

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/E Corner of Orbitan Road and		
Summer Park Road	*	ZONING COMMISSIONER
(3508 Orbitan Road)		
11 th Election District	*	OF
6 th Council District		
	*	BALTIMORE COUNTY
Douglas M. Vojik, et ux		
Petitioners	*	Case No. 2009-0159-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Douglas M. Vojik. The Petitioner seeks relief from Section 427.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the erection of a residential 6-foot high occupancy fence in the side and rear yard of a lot which adjoins the front yard of another lot on which a residence has been built, in lieu of the maximum permitted 42 inches (when fence is situated within 10 feet of the adjoining front yard property line). The subject property and relief sought are more particularly described on the site plan and photographs submitted which were marked and accepted into evidence as Petitioners' Exhibits 1 and 4, respectively.

Appearing at the requisite public hearing in support of the request were Douglas Vojik, property owner, and Deborah Weitzel, who also resides on the property. There were no Protestants or other interested persons present, and it should be noted that there were no adverse Zoning Advisory Committee (ZAC) comments received from any of the County reviewing agencies.

Testimony and evidence offered revealed that the subject property is an irregular, rectangularly shaped corner lot, containing a gross area of 0.192 acres (8,400 square feet), more or less, zoned D.R.5.5 and located in the Parkville/Carney area. The property is within the Upton Village subdivision, recorded in the Land Records of Baltimore County and the Petitioner

has owned the property since 2002. The property is improved with a two-story single family dwelling which is accessed by way of Orbital Road that runs past Summer Park Drive and Lamaze Road when proceeding in a northwest direction towards Glenside Drive. The subject of the variance request relates to Petitioner's desire to erect a 6-foot high board-on-board fence around the sides and rear of the property. As shown in photographs submitted at the hearing, as well as the plat of the property, the fence extends from the sides of the house along the east, north and west boundaries of the property (a distance of 215 feet) in order to buffer the views and keep several feral cats that habitually overrun the subject property. These cats defecate and urinate in the Petitioner's gardens and under his deck. Additionally, the cats have stalked and seized fish that are kept in the ornamental aquatic pond and have killed many wild birds in his yard. The subject fence replaces a chain link fence that has existed on the property for many years and will help keep the cats out of the yard. *See* photographs – Petitioner's Exhibit 4. In this regard, the petition was filed as the result of an anonymous complaint registered with the Code Enforcement Division of the Department of Permits and Development Management relative to a fence being built without a permit.¹ Relief is requested as set forth above to allow a 25-foot section of the fence to be built at a height of 72 inches (6 feet) along a small portion of the northwest boundary that adjoins the front yard of Mary T. Patterson at 9103 Summer Park Drive.

Under the B.C.Z.R. and Baltimore County Building Code, the proposed fence can be constructed and is permitted by right in the side and rear yards. However, variance relief is required to allow the fence to be constructed in the front yard of a lot which adjoins another on which a residence has been built. Under Section 427 of the B.C.Z.R., the fence cannot exceed a height of 42 inches (3.5 feet) in that area.

Mr. Vojik and Ms. Weitzel offered testimony during the hearing about the need for the fence. They indicated that their request is based on the cats ability to jump up and then over

¹ Petitioner's Exhibit 3 is a Baltimore County Fence Use Permit obtained on November 13, 2008 subject to compliance with B.C.Z.R. Section 427.

a 42-inch high fence. The most affected property owner, Mary Patterson, has no objection to the 6-foot high fence, in the Petitioner's rear yard coming to her front yard. *See* Petitioner's Exhibit 2. Ms. Patterson points out that mature pine trees screen the fence from her view. Mr. Vojik presented five (5) photographs (Petitioner's Exhibit 4) that illustrate this evergreen buffer.

Under the circumstances, I am persuaded to grant the requested variance. Relief is necessary due to the configuration of the property, its corner location and the location of the house on the adjacent lot. The subject fence is not located in the public right-of-way nor will it interfere with the line of sight for vehicles entering or exiting Orbital Road and Summer Park Drive or traveling along that roadway. There were no adverse ZAC comments submitted by any County reviewing agency and none of the neighbors voiced any objection. Thus, it appears that the relief requested can be granted without detrimental impact to adjacent properties or the surrounding locale. The board-on-board materials are an improvement to the chain link fence that had been erected by the prior owner.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 18th day of February 2009, that the Petition for Variance seeking relief from Section 427.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the erection of a portion of a residential occupancy fence in the side and rear yard of a lot which adjoins the front yard of another on which a residence has been built, with a fence height of 72 inches (6 feet) in lieu of the maximum permitted 42 inches (when fence is situated within 10 feet of the adjoining front yard property line), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following:

1. The Petitioner may be issued a Baltimore County Fence Use Permit upon receipt of this Order; however, the Petitioner is made aware that proceeding at this time is at his own risk until the 30-day appeal period

WJW:dlw

____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County