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| IN RE: PETITION FOR VARIANCE | * | BEFORE THE |
| (13029 Fork Road) | | |
| 11th Election District | * | OFFICE OF ADMINISTRATIVE |
| 3 rd Council District | | |
| Robert & Concetta DiMarino | * | HEARINGS OF |
| | | |
| Legal Owners/Petitioners | * | BALTIMORE COUNTY |
| | * | CASE NO. 2020-0266-A |

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Petitioners Robert and Concetta DiMarino (the “Petitioners”) for property located at 13029 Fork Road (the “Property”). The Petitioners are requesting variance relief from Baltimore County Zoning Regulations (“BCZR”) §§427.1.B.1 and B.2 to permit an existing residential occupancy fence to remain in the side yard that adjoins a neighboring front yard which exceeds 42 inches in height (8 ft.) with a setback of 0 ft. in lieu of the required setback of 10 ft., and from BCZR, §1A04.4.D3 for a fence which is located within 50 ft. of a public right of way.

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. The Petitioners appeared, *pro se*, at the hearing. There were several neighbors in attendance as addressed herein. Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) who opposed the setback variance of 0 ft. in lieu of 10 ft.

The Property is approximately 1.02 acres, is zoned RC5 and is part of the Baldwin Estates Community. Mr. DiMarino explained that he and his wife purchased the Property in October, 2013. The southern property line borders on farmland which is owned by the Pippin family. Mr. Marino testified that there were 15 dead ash trees and white pines which required removal. After

the trees were removed along the southern boundary, the Petitioners erected an 8 ft. privacy fence within 10 ft. of the front yard of property owned by Harry Pippin. (Pet. Ex. 2). The fence is also within 50 ft of Fork Rd. The Petitioners testified that they were not aware of regulations regarding the fence height or setbacks and had hired a contractor to install it. A Code Enforcement complaint was filed resulting in this case. The Petitioners also installed a paved driveway which runs along that fence line for access between the house and Fork Rd. (Pet. Ex. 8A, 8B). The Petitioners contend that they need the privacy fence to block the view of the area beyond their southern boundary line which is not maintained.

Jessica and Dennis Cashman, 6403 Baldwin Gate Rd., share the western boundary of the Property with the Petitioners. The Cashmans also had to remove 12 dead white pine trees from their property. The Cashmans do not object to the Petitioners' fence and remarked that it helps to block the view of properties to the south which are not maintained in the same way as the properties in Baldwin Estates Community. They mentioned that the Petitioners have spent a lot of money to maintain their Property.

Barbara Doud, 6406 Baldwin Gate Rd. has resided in her home for 14 years. Ms. Doud testified that when she pulled her car up to the stop sign on Baldwin Gate Rd. and Fork Rd., the fence does not block her view to the south down Fork Rd. Cheryl Overend, 6409 Baldwin Gate Rd. testified that the Petitioners have improved their Property since moving in and the fence is an asset to the neighborhood. She too had problems with trees on her property which had to be cut down.

Ross Carmen, 13105 Sanfield Rd. testified that the Petitioners' fence increases the site line down Fork Rd. because it separates Baldwin Estates from properties to the south. Tom Baker, 13101 Fork Rd. moved into the neighborhood in 2015. Mr. Baker testified that the fence lends

‘definition’ to the neighborhood because it is the furthest southern property in Baldwin Estates Community before heading south on Fork Rd. He stated that the fence is an improvement over the 21 dead trees which were there. Additionally, he testified that there are no visibility issues created for drivers.

Judy Plowman, 13105 Fork Rd. testified in opposition to the fence. She stated that she has lived in her home for 50 years. While she agreed that the Petitioners have maintained their Property, she noted that the fence is a clear violation of the setback and height regulations and that, granting the relief here would cause a dangerous precedent in the neighborhood. She understands that other neighbors will seek to install the same fences and that they are out of character in a rural setting. Ms. Plowman added that the Petitioners’ driveway was installed after the privacy fence was erected.

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).

The Property is unique because it sits on a corner lot bounded on the west by Fork Rd. and on the north by Baldwin Gate Rd. It is peculiar and unlike other properties within the subdivision because it acts as the boundary line between Baldwin Estates Community and the other properties to the south which consist of various residential properties and farmland. As the Petitioners testified here, peculiar circumstances exist in that the ash and white pines trees previously served as the boundary/natural screen of properties located to the south. When those trees had to be removed for safety reasons, there was no longer a screen or buffer between the newer Baldwin

Gates Community and the southern parcels.

Given its unique location at the end of the Baldwin Gates Community, if the Property were required to comply with BCZR, §§427.1 and 1A04.4D.3, the Petitioners would suffer a practical difficulty and unreasonable hardship in no longer having separation between their Property and properties to the south. Additionally, the Petitioners would be required to move the fence within the 10 ft. setback which would eliminate the use of their side yard. Reducing the fence height here to 42 inches would negate the purpose of defining the Baldwin Gates Community. Moreover, the paved driveway would have to be removed and/or relocated to install the fence within the setback.

I find that given the peculiarity of the Property and the practical difficulty, the variance can be granted within the spirit and intent of the height and area fence regulations and in a manner without injury to the public health, safety and general welfare, particularly given the testimony in support of the variance by adjacent neighbors. Specifically, there was no testimony that the fence blocks the view of drivers pulling out from Baldwin Gate Rd. onto Fork Rd. which is an inherent purpose behind the 50 ft. setback from a public road under BCZR, §1A04.4D.3. I appreciate the testimony of Ms. Plowman who is concerned about other property owners seeking to obtain variances for fences. However, the law governing variances requires specific factors of uniqueness and practical difficulty to be found in each case before a variance can be granted. Each property owner is required to meet that test. It was only due to the peculiar circumstances here that the Property was found to be unique.

THEREFORE, IT IS ORDERED, this 9th day of **March 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to §§ BCZR 427.1.B.1 and 2 to permit an existing residential occupancy fence to remain in the side yard that adjoins a neighboring front which exceeds 42 in. in height with a setback of 0 ft. in lieu of the required

setback of 10 ft., and from BCZR, §1A04.4.D3 for a fence which is located within 50 ft. of a public right of way is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

- Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

Signed _____
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm