

25 - 0276  
JK

# Application for Administrative Waiver to the Fence Height Limitations of Sections 427.1 and 427.2, BCZR

**Instructions:** Fill out, sign & date the information below (above the dotted line) and prepare a Site Plan (see requirements on the next two pages). Send this completed application and the completed site plan to the Baltimore County Zoning Review Office, County Office Building, 111 W. Chesapeake Avenue, Room 124, Towson, MD 21204. Note that if no public hearing is requested, the waiver decision will be based on evidence presented along with County maintained information about the site.

Property Address: 3004 offutt rd Randallstown md 21133  
Tax Account Number: 02-16-600960  
Applicant/Owner: John and Kathleen Horton  
Applicant/Owner Address: 3004 offutt Rd Phone (Cell): 443-431-4424  
Randallstown, md 21133 Phone (Home): \_\_\_\_\_  
Email: Khortonkitty@gmail.com

Corner Lot: Yes **OR** No Fence is located in: Front Yard **OR** Side Yard **OR** Rear Yard

The undersigned applicant hereby applies for a waiver to the height limitations requirements of the following sections of the Baltimore County Zoning Regulations (check the appropriate box below):

- Pursuant to Section 427.1.B, BCZR, to permit a Fence to be erected in the front yard with a Fence Height of 6' feet in lieu of the maximum allowed Fence Height of 42 inches (3.5 feet). (Attach fence location drawing)
- Pursuant to Section 427.1.C, BCZR, to permit a Fence to be erected in the side or rear yard with a Fence Height of \_\_\_\_\_ feet in lieu of the maximum allowed Fence Height of 6 feet. (Attach fence location drawing)
- Pursuant to Section 427.1.C, BCZR, to permit a Fence to be erected in the side or rear yard with a Fence Height of \_\_\_\_\_ feet when the fence is set back from the property line a horizontal distance of two feet for every vertical foot of height in excess of six feet. (Attach fence location drawing)
- Pursuant to Section 427.1.E and F, BCZR, to permit a Fence to be erected in the rear or side yard of a lot which adjoins the front yard of another lot on which a residence has been built with a Fence Height of \_\_\_\_\_ feet in lieu of the maximum allowed 42 inches (3.5 feet), when the fence is situated within ten feet of the adjoining front yard property line. (Attach fence location drawing)

Basis for Request: Neighbor is taking pics of us and calling coun and being a nuisance

Applicant's Signature: [Signature] Date: 3/13/25

To the Fence Waiver Applicant: This Portion of the Form is for Use by Baltimore County Only!

Waiver Number UA-2025 - 0008 -FW (County Use Only)

Date Property Posted: JULY 20, 2025 Closing Date: JULY 24, 2025 (15 days after posting date)

Input/comments/prottests received within 15 days? Yes / No  
Has Hearing been requested? Yes / No (If Yes, attach record of Hearing)

Final Disposition: Denied

Code Official or Designee: \_\_\_\_\_ Date: 11/20/25

[Signature]  
TYLER COX



KATHERINE A. KLAUSMEIER  
*County Executive*

MAUREEN E. MURPHY  
*Chief Administrative Law Judge*  
ANDREW M. BELT  
*Administrative Law Judge*  
DEREK J. BAUMGARDNER  
*Administrative Law Judge*

October 15, 2025

Paul Mayhew, Esquire - [paul@kotrocolaw.com](mailto:paul@kotrocolaw.com)  
Matthew Kotroco, Esq. [matt@kotrocolaw.com](mailto:matt@kotrocolaw.com)  
Kotroco & Associates, LLC  
210 Allegheny Avenue, Suite 100  
Towson, MD 21204

RE: Fence Waiver  
Case No. UA-2005-0008-FW  
Property: 3004 Offutt Road

Dear Counsel:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

Pursuant to Baltimore County Code § 32-3-401(a), "a person aggrieved or feeling aggrieved" by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew M. Belt".

ANDREW M. BELT  
Administrative Law Judge  
for Baltimore County

AMB:dlm  
Enclosure  
C: ~See Next Page~

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c: Richard Simmons, Esq. [rich@simmonsllawonline.com](mailto:rich@simmonsllawonline.com)  
John and Kathleen Horton [khortonkitty@gmail.com](mailto:khortonkitty@gmail.com)  
John Moir [johnm1@gmail.com](mailto:johnm1@gmail.com)  
Rebecca Moir [becca02@gmail.com](mailto:becca02@gmail.com)  
Jennifer Frankovich [jfrankovich@baltimorecountymd.gov](mailto:jfrankovich@baltimorecountymd.gov)

**IN RE: PETITION FOR ADMINISTRATIVE  
FENCE WAIVER**  
(3004 OFFUTT ROAD)  
2<sup>nd</sup> Election District  
4<sup>th</sup> Council District  
John R. Horton & Kathleen Horton  
  
Petitioners

\* BEFORE THE  
\* OFFICE OF ADMINISTRATIVE  
\* HEARINGS FOR  
\* BALTIMORE COUNTY  
\* **CASE NO. UA-2025-0008-FW**

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Administrative Fence Waiver filed by the legal owners, John and Kathleen Horton (“Petitioners”) for the property located at 3004 Offutt Road, Randallstown, (the “Property”). The Petitioners are requesting from the Baltimore County Zoning Regulations (“BCZR”), § 427.1.B to permit a Fence to be erected in the front yard with a fence height of 6 ft., in lieu of the maximum allowed fence height of 42 inches (3.5).

