

IN RE: PETITION FOR VARIANCE

NE side of Greenwood Avenue; 81 feet
SE of the c/l of Center Avenue
14th Election District
6th Councilmanic District
(21 Greenwood Avenue)

Robert and Diane Brown
Petitioners

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **CASE NO. 2010-0367-A**

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owners of the subject property, Robert and Diane Brown. Petitioners are requesting Variance relief from Section 427.1.B.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a fence on the side and rear yard with a height of 6 feet and adjoining the front yard of another residence to have a setback of 0 feet in lieu of the required 10 feet. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the variance request were Petitioners Robert and Diane Brown and their daughter, Karen Brown. Appearing as interested citizens opposed to the requested relief were next door neighbor Doris White of 23 Greenwood Avenue and her daughter, Sheila Coomer, of 25 Greenwood Avenue. There were no other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is rectangular-shaped and consists of approximately 16,000 square feet or 0.367 acre, more or less, zoned D.R.5.5. The property is located on the north side of Greenwood Avenue, southeast of Kenwood Avenue and Belair Road and just east of the City/County line, in the Overlea area of Baltimore County.

The property is part of the “Kenwood” subdivision that was platted and recorded in 1912. According to Real Property Tax records, the property is improved with a two-story frame dwelling built in 1913 consisting of approximately 2,000 square feet. These records also indicate that Petitioners have owned the property since 1989.¹ The property is also improved with a macadam driveway running along the right side leading to a garage that is located to the rear of the property.

It should be noted that this matter came before me as a result of a complaint registered with the Code Enforcement Division of the Department of Permits and Development Management². A Code Inspections and Enforcement Correction Notice was issued to Petitioners for a 6 foot high fence installed along the front yard. Hence, Petitioners filed the aforementioned variance request.

Petitioners both testified that they have lived at the property for the last 21 years and for most of that time, they got along well with their neighbors; however, in the recent past, the relationship with their next door neighbors has deteriorated significantly to the point where there is open hostility between Petitioners and Ms. Coomer and her family. Karen Brown, Petitioners’ daughter, also resides at the property with her two boys. Ms. Brown and Petitioners recounted examples of the bad relations between the parties and what they feel is harassment on the part of Ms. Coomer and her family.

As a result, Petitioner Mr. Brown erected the subject 6 foot high board-on-board privacy fence along the property line he shares with Ms. White’s property this past June, 2010. As depicted on the site plan, this fence runs along his driveway. Photographs of the fence were marked and accepted into evidence as Petitioners’ Exhibits 2A through 2E and show the location

¹ Mrs. Brown indicated in testimony that she was born and raised in the home.

² Case No: CO-0079626

of the fence right next to an existing chain link fence and running from the front of the property to the rear yard, next to the garage. Apparently, Petitioners applied for and were issued a building permit for the fence, as evidenced by the permit application that was marked and accepted into evidence as Petitioners' Exhibit 3; however, that permit was issued in error based on the location and height of the fence. Petitioners desire to keep the fence because they believe it is the only way to have some peace and enjoyment of their own property, given the openly hostile relations between them and their neighbors.

Testifying in opposition to Petitioners' requested variance were Ms. Coomer and her mother, Ms. White. As already indicated, Ms. White resides next door at 23 Greenwood Avenue and Ms. Coomer lives one door down at 25 Greenwood Avenue. During her testimony, Ms. Coomer was just as emphatic as Petitioners concerning the poor relations between the parties. Contrary to previously described testimony, Ms. Coomer attributed these difficulties to Petitioners and in particular Ms. Brown and her two boys. She recounted incidences of misconduct on the part of the boys toward Ms. Coomer's daughter and indicated that it is Petitioners who are the instigators of the harassment. Nonetheless, it was Ms. Coomer who registered the complaint with Code Enforcement and is opposed to the fence along her mother's property line.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

The determination of a variance request from the Zoning Regulations is governed by Section 307.1 of the B.C.Z.R., as interpreted by the Court of Special Appeals of Maryland in *Cromwell v. Ward*, 102 Md. App. 691 (1995). As indicated by the Court in *Cromwell*, "The

general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances.” 102 Md. App. at 700. In that case, the Court interpreted the regulation to require that a two-prong test be met in order for variance relief to be granted. First, it must be shown that due to peculiar circumstances, the property is unique in some manner and that this uniqueness drives the need for variance relief. Secondly, upon the determination that the property is unique, it must then be considered whether, absent the requested relief, strict compliance with the regulation would cause a practical difficulty or undue hardship upon the property owner. Self-inflicted or self-created hardship is not considered proper grounds for a variance. *Id.* at 707.

After due consideration of the testimony and evidence presented, I find that Petitioners’ request for variance should be denied. Although I am very sympathetic to Petitioners’ desire to have a privacy fence between their property and Ms. White’s property, given the obviously antagonistic relations between the parties, insufficient evidence was put forth to satisfy the substantial burden of proof required for a variance. In my judgment, there is not sufficient evidence of unusual conditions or characteristics that are unique or inherent to this property, and which drive the need for the variance. While it is regrettable that the relationship between the parties has deteriorated to the extent described in testimony, I cannot find that the property is encumbered by special circumstances or features that would render it unique in a zoning sense so as to satisfy the *Cromwell* standard. Indeed, the presence of the high fence may well be a practical solution to keeping the peace to whatever extent possible between these neighbors; however, I cannot premise a decision on whether to grant the requested relief on that basis, especially in the face of opposition from the most affected neighbor, Ms. White. In short, there is not sufficient evidence to suggest that this property meets the “uniqueness” requirement, and I

must therefore deny the variance requested by Petitioners. Moreover, the fact that the fence has already been built does not present a case of undue hardship. As declared by the Court of Special Appeals in *Cromwell*, “hardship, arising as a result of the act of the owner . . . will be regarded as having been self-created, barring relief.” 102 Md. App. at 707.

Finally, I must also determine whether the requested variance is in strict harmony with the spirit and intent of the Zoning Regulations and its impact, if any, on adjacent properties. As earlier stated, although I am certainly understanding and empathetic with Petitioners in their desire to construct a privacy fence, in my view, the layout of properties in this subdivision and the relative closeness and orientation of the dwellings does not lend itself to the construction of the type of board-on-board fence, including its height and length along the property, as proposed on the site plan. I believe the fence would have an overall negative impact on the character and aesthetics of the neighborhood and, hence, is not within the spirit and intent of the Zoning Regulations.

It is worth repeating that based on the testimony presented by both parties, clearly some kind of intervention or mediation is warranted. It seems hard to believe that people on both sides can live a healthy and enjoyable life in the type of environment described. But unfortunately, Petitioners will need to find another lawful way of dealing with the challenges presented by the ongoing dispute with Ms. White’s and Ms. Coomer’s families. I can only wish both sides well in this regard.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioners’ variance request should be denied.

THEREFORE, IT IS ORDERED this 16th day of September, 2010 by this Deputy Zoning Commissioner that Petitioners' Variance request from Section 427.1.B.2 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a fence on the side and rear yard with a height of 6 feet and adjoining the front yard of another residence to have a setback of 0 feet in lieu of the required 10 feet be is hereby **DENIED**.

As a consequence of the denial of the requested relief, Petitioners shall within ninety (90) days of the date of this Order, at their sole cost and expense, remove and properly dispose of the board-on-board privacy fence that is the subject of the requested variance, as depicted on the site plan and the photographs accepted into evidence as Petitioners' Exhibits 2A through 2E.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Deputy
for

THB:pz

SIGNED _____
THOMAS H. BOSTWICK
Zoning Commissioner
Baltimore County