

**APPLICANT:**  
Wendell Craig

**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

**Case No. 5719**

**HEARING DATE:** October 6, 2010

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** Wendell Craig

**LOCATION:** 1006 Calvary Road, Churchville  
Tax Map: 50 / Grid: 2D / Parcel: 138  
Third (3<sup>rd</sup>) 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:**

The subject parcel is a 0.59 acre lot, improved by a two-story dwelling, 3 sheds, and a 6 foot high fence along the rear and northerly side property lines. The parcel is approximately 290 feet in length and 100 feet deep on average. The parcel fronts on MD Route 136.

The Applicant has filed this application seeking approval for an existing fence. The fence along the rear property line is 6 feet in height, which is allowed by Code. The fence along the northerly side property line is also 6 foot high. The fence in the front yard of the parcel may only be 4 feet in height and, as a result, part of the side property line fence is not permitted.

Mrs. Angel Craig testified for the Applicant. Mrs. Craig believes that the parcel is non-conforming due to its extreme shallowness. Furthermore, a significant part of the dwelling would be considered, under current Development Regulations, to be located within the front yard. Accordingly, very little of the fence along the northerly property line is, allowed to be 6 feet in height by Code. The required front setback is 70 feet from the center line of MD Route 136. Since the property is only 80 feet deep at the northerly property line most of the northerly property line can not be encumbered by a 6 foot high fence.

## Case No. 5719 – Wendell Craig

Mrs. Craig testified that the dwelling itself is only about 20 feet from the shoulder of MD Route 136. The 6 foot high fence itself also begins about 20 feet from the shoulder of MD Route 136. Mr. and Mrs. Craig originally constructed the fence for privacy, and also to help protect them from intrusive actions of their neighbors. The 6 foot fence, in Mrs. Craig's opinion, is necessary to give them adequate screening, as a 4 foot high fence would not be sufficient. Mr. and Mrs. Craig were eventually required to obtain a restraining order against their neighbors. Conditions are now better, particularly with the existence of the fence.

William Cass, whose family owns the property adjoining the Applicants', testified in opposition. He believes the neighbors of the Applicants were a problem, but they have now moved. Mr. Cass has no objection to a fence as allowed by Code, but he does object to a 6 foot high fence. Mr. Cass believes a 6 foot high fence will interfere with air flow onto his property and is opposed to the variance.

Next for the Department of Planning and Zoning testified Anthony McClune, Deputy Director. Mr. McClune and the Department recommend approval of the requested variance. The fence along the rear property line is allowed to be 6 feet. Under the present Development Regulations, a residential dwelling in an agricultural district is to be set back 70 feet from the front lot line. A 6 foot fence could then be built along the side property line, beginning 70 feet from the front yard line. This could be done without a variance. However, because of the extreme shallowness of the subject parcel, the location of the home on the subject parcel does not comply with current zoning regulations. The dwelling is, in fact, about 20 feet from the shoulder of MD Route 136, with the front line of the lot being in the middle of Route 136. This is an unusual lot with an unusual configuration, according to Mr. McClune. Nevertheless, that portion of the fence as constructed by the Applicants and for which permission is requested, begins only at a point parallel with the location of the home, although it is technically within the front yard setback of the lot.

Mr. McClune and the Department believe this is an unusual situation, and one which should be remedied by the granting of a variance. Mr. McClune said the Department sees no adverse impact if the requested variance is granted. According to the Staff Report:

“The Department finds that the subject property is unique. The parcel is a long, narrow lot averaging less than 100 feet deep. The property extends to the center line of MD Route 136. The dwelling and lot are non-conforming regarding setbacks. The dwelling appears to be approximately 20± feet from the shoulder of the road. The required front yard setback would be 70 feet from the center line of the road. The fence does not impact traffic or sight distance along MD Route 136. The dwelling on the adjacent lot is only about 10 to 15 feet from the corner of the fence and the adjacent parking area comes up to the property line.”

The Department, accordingly, recommends approval.

## Case No. 5719 – Wendell Craig

Other than Mr. Cass, no testimony in opposition was given. Furthermore, the Applicant has submitted letters to the file from neighbors, all of whom have expressed their lack of opposition the request.

### **APPLICABLE LAW:**

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

#### *“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.”*

## **Case No. 5719 – Wendell Craig**

The Applicant is 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.”*

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

The subject parcel is an unusual lot. It has approximately 290 feet of road frontage along MD Route 136, an average depth of 100 feet, and is improved by a single-family residence which is located about 20 feet from the shoulder of MD Route 136. Clearly, the property is non-conforming in that neither its dimensions nor the location of the home on the lot would meet today's development regulations.

The property is also impacted somewhat by the lot to its north, on which a house is located fairly close to the northwesterly corner of the subject parcel. Apparently, the occupants of that residence have been an annoyance to the owners of the subject parcel for some time. In an effort to minimize the impact of the occupants of the adjoining property, a 6 foot high fence was built on the rear property line and along the northerly side yard line. The residence of the neighbor who had been giving the Applicant difficulty is located directly behind the intersection of those two lot lines.

Unfortunately, however, due to the shallowness of the Applicant's lot, a 6 foot high could by current Code come no closer than approximately 70 feet to the front property line, which means the 6 foot high fence would extend, at most, 20 feet long along the northerly property line, and the remaining 70 feet could be bordered by a 4 foot high fence.

**Case No. 5719 – Wendell Craig**

Nevertheless, a 6 foot high fence, given the location of the northerly neighbor's dwelling and parking area, causes no apparent impact on the adjoining property. Mr. Cass, whose family owns the adjoining property, testified in opposition, but his only grounds for opposing the request was the lack of air flow that a 6 foot high would cause. In truth, there would be little, if any, difference in impact between a 4 foot fence and a 6 foot fence on Mr. Cass's airflow in this rural setting.

Most strikingly, the present Code would allow a 6 foot high fence to be constructed from a rear property line to a point parallel to the front wall of a residential dwelling, if built according to Code. The Applicant's fence ends at approximately the front wall of their dwelling and, except for the shallowness of the property's lot, would have been allowed as a matter of right.

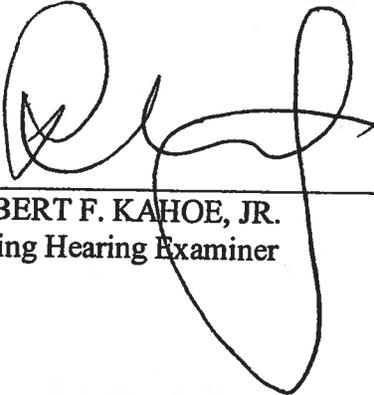
It is, accordingly, found that, given the unusual dimensions of the parcel, the Applicant would suffer practical difficulty if he were not able to build a 6 foot high fence similar to others, which could be built as a matter of right, by homeowners' whose lots conform to current development regulations.

There is no finding of an adverse impact on any adjoining neighbor or property, and the relief requested is the minimum necessary to alleviate the hardship.

**CONCLUSION:**

It is, accordingly, recommended that the requested variance be approved.

Date: November 17, 2010

  
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ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on December 17, 2010.**