A Formal Demand was filed on or approximately March 28, 2025 by the neighbors, John Moir and Rebecca Moir at 3008 Offutt Road, Randallstown, MD.

An In-Person Hearing was held on September 24, 2025, at the Jefferson Building, 105 Chesapeake Avenue, Room 205, Towson, Maryland 21204. Present at the hearing were the Petitioners, Kathleen Horton and John Horton, represented by Paul Mayhew, Esquire. Protestants and John and Rebecca Moir attended with their counsel, Richard Simmons, Esq.

**FACTS**

Petitioner, Kathleen Horton testified that she and her husband contracted with a fence company to install the fence in question in April of 2025. She explained that she and her husband were under the mistaken impression that the contactors had secured the necessary permits from

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Date 10-15-25  
By BJ

the County but were subsequently informed by County Code Enforcement that their fence exceeded the permitted 43-inch height limit. She admitted that the fence in question has been constructed on a concrete, curb-like structure that runs along the driveway abutting the Protestants' property, causing the fence's current height to exceed 6 ft. Upon cross-examination she admitted that this curb-like structure was on her property, but was installed to divert water run-off onto the Protestants' property. Ms. Horton explained that the fence was erected to curb, what she and her husband perceive as constant harassment and invasions of privacy from the Protestants. She described that the Protestants have often reported her property to Code Enforcement for what she perceives as trivial matters and that the Protestants also routinely take photographs of her property, her family and her guests.

Protestant John Moir, who lives next door to the Petitioners testified that the fence at issue is too high and its installation has damaged the concrete divider between the two properties. Mr. Moir stated the he believes the excessive fence height creates a safety issue in the event of high winds and that it also makes getting in and out of vehicles in his driveway difficult now that the fence has been erected directly on the property line. Mr. Moir admitted taking photographs of the Petitioners' property but explained that he was instructed to do so by Code Enforcement to document alleged violations.

#### DECISION

Residential fences in Baltimore County are limited to a maximum height of 42 in. for front

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By AW

yards and 6 ft. for side and rear yards. See BCZR § 427.1.<sup>1</sup> Pursuant to BCZR § 427.4 (B), the building official or [building official's] designee is authorized to grant fence height waivers provided public notice has been given and a public hearing has been held before the administrative law judge if requested. See BCZR § 427.4.<sup>2</sup> Any order by the building official granting a waiver shall contain a finding of fact setting forth and specifying the reason or reasons for allowing such a waiver. BCZR § 427.4 (E). The previous version of BCZR § 427.1 required variance relief to be requested in order to deviate from front fence height requirements.<sup>3</sup> Accordingly, the applicable law applied in adjudicated such requests was clearly dictated by the factors annunciated in *Cromwell v. Ward*.<sup>4</sup> In the current statutory iteration of "Fence Waiver" regulations, the word "variance" has been removed and no legal standard of review has been put in its place. In the absence of clear guidance at law, the tenets of Equity will be employed in

<sup>1</sup> BCZR § 427.1

Conditions for use; exceptions.

A. Applicability.

1. Subsections D and E of this section do not apply to a fence required by § 13-6-101 of the Baltimore County Code, as revised, to be constructed in order to screen a swimming pool.

2. Subsections D and E of this section do not apply if the residences on the adjoining lots are more than 200 feet apart.

B. Front yards. The maximum height permitted for any residential occupancy fence shall be 42 inches above normal grade in a front yard.

C. Side and rear yards. The maximum height permitted for any residential occupancy fence shall be six feet above normal grade in a side and rear yard. A fence may be erected up to ten feet high in a side or rear yard when the fence is set back from the property line a horizontal distance of two feet for every vertical foot of height in excess of six feet.

D. Notwithstanding any other provisions of this Code or the Baltimore County Code, in a D.R. or R.C. 5 zone located in a historic district, the maximum height of a residential occupancy fence is 42 inches if the fence is erected in the side yard of a lot that adjoins a public road.

E. A residential occupancy fence may not be erected in the rear or side yard of a lot which adjoins the front yard of another on which a residence has been built, except in accordance with the provisions of this section.

