

IN RE: PETITION FOR ADMIN. VARIANCE

N/W corner of Jolly Road and
Rockland Hills Drive
(2000 Jolly Road)
3rd Election District
2nd Council District

Grigoriy Rubinshteyn, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* **Case No. 2010-0313-A**

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Grigoriy Rubinshteyn and Marina Kuznetsova. The Petitioners seek relief from Section 427.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the erection of a 72" high residential occupancy fence in the 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. The subject property and requested relief are more particularly described on Petitioners' Exhibit 1.

The Petition was filed through the administrative variance process, pursuant to Section 32-3-303 of the Baltimore County Code (B.C.C.). That Section allows an individual to seek variance relief for an owner-occupied residential property without the need for a public hearing. Under the Code, the property in question is posted for a period of 15 days during which time any property owner residing within 1,000 feet of the property may demand a public hearing for a determination as to the merits of the request. Additionally, the Zoning Commissioner/Deputy Zoning Commissioner can schedule the matter for a public hearing if deemed appropriate. If no hearing is requested or scheduled, the matter can be considered and an Order issued by the Zoning/Deputy Commissioner based on the documentation contained in the file. In the instant

case, the property was duly posted and within the requisite time period, the nearby property owner of 7102 Rockland Hills Drive, Murray A. Kalish, filed a request for a public hearing. This matter was, therefore, scheduled for a public hearing, which was held on June 29, 2010.

Appearing at the requisite public hearing in support of the variance request were Grigoriy Rubinshteyn and Marina Kuznetsova, and their daughter. Appearing at the hearing in opposition to the request were Murray A. and Michele R. Kalish, adjacent property owners (7102 Rockland Hills Drive) and Darlene Fleischmann, a family friend of the Kalish's. No other Protestants or interested persons were in attendance at the hearing.

Testimony and evidence offered revealed that the subject property, 2000 Jolly Road, is a square-shaped corner parcel containing a gross area of 17,484 square feet, more or less, zoned D.R.16. The subject property sits at the northwest corner of the intersection of Jolly Road and Rockland Hills Drive, in the Green Gate subdivision of Mount Washington. The Petitioners have owned the subject property since 2003, which is improved with a single-family dwelling, built in 1977, encompassing 1,780 square feet, more or less.¹ The subject of the variance request relates to Petitioners desire to erect a six (6) foot/ seventy-two (72) inch, high vinyl fence that will run along the rear of the property bordering the front yard of 7102 Rockland Hills Drive.

Under the B.C.Z.R., the proposed fence can be constructed and is permitted by right in the side and rear yards. However, variance relief is required pursuant to Section 427 of the Regulations to allow the fence to be constructed in the front yard of a lot that adjoins another on which a residence has been built, if that fence is more than forty-two (42) inches high and within ten (10) feet of the adjoining front yard property line. Conversely, a fence more than forty-two

¹ According to the Real Property Data Search record contained in the case file, Petitioners purchased the property and improvements from Joseph Rosen and was designated as "Lot 14, block H on a Plat entitled, Plat 2, Section 5, Green Gate".

(42) inches high is permitted under the aforementioned section if that fence was not within ten (10) feet of the adjoining front yard property line.

Mr. Rubinshteyn and Ms. Kuznetsova offered testimony during the hearing about the need for the fence. Petitioners opined that the fence is necessary due to the multitude of individuals that use their property as a 'cut-through.' They mentioned continued fear for themselves and their family following reports of several robberies in the neighborhood. Petitioners wish to curb such occurrences and ease their fears with the erection of the proposed fence. Furthermore, Petitioners cite to the need for increased privacy due to the visibility of their backyard from the sidewalk and especially the pool and clubhouse of the Twin Ridge Apartment Complex directly across the street. Petitioners exposed deck and backyard can be seen in the photographs accepted and marked collectively into evidence as Petitioners' Exhibit 2.

In opposition to the Petitioners request for variance relief, Murray Kalish stated that the proposed fence infringes on the aesthetics of his property and his reasonable use and enjoyment of the property. Mr. Kalish presented a signed and notarized letter from the Petitioners adjacent neighbors to the west, Harry and Frances Bernstein at 2002 Jolly Road, which was accepted and marked into evidence as Protestant's Exhibit 2, in which opposition to the Petitioners request is expressed stating that the fence poses a risk to the public health and safety of the community. Additionally, Mr. Kalish submitted a petition signed by a multitude of neighbors stating their opposition to the fence request. The petition was submitted and accepted into evidence as Protestant's Exhibit 3.

The Zoning Advisory Comments (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated June 8, 2010 recommending denial of the Petitioners administrative variance request. These comments cite

the fact that the Petitioners application does not address the burden of proof required by Section 307.1 of the B.C.Z.R., i.e., hardship or practical difficulty. Moreover, these comments state that the height requirements of the Regulations provide Petitioners the privacy and security they aim to achieve with construction of the fence.

The consideration of a variance request from the zoning regulations is governed by Section 307.1 of the B.C.Z.R. as interpreted by *Cromwell v. Ward*, 102 Md. App. 691 (1995). The two-part variance test involves finding that a property is unique and unusual and that if strict adherence to the regulations were required absent relief, an unreasonable hardship or practical difficulty would result. Self-inflicted or created hardship is not considered proper grounds for a variance.

After due consideration of the testimony and evidence presented, I find that the Petitioners request for variance should be denied. Although I recognize the Petitioners' intentions to provide privacy and safety for their home, insufficient evidence was put forth to satisfy the strict burden of proof required for a variance. The Petitioners did comment that instead of building the fence within the regulated ten (10) feet of the adjoining front yard property line, the fence would be constructed, pending permit approval, outside the regulated area at its proposed height of seventy-two (72) inches.

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

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County, this 29th day of June, 2010, that the Petition for Variance from Section 427.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the erection of a residential occupancy fence in

the rear yard of a lot which adjoins the front yard of another lot on which a residence has been built, with a fence height of 72 inches (6 feet) in lieu of the maximum permitted 42 inches, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petitioners have thirty (30) days from the date of this Order to file an appeal of this decision.

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

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