

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(8632 Windmill Road)		
2nd Election District	*	OFFICE OF ADMINISTRATIVE
4th Council District		
Dr. Crystal Greene	*	HEARINGS FOR
Legal Owner		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2020-0234-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by Dr. Crystal Greene (the “Petitioner”) for property located at 8632 Windmill Rd. (the “Property”). The Petitioner is requesting variance relief from Baltimore County Zoning Regulations (“BCZR”) § 427.1 to permit a 6 ft. high fence to be erected in the side and rear yard which abuts the front yard of a neighboring property, in lieu of the maximum allowed fence height of 42 inches.

Although this case was filed as an Administrative Variance, under Baltimore County Code (“BCC”), §32-3-303(b), the owner of 4129 Windmill Circle, Laretta Holliday, filed a request for a public hearing. Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A site plan was marked and accepted into evidence. (Pet. Ex. 7). Dr. Crystal Greene appeared at the hearing. Derrick Burnett, President of Owings Mills Overlook Community Association (the “Association”) and Laretta Holliday both appeared in opposition to the Petition.

There was one Zoning Advisory Committee (“ZAC”) comment submitted by Department of Environment Protection and Sustainability (“DEPS”) which agency did not oppose the requested relief.

According to the SDAT record in the County file, the Property is approximately 6,969 sq. ft. and is zoned DR 3.5. Dr. Greene testified in regard to the photographs she submitted of her Property. (Pet. Ex. 1-5). The photographs show that a 42 inch tall wood fence exists around one-half of the rear yard which faces the front yard of 4129 Windmill Circle (Lauretta Holliday's house) and which continues along the western side yard facing the sidewalk along Windmill Circle. (See Pet. Ex. 7). This shorter fence is the portion she wishes to replace with a taller one. The remaining one-half of the rear yard and eastern side yard have a 6 ft. +/- high fence.

Dr. Greene and her husband, Michael Ogunbamwo, live with Dr. Greene's two sons whom she described as having special needs. Her oldest son, Kevin Thomas is 28 years old and has an 'impulsive' behavioral disorder which is described in a document entitled "Tier 2 Support Plan". (Pet. Ex. 6). Her younger son, London Greene, is 10 years old, and has Attention Deficit Hyperactivity Disorder (ADHD). Prior to COVID, Dr. Greene testified that Kevin attended a vocational program and London was in school. In the summer, her sons went away to camps.

Because of COVID, both Kevin and London are at home all day. In addition, Dr. Greene works out of her home. She testified that her sons often play basketball in the driveway in the front of the home but she feels it is not safe due to the traffic. She also stated that if it were not for the COVID restrictions keeping her sons at home, she would not be requesting to replace the shorter fence here with a taller one. Specifically, she is concerned that her sons will jump the shorter fence if she does not replace it with a taller one. As a result, she emphasized that the basis for the variance request is out of concern for the safety of her children.

Derrick Burnett testified on behalf of the Association. The Association includes 80 homes in Owings Mills Overlook community and is opposed to the Petition because the Association's Bylaws prohibit property owners from erecting 6 ft. tall fences on corner lots. Mr. Burnett gave a

copy of the Bylaws to Dr. Greene. Mr. Burnett also testified that he is familiar with Dr. Greene's sons, that they play basketball in the driveway and he does not believe that the boys will jump the shorter fence. In addition, he highlighted that, because the boys play basketball, Dr. Greene would need to install a concrete basketball court in the rear yard. Mr. Burnett believes that granting this Petition will set a precedent for other owners in the neighborhood to request the same.

Lauretta Holliday testified that she has lived in her home for 30 years. She is opposed to the Petition because replacing the shorter fence with a 6 ft. privacy fence will block the view of cars exiting her driveway. Ms. Holliday presented photographs of the view from her driveway. (Prot. Ex. 1-4). Ms. Holliday acknowledged that Dr. Greene did come to her to discuss the Petition and, at that time, Ms. Holliday requested that Dr. Greene show transparent fencing options.

While I am sympathetic to Dr. Greene's concern regarding the safety of her sons and the difficulty of caring for them while she is working at home during a pandemic, based on the evidence presented and the law governing variances, I am not able to grant this variance. A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995). In order to grant a variance, there must first be evidence of uniqueness of the physical characteristics of the property at issue as compared to other properties in the neighborhood. In requiring a pre-requisite finding of "uniqueness", the Court in *Cromwell* defined the term and stated:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent

characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects in bearing or parting walls....

Id. at 710. The *Cromwell* Court held that if no evidence is presented as to uniqueness, there is no analysis of the ‘practical difficulty’ factor. *Id.* at 698. Because there was no evidence presented here of this Property’s uniqueness, the Petition for Variance must be denied.

THEREFORE, IT IS ORDERED, this **12th** day of **January 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §427.1 to permit a 6 ft. high fence to be erected in the side and rear yard which abuts the front yard of a neighboring property, in lieu of the maximum allowed fence height of 42 inches is hereby DENIED.

Signed
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm