

APPLICANTS:
Jessica & Anthony Pumilia

BEFORE THE
ZONING HEARING EXAMINER

REQUEST: A variance to permit an
6 foot high fence within in the R2 District

FOR HARFORD COUNTY
BOARD OF APPEALS

HEARING DATE: July 6, 2011

Case No. 5740

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Jessica & Anthony Pumilia

LOCATION: 1310 Ipswich Drive, Parliament Ridge subdivision, Bel Air
Tax Map: 48 / Grid: 1E / Parcel: 436 / Lot: 77
Third (3rd) Election District

ZONING: R2 / Urban Residential District

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 feet proposed) in the R2 Urban Residential District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject parcel is about one-quarter acre in size and is located in the Parliament Ridge subdivision outside Bel Air. The parcel is improved by a two-story Colonial type dwelling, in which reside the Applicants and their young son. The parcel was purchased by the Applicants in December 2010 and was, at that time, improved by a somewhat dilapidated fence enclosing the backyard.

The Applicants wish to replace the fence with a 6 foot high, white vinyl coated fence. The Applicants provide various reasons for their request, including the need to keep other animals outside their yard; to help screen a potential future swimming pool; to keep their own dogs within their yard and to keep children from intruding into their yard.

Evidence indicates that the Applicants' property is, in fact, a corner lot, with frontage on both Ipswich Drive and Friar Tuck Drive. Due to the double lot frontage of this parcel the apparent side yard lot line must comply with front yard lot requirements, which means that no fence can be more than 4 feet in height.

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In addition to the issues identified by the Applicants, the evidence also shows that the topography of the lot falls fairly significantly down to Friar Tuck Drive, to such an extent that a 4 foot high fence along that road would not adequately screen the property; that is, it would not provide the same screening that a 4 foot fence would otherwise provide on a relatively level lot.

The Applicants fence will be coated white vinyl with lattice work at the top. The Applicants believe that the fence would be an attractive addition to the neighborhood. Photographs in the file indicate the type and color of the proposed fence.

For the Department of Planning and Zoning testified Anthony McClune, Deputy Director. Mr. McClune and the Department believe the property is unique as it is a corner lot and must comply with two front yard setback requirements. The property slopes about 5 feet up from Friar Tuck Drive and, in Mr. McClune's opinion, a 4 foot high fence would not provide adequate privacy screening. The Staff Report indicates that a 6 foot high fence would not be out of keeping with the neighborhood and, indeed, many properties in the neighborhood have similar fences. Mr. McClune also believes that a 6 foot high fence would not impact sight lines for passing motorists.

No evidence or testimony was given in opposition. In fact, a number of letters are in the file from neighbors who expressed no opposition to the requested fence variance.

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.*

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- 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 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:

Clearly, the subject property is a unique lot as the Harford County Development Regulations treat it as having two front yards. The problem experienced by the Applicants is one that is often experienced by people in similar circumstances. Even though they are forced to comply with two front yard requirements, that part of their property which fronts on the side street in fact is used as a side yard. Accordingly, to impose a front yard requirement that a fence can be no more than 4 feet in height is simply, in most instances, not reasonable.

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This difficulty is particularly apparent in the Applicants' case. The portion of their lot fronting on Friar Tuck Drive slopes sharply upward for about 5 feet to the level area of their backyard. A 4 foot high fence along Friar Tuck Drive would effectively create no privacy screening whatsoever.

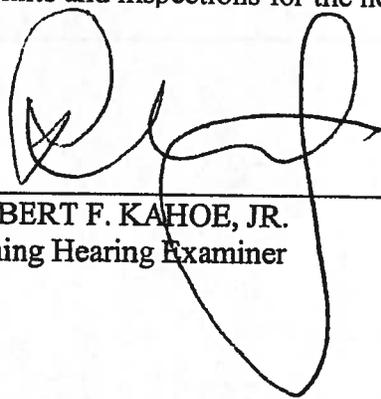
There is also evidence that the fence will not be out of keeping with others in the neighborhood and, in fact, many neighbors have expressed their support of the request. ¹

It is clear the Applicants suffer a practical difficulty because of the unique characteristic of their lot and their inability to construct a fence to provide some degree of privacy which is enjoyed by others in the neighborhood. No adverse impact has been identified nor, indeed, can any adverse impact be envisioned from the granting of the variance.

CONCLUSION:

Accordingly, it is recommended that the requested variance be granted, subject to the condition that Applicants obtain all necessary permits and inspections for the new fence.

Date: August 12, 2011



ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on September 12, 2011.

¹ The Applicants, both in their written application and during testimony, gave as a major reason for the variance their need to help contain their dogs within their backyard as the existing, dilapidated fence will not do so. It is noted that this argument cannot support the granting of a variance. Homeowners are responsible for the activities of their animals and must maintain the proper safeguards. The County has no obligation to grant a variance to help homeowners meet these obligations.