A.2d at 437. “‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, *i.e.*, its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.” *Id.* at 710, 651 A.2d at 433-34. Moreover, variance relief cannot be “based on reasons personal to the applicant,” rather than the uniqueness of the property in question. *Id.* at 720, 651 A.2d at 438.

In this case, the Petitioners argue that their property is unique, and warrants variance relief to allow for a six-foot high fence, because of the presence of trees and roots along the boundary with the McMillan Property. The Board disagrees. Based on the testimony before the Board and the exhibits submitted at the hearing, the Board finds that the Petitioners' Property is similar in all material respects to the other properties in the neighborhood. For example, as evidenced by Petitioners' Exhibit B6, the general shape and topography of the Petitioners' lot and the tree line along the edge of the Petitioners' Property are similar to numerous other lots along Trenton Road in the Petitioners' neighborhood.

Rather than the unique characteristics of the Property itself, the driving force behind Petitioners' request for a variance seems to be their desire to cover the open area left by their removal of the lower branches of Ms. McMillan's spruce trees. Because, however, the Petitioners' Property is not "in any way peculiar, unusual, or unique when compared to other properties in the neighborhood," the Board must deny the Petitioners' request for a variance under BCZR § 307.1. *Cromwell*, 102 Md. App. at 726, 651 A.2d at 441.

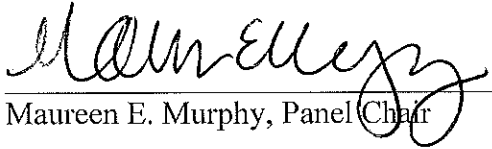
ORDER

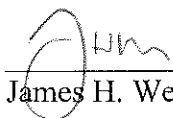
THEREFORE, it is this 19th day of July, 2017, by the Board of Appeals of Baltimore County,

ORDERED, that the Petition for Variance seeking relief under Section 427.1.B.2 of the Baltimore County Zoning Regulations to permit a fence six feet high, in lieu of a fence 42 inches high, along the portion of the property line bordering the front yard of the McMillan Property, be and is hereby **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chair


James H. West

Board Member Benfred B. Alston served on the panel for the above referenced matter at the hearing on March 29, 2017 and participated at the public deliberation on April 26, 2017. He was not reappointed to the Board and his term expired on April 30, 2017.



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

July 19, 2017

Anthony and Mindy Johns
16007 Trenton Road
Upperco, Maryland 21155

RE: *In the Matter of: Anthony and Mindy Johns*
Case No.: 17-083-A

Dear Mr. and Mrs. Johns:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington" followed by a date "1/19/17".

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

c: Anita McMillan
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law