

APPLICANT: Beverly King

BEFORE THE

**REQUEST: Variance to permit a 6 foot high
fence in the front yard in the Agricultural District**

ZONING HEARING EXAMINER

FOR HARFORD COUNTY

BOARD OF APPEALS

HEARING DATE: August 12, 2014

Case No. 5845

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Beverly King

LOCATION: 720 Aldino Stepney Road, Aberdeen
Tax Map: 51 / Grid: 1D / Parcel: 106
Second (2nd) Election District

ZONING: AG / Agricultural District

REQUEST: Variance to Section 267-24B(1) of the Harford County Code, to permit a fence to exceed four (4) feet in height in the front yard (6 foot fence existing) in Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject parcel is, after various consolidations, 6.88 acres in size and is improved by a single-family residence, a pole barn, and various other outbuildings. On the property was formerly located the Aldino Sawmill and Lumber Company, which has been out of business for a number of years.

For the Applicant first testified Michael Charlton, Vice President of the Developer of the Eagle's Rest Subdivision, located directly across Aldino Road from the subject property.

According to Mr. Charlton, during its operation the Aldino Sawmill and Lumber Company constructed a chain-link fence across its frontage along Aldino Stepney Road. The chain-link fence was 6 feet in height and was constructed pursuant to a conditional use permit granted in 1979 (see Case No. 2481).

The Aldino Sawmill and Lumber Company eventually ceased operations and the property reverted to exclusively residential use. The property now consists, for the most part, of open fields, forest and the improvements noted above. The chain-link fence had deteriorated to the extent that it was weed filled and in a state of disrepair. Furthermore, the property directly across Aldino Stepney Road has been developed into a residential subdivision known as Eagle's Rest.

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Mr. Charlton stated that when Eagle's Rest first began to be developed, the subject property was improved by a rusty, unsightly fence six (6) feet in height. The developers of Eagle's Rest agreed to replace the fence with a six (6) foot high vinyl clad fence in order to remove the eyesore which the old chain-link fence constituted and provide more acceptable and attractive screening. Accordingly, his firm paid to have the present fence constructed in 2011. Unfortunately, the new fence was constructed without the required permit which necessitates this variance request.

Mr. Charlton emphasized that the new fence was constructed in the same location as the old chain-link fence, and is the same height as was the chain-link fence when it was originally constructed.

The witness stated that the height of the fence gives additional privacy to the Applicant as her property is somewhat lower in elevation than the Eagle's Rest Subdivision. A four (4) foot high fence, which would be allowed without a variance, would not provide adequate privacy.

Mr. Charlton has heard no complaints from any resident of Eagle's Nest. The residents of Eagle's Nest have expressed their appreciation of the fence and approval of it.

Next for the Department of Planning and Zoning testified Anthony McClune, Chief of Current Planning. Mr. McClune stated that the property is unique. It is zoned Agricultural and, adjoins the City of Aberdeen. The fence helps buffer this agriculturally zoned parcel from the high-density residential development within the City. Mr. McClune stated there were no sight problems along Aldino Stepney Road; the residents of the subject property would have no safety issues entering and leaving Aldino Stepney Road due to the fence. The fence is attractive and replaced an earlier chain-link fence which had been there for many years and which had become very unsightly. In fact, the existing white vinyl fence has been in existence since 2011 with no objection or adverse comment.

The Harford County Department of Planning and Zoning Staff Report states, inter alia:

"The property is...unique in that although it is located in a rural area of the County, it is adjacent to the City limits of Aberdeen, which are located directly across the street from the subject property. The Eagle's Rest subdivision is located across the street and is being developed in accordance with the provisions of the City of Aberdeen. The fence serves as a transition and buffer between the two distinct areas. The density of the Eagle's Rest subdivision is much greater than the existing developed lots on the west side of Aldino Stepney Road.

With the continued development of the Eagle's Rest subdivision across the street, the change in topography has caused the 2-story homes built along Aldino Stepney Road to be constructed at a higher elevation than the subject property. The additional height of the fence does provide privacy from the homes that look down into the Applicant's property."

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The Department, accordingly, recommends approval.

No evidence or testimony was presented in opposition.

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 267-63.H (Chesapeake Bay Critical Area Overlay District, variances), 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.”*

Section 267-24B of the Harford County Code states:

- "B. *Fences and Walls. A zoning certificate is required for all fences and walls. Fences and walls may be located in required yards in accordance with the following:*
 - (1). *Front yards. For all residential units, walls and fences shall not exceed 4 feet in height above ground elevation . . . ”*

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FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject parcel was the former location of the Aldino Sawmill and Lumber Company, a high-intensive commercial/industrial use, which had been in existence on the subject property for many years. During the period of its operation it received a zoning permit to construct a six (6) foot high chain-link fence along the parcel's frontage on Aldino Stepney Road.

Eventually, the Aldino Sawmill and Lumber Company ceased operation and the property reverted to its present condition of forested area and open space, improved by a single-family residence. In an effort to improve the neighborhood the developer of the property across the street from the subject parcel removed the, by that time, unsightly and dilapidated chain-link fence and installed a (six) 6-foot high solid white vinyl fence. There is no question but that the new fence is much more attractive than was the chain-link fence.

The Department of Planning and Zoning suggests that the property is unique as it borders the City of Aberdeen limits, and that the fence helps the transition between the high intensity residential zoning of the City property from the agriculturally zoned subject parcel.

The Applicant argues that she would suffer an undue hardship if she were forced to remove what is a fairly significant, solid vinyl fence. No doubt the fence, which was constructed merely to replace an older, chain-link fence is an attractive addition to the neighborhood.

It is therefore found that the Applicant would suffer practical difficulty if the requested variance to allow the existing fence is denied. The relief requested is the minimum relief necessary to alleviate the hardship.

CONCLUSION:

It is, accordingly, recommended that the requested variance to allow the existing six (6) foot fence along the front of the Applicant's property be approved.

Date September 10, 2015



ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on October 8, 2015.