F. The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line.

<sup>2</sup> A. Any person may apply for a waiver to the height limitation requirements of Sections 427.1 and 427.2.

B. The building official or designee is authorized to grant such waivers, provided public notice has been given and a public hearing has been held before the administrative law judge if requested.

C. 1. Public notice shall consist of posting the property for a period of 15 days.

2. Anyone living within 1,000 feet of the subject property may request a public hearing, or may submit written comments for consideration.

3. If no public hearing is requested, the building official or designee may grant a waiver containing any appropriate conditions or limitations.

4. If a public hearing is requested, notice shall be further provided by posting the property for an additional 15 days.

5. Such notice shall include the date, time, and location of the hearing.

D. Any person aggrieved by the decision of the building official or designee may file a notice of appeal with the board of appeals and the department of permits, approvals, and inspections within 30 days after the date of the final decision of the hearing officer.

E. Any order by the building official granting a waiver shall contain a finding of fact setting forth and specifying the reason or reasons for allowing such a waiver. BCZR § 427.4.

<sup>3</sup> The former BCZR 421.1B3 states the following:

B.

3. Any person may request a *variance* from the requirements of this subsection.

<sup>4</sup> 102 Md. App. 691 (1995).

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By RS

adjudicating the case at bar. Utilizing the tenets of equity in this matter involves weighing the Petitioners' desire for privacy against any negative impacts suffered by the Protestants as a result of the Petitioners' erection of a 6 ft. high fence with a black vinyl screening along the front property line.

The Petitioners testified that the invasive behavior of the Protestants, i.e., the taking of photographs is the catalyst for the fence's construction. Additionally, the Protestants have admitted to reporting alleged Code violations regarding the Petitioners' property. While a strong argument can be made that this type of photographic surveillance is less than neighborly, doing so is not a violation of law. It is also not uncommon for Code officials to instruct neighbors to take such photographs to document complaints before Correction Notices can be issued. In this matter, it appears that some of the Petitioners' complaints have been warranted enough to result in actual Correction Notices being issued. While no expert testimony has been received to evaluate the safety of the present installation of the 6 ft. fence, I do take notice that built into fence height restrictions is the need for structural safety. I find the Protestants' complaint regarding the fence's location on the property line irrelevant, in that a fence which complied with height restrictions would cause similar problems. However, I do sympathize that the aesthetics of the 6 ft., solid black fence along the front property line is less than appealing.

One tenet of Equity is that "those who come into equity must have clean hands." *Manown v. Adams*, 89 Md. App. 503 (1991) (citing *Roman v. Mali*, 42 Md. 513, 533-34 (1875)) In this matter the Petitioners are wanting in this regard due to the fact that they have built the fence at issue without first securing a permit, thus, creating the classic "forgiveness rather than permission" scenario. While their motives for erecting such a fence appear to be grounded in sound logic, they are not similarly grounded in law. Counsel for the Petitioners was quite correct

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By RW

in his statement that "tall fences make good neighbors." Unfortunately, such valid logic does not carry the day in an equitable fence waiver analysis. Consequently, the Petitioners' request must be denied.

THEREFORE, IT IS ORDERED, this 15th day of **October, 2025**, by the Administrative Law Judge for Baltimore County, that the Petitioners are requesting from the Baltimore County Zoning Regulations ("BCZR"), § 427.1.B, to permit a Fence to be erected in the front yard with a fence height of 6 ft., in lieu of the maximum allowed fence height of 42 inches (3.5), be and is hereby **DENIED**.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.



ANDREW M. BELT  
Administrative Law Judge for  
Baltimore County

AMB:dlm

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Date 10-15-25

By AW



## Certificate of Posting

Case# UA-2025-0008-FW

Petitioner/Developer

John & Kathleen

Horton

Date of Hearing/Closing

July 24, 2025

Baltimore County Department of Permits and Management

County Office Building Room 111; 111 West Chesapeake Ave. Towson Md. 21204

Attention:

Ladies and Gentlemen:

This is to certify under penalties of perjury that the necessary sign/signs required by law were posted conspicuously on the property located at

3004 Offutt Road on July 20, 2025    Signs 1A & 2A

Sincerely, Martin Ogle

Martin Ogle

9912 Maidbrook Road

Parkville, Md. 21234

443-629-3411



### Certificate of Posting

Case# UA-2025-0008-FW

Petitioner/Developer

John & Kathleen

Horton

Date of Hearing/Closing

July 24, 2025

Baltimore County Department of Permits and Management

County Office Building Room 111; 111 West Chesapeake Ave. Towson Md. 21204

Attention:

Ladies and Gentlemen:

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3004 Offutt Road on July 20, 2025    Signs 1B & 2B

Sincerely, Martin Ogle

Martin Ogle

9912 Maidbrook Road

Parkville, Md. 21234

443-629-3411