IN THE MATTER OF ROBERT ALVIS AND FIONA CHUO – LEGAL OWNERS AND PETITIONERS FOR VARIANCE ON THE PROPERTY LOCATED AT 2808 FIFTH STREET	* * *	BEFORE THE BOARD OF APPEALS OF
15th ELECTION DISTRICT 7th COUNCIL DISTRICT	* *	BALTIMORE COUNTY Case No.: 22-217-A

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OPINION

This case comes before the Baltimore County Board of Appeals ("Board") as an appeal from an Opinion and Order dated November 28, 2022 by Administrative Law Judge ("ALJ") Maureen E. Murphy denying variance relief to Petitioners, Robert Alvis and Fiona Chuo ("Petitioners"). Petitioners had requested a variance from Baltimore County Zoning Regulation ("BCZR") § 427.1(B)(2). This provision requires that any side or rear fence that is within ten feet of the front yard property line of an adjoining property not exceed forty-two inches in height. Petitioners requested permission for a six foot fence in lieu of the forty-two inch fence.

A *de novo* hearing was held before this Board on April 5, 2023, via Webex. Petitioners appeared *pro se*. No one appeared in opposition at this hearing. A public deliberation was held on June 7, 2023, via Webex.

BACKGROUND

Petitioners purchased the property July 29, 2022. Prior to the filing for variance relief in this matter, Petitioners contracted with Pyle Fence Company to construct a six foot side yard fence that was within ten feet of the neighboring front property line. After the fence was erected, a complaint was filed with Baltimore County Code Enforcement. A Correction Notice was issued to reduce the fence to forty-two inches in height. After receiving the Notice,

Petitioners requested a variance pursuant to BCZR § 400.1 and § 427.1(B)(3) to permit the existing six-foot side yard fence to remain. Section 427.1(B)(3) specifically authorizes variance relief from the requirements of § 427.1(B)(1) and (2).

Petitioners testified that the extra height of the fence is necessary because of safety, privacy and trespassing concerns. They submitted four exhibits: (1) Affidavits of Support, including one from the adjoining property owner most affected; (2) Photos of Other Fences in Neighborhood; (3) Map; and (4) the ALJ opinion. Mr. Alvis testified that the proximity to local restaurants (Dock of the Bay and Row Boat Willie's Dock Bar) along with a County Park nearby requires a higher fence to prevent trespassing. Strong winds coming off Back River often has trash and debris blowing into their rear and side yards. The property is uniquely situated in the middle of Cuckold Point.

LEGAL STANDARD

The threshold issue in this matter is whether Petitioners have met the test for entitlement to a variance as established in *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995).

In order to grant a variance, Baltimore County Zoning Regulations (BCZR) § 307.1 states, as relevant:

> ...The County Board of Appeals...shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship...Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare...

In order to obtain a variance in this instance, Petitioners first must prove the uniqueness of the property and then that such uniqueness results in practical difficulty. (*See Cromwell v. Ward, supra,* 102 Md. App. at 703-722; 651 A.2d at 430-440.) The uniqueness element requires that the subject property have an inherent characteristic not shared by other properties in the area, such as, shape, topography, sub-surface 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. (*Id.*, 102 Md. App. at 710-11; 651 A.2d at 433-34, *citing North v. St. Mary's County*, 99 Md. App. 502, 514-15; 638 A. 2d 1175 (1994).)

With respect to practical difficulty, there is a three-part review: (1) whether compliance with the strict letter of the restrictions governing area, setbacks, etc., would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome; (2) whether a grant of the variance would do substantial justice for the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners; and (3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. (*Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel*, 407 Md. 53, 83-84; 962 A.2d 404, 422 (2008), *citing McLean v. Soley*, 270 Md. 208, 214-15; 310 A.2d 783, 787 (1973).) The hardship at issue cannot be self-created. (*Cromwell*, 102 Md. App. at 721-22; 651 A.2d at 439-40.) In addition, financial considerations also do not necessarily justify a petitioner's entitlement to variance relief. (*See Green v. Bair*, 77 Md. App. 144, 151; 549 A.2d 762, 765 (1988) ("Mere financial hardship or an opportunity to get an increased return from the property is not a sufficient reason for granting a variance,") *citing*, *Daihl v. County Board of*

Appeals, 258 Md. 157, 167; 265 A.2d 227, 232 (1970) (other citations omitted).) At the same time, financial hardship can be a consideration. (*Id.*)

The first determination is that of uniqueness of the property. The Board finds that this prong is satisfied. Testimony was received describing location of the property and the proximity to local restaurants, a County Park and to Back River. These practical restrictions in the area make this property unique and not shared with others in the area. In addition, the property had previously been found to be unique for a different variance request in Case No. 08-200-A which was not appealed to the Board of Appeals.

The second determination is that of practical difficulty or hardship. The Board also finds that this prong is satisfied. Evidence was presented that the increased height will mitigate the effects of wind, increased traffic noise from the nearby park, and noise from the boat launch area in that park. The six-foot fence also provides much needed privacy from the surrounding activities. The variance will do substantial justice for Petitioners. This relief is granted while looking out for the public safety and welfare of all, and unless granted will prevent Petitioners from using this property in a reasonable manner. Given that the Petitioner has persuaded this Board that both prongs of the *Cromwell* test have been met, the requested variance relief is granted.

ORDER

THEREFORE, IT IS THIS 12th day of July, 2023, by the Board of Appeals of Baltimore County:

ORDERED that the Petition for Variance to permit a six-foot side yard fence on the subject property where that fence is less than ten feet from the adjoining front yard property line be, and the same hereby, is **GRANTED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through 7-210 of the *Maryland Rules*.

BOARD OF APPEALS OF
BALTIMORE COUNTY

Andrew M. Belt, Chairman

Fred M. Lauer

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Board of Appeals of Baltimore County

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July 12, 2023

Robert Alvis
Fiona Chuo
2808 5th Street
Sparrows Point, Maryland 21219

RE: In the Matter of: *Robert Alvis and Fiona Chuo – Legal Owners*
Case No.: 22-217-A

Dear Mr. Alvis and Ms. Chuo:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Sunny Cannington Hay

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

c: Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
Adam Whitlock, Chief of Code Enforcement/PAI
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law