

APPLICANTS:
Carner and Renee Weaver

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

REQUEST: A variance to permit a
6 foot high fence within the front yard
in the Agricultural District

HEARING DATE: May 23, 2007

Case No. 5595

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Carner A. Weaver, Jr.

CO-APPLICANT: Renee D. Weaver

LOCATION: 1237 Sharon Acres Road – Sharon Hills Subdivision, Forest Hill
Tax Map: 33 / Grid: 2A / Parcel: 359 / Lot: 2
Fourth (4th) Election District

ZONING: AG / Agricultural

REQUEST: A variance pursuant to Section 267-24B(1) of the Harford County Code to permit a fence to exceed 4 feet in height (6 foot fence proposed) within the front yard in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

Renee D. Weaver, Co-Applicant, described the subject property as an approximately one acre, agriculturally zoned, residentially used parcel located off Sharon Acres Road in Forest Hill. The property is improved by a 28 foot by 48 foot Cape Cod style, single-family dwelling, and a 30 foot by 40 foot two-bay garage located to the rear of the home. The parties have owned the subject property since 1998.

The Applicants desire to install a 6 foot high chain link fence around the perimeter of their one acre lot. As the front yard is impacted by a 30 foot County road improvement right-of-way, the fence will actually be located about 20 – 21 feet off the travel portion of Sharon Acres Road, within the front yard of the Applicants. The Applicants have offered a series of photographs showing the topography and the general location of the proposed fence. Attachment 2 to the Staff Report is a drawing of the property showing the proposed location of the fence.

The Applicants believe their property is unique. The front yard of the property is characterized by a very steep elevation change, from Sharon Acres Road down to the front of the house. This 'very steep drop in elevation' would result in a 4 foot fence, if located across that elevation change, being less effective and much easier to scale because of the steep slope.

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Mr. Weaver testified that he and his wife are concerned about crime in their neighborhood, and believe that the fence will help protect their property. Mr. Weaver does not believe the fence would be a hindrance to motorists on Sharon Acres Road, as it would not be readily visible to any motorist due to the elevation change.

The Applicants intend to plant evergreens around the inside of the fence which will help improve the screening.

The Applicants have spoken to some of their neighbors. No neighbor has expressed any opposition to the Applicants' request.

Mr. Weaver reiterated that, in his opinion, it is simply too easy for one to climb a 4 foot fence that is located across the steep slope in front of his house. They, therefore, request the variance to allow a higher fence.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune and the Department believe the property of the Applicants is unique. The front yard is characterized by a "very steep drop off" from Sharon Acres Road to the front of the house. This drop off is much worse than other properties in the neighborhood. As a result, says Mr. McClune, a fence of 4 feet in height would be easy to breach by individuals crossing it in the front yard. A 6 foot fence would be much more effective in that area.

The property is also encumbered by a 30 foot road improvement right-of-way for Sharon Acres Road. As a result, the fence would be located approximately 20 – 25 feet from the edge of the travel portion of Sharon Acres Road.

No variance is necessary, according to Mr. McClune, for the fence in either side yard or the back of the property. It is only that portion of the lot to the front of the house in which normally only a 4 foot high fence would be allowed.

The Staff Report concludes by stating:

"The Department finds that the subject property is unique based on the existing topography. The fence will appear to be less than 6 feet high because of the steep grade near the road. The fence will not adversely impact traffic or adjacent properties."

There was no testimony or evidence given in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

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“Variances.

- A. *Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) *By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) *The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

The Applicants are requesting a variance to Section 267-24B(1) which states:

- “B. *Fences and walls. Fences and walls may be located in required yards in accordance with the following:*
 - (1) *Front yards. For single-family detached units, walls and fences shall not exceed four feet in height above ground elevation. Where fences and walls are an integral part of the unit design and are applied in a consistent and coordinated pattern throughout the project, fences and walls may be constructed to a maximum of six feet above ground level. For continuing care retirement communities, consistent and coordinated fencing or walls may be constructed to a maximum of eight feet above ground elevation provided strategically located gates are provided for emergency access.”*

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FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants request permission to erect a 6 foot high, chain link fence, within their front yard. As a matter of right, the parties would be allowed to erect a 4 foot high fence.

However, the Applicants argue that due to the severe downward elevation change of their yard between Sharon Acres Road and the front of their house, a 4 foot fence would be ineffective as a security measure. Simply put, one could more easily jump over the fence because of the steep slope on which it would be erected. The Applicants, accordingly, believe that a 6 foot fence would be more effective. A 6 foot high fence in the front yard would also match the height of the fence which will encircle their house to the sides and rear.

The Department of Planning and Zoning has recommended approval, also finding that the property is unique. No neighbors have expressed any opposition.

It must be acknowledged that, normally, variance requests of this nature are difficult to substantiate, and are seldom granted. Six-foot high fences in front yards of homes is not a particularly ‘neighborhood friendly’ use. Fences are allowed, although 4 feet in height only, and there are few possible scenarios under which a higher fence would normally be permitted.

However, it must also be acknowledged that the Applicants have made a showing that they do suffer from an unusual topography in that their front yard is at such a steep elevation that a 4 foot fence would simply not be effective. The adjustment, as requested, will actually make the fence more in keeping with the remaining fence which they intend to erect around the sides and rear of their house.

While one could question whether the creation of such a “compound” in this residential area is a particularly beneficial intrusion, it would appear that the Applicants have satisfactorily met the variance requirements. They have shown an unusual feature of their property which causes the 4 foot height limitation on front yard fences to impact them more severely than others who do not suffer a similar topographical anomaly.

The Department of Planning and Zoning has suggested no adverse impact will result. No neighbor appeared to testify as to any adverse impact. Although, as noted above, it would not appear that such a structure in this neighborhood would be necessarily positive, in the lack of any evidence of an adverse impact, or even suggestion of such an impact, such a finding simply cannot be made.

It is also found that the relief requested, that is, a variance to allow a 6 foot high fence instead of a 4 foot high fence, is the minimum relief necessary to alleviate the hardship.

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CONCLUSION:

It is accordingly recommended that the 2 foot fence height variance be granted, subject to the Applicants obtaining all necessary permits and inspections.

Date: June 5, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JULY 3, 2007