

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
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(240) 777-6600

**Case No. A-6706**

**PETITION OF DANIEL CUFF**

OPINION OF THE BOARD  
(Hearing Date: June 2, 2021)  
(Effective Date of Opinion: June 11, 2021)

Case No. A-6706 is an application by Petitioner Daniel Cuff for two variances needed for the proposed construction of an eight (8) foot fence, which is considered an accessory structure. The proposed fence requires a variance of fifty (50) feet as it is within zero (0) feet of the side street lot line. The required setback is fifty (50) feet, in accordance with Section 59-4.4.4.B.2 of the Zoning Ordinance. In addition, the proposed fence requires a variance of twelve (12) feet as it is within zero (0) feet of the rear lot line. The required setback is twelve (12) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on June 2, 2021. All participation was done via Microsoft Teams. Petitioner Daniel Cuff participated in support of the requested variances.

Decision of the Board: Variances **GRANTED**.

**EVIDENCE PRESENTED**

1. The subject property is, Lot 6, Block C, Layton Ridge Subdivision, located 20801 Layton Ridge Drive, Gaithersburg, Maryland, 20882 in the RE-2 Zone. It is a five-sided corner lot with approximately 200 feet of frontage on the east side of Layton Ridge Road, approximately 450 feet of frontage along the north side of Warfield Road, and an angled lot line, approximately 45 feet in length, that faces the intersection. See Exhibits 4 and 9(b).
2. The Petitioner's Justification Statement ("Statement") states that the Petitioner purchased the subject property in 2014. See Exhibit 3. The Statement indicates that the Petitioner is seeking to replace an existing, "increasingly dilapidated" split rail fence that runs along the front, south side, and the rear of the property with a wooden board and

batten fence that is eight (8) feet tall.<sup>1</sup> It states that the existing fence line on the south side of the property is just inside the property line, and is set back approximately 35 feet from Warfield Road. The Statement further indicates that the height of the rear segment of fence will be decreased from eight (8) feet to six and a half (6.5) feet along a distance of about 30 feet, beginning at the property's southeast corner. See Exhibits 3 and 5(a). The Statement notes that the topography of the property causes the fence line on the side of the property to be lower in elevation than the road, and that as a result, a standard six (6) foot fence is of limited utility, as follows:

The existing fence line along the front and one side of the property is set approximately 2 ft below the level of the adjacent road. The fence line is also set back approximately 120 ft from the road at the front and approximately 35 ft from the road at the side. The combination of topography and location means that a typical 6 ft privacy fence would not serve its purpose of providing privacy or noise attenuation from passing traffic.

See Exhibit 3. The Petitioner includes photographs showing the lower elevation of the fence with his application. See Exhibits 5(b) and (c).

3. The Statement at Exhibit 3 further states that the subject property is directly across the street from Laytonsville Golf Course, and that this makes the property unique because errant golf balls frequently land on the subject property, creating an unusual and potentially hazardous condition:

In addition, the neighboring property to the south is the Montgomery County Golf (MCG) Laytonsville Golf Course. Each year, approximately one to two hundred stray golf balls will land on the petitioner's property risking damage to property, shrubbery, family and pets.

4. The Statement states that the style of the proposed fence matches the fence on the abutting property to the north and the fences of other properties in the neighborhood. See Exhibit 3. The Statement further states that the fence will not adversely impact traffic or change the look of the neighborhood, as follows:

Given the topography of the fence line along the front and side, and the fact that the property line is set back some 35 ft from the road along the side (and some 120 ft from the front), the proposed structure would not disrupt passing traffic or change the look of the surrounding properties and neighborhood and will merely function as a typical privacy fence.

See Exhibit 3. The Statement further notes that "[t]he visual impact of the proposed structure is mitigated by both the topography and the fact that the side property line is set back some 35 ft from the main road and the front fence line is set back some 120 ft from the side road."

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<sup>1</sup> The Petitioner testified at the hearing that in accordance with the wishes of his abutting neighbor to the rear, whereas he had originally planned to step the height of the new fence down to a 6.5 foot board and batten fence that would extend across the rear of his property, he now intends that the new fence will be transitioned down to join the existing split rail fence along the rear of the property.

5. The Statement states that the special circumstances pertaining to the requested variances are not due to any action of the Petitioner, but rather "are a result of the natural grade of the land and the proximity to the neighboring golf course." The Statement further states that "[a] typical 6 foot privacy fence would not serve its purpose of providing privacy and protection along the front and side of the property due to the topography of the property and the proximity to the golf course," and that the requested variances are the minimum needed to allow the proposed replacement fence to follow the fence line of the existing fence. See Exhibit 3.

6. The Statement states that the proposed fence will not be adverse to the use and enjoyment of neighboring properties, as follows:

The requested structure would provide safety and privacy not only for the family residing on the property but also to the adjacent neighbors and to the public.

The variance will not have a detrimental effect on surrounding properties or the general neighborhood and will cause no objectionable obstructions. The Accessory Structure will not adversely affect the health, safety or general welfare of the surrounding residents and will not cause an adverse impact on the public.

See Exhibit 3. The record contains emails supporting the grant of the requested variances from the owner of the corner property confronting the Petitioner's property across Layton Ridge Road, and from the owner of the property that abuts the Petitioner's property to the rear (east). See Exhibits 8(a) and (b). Exhibit 8(b) notes the elevation difference between the Petitioner's property and Warfield Road, and states that as a result, the Petitioner's back yard is "completely open to passing traffic," and that a standard height fence "would not meaningfully change that," going on to note that the proposed fence may indirectly benefit his property as well.

7. At the hearing, the Petitioner testified that he has lived on the subject property for six years. He stated that the existing split rail fence is dilapidated and provides minimal privacy or protection from passing traffic on Warfield Road and from the incursion of errant golf balls. The Petitioner testified that the driving range for the golf course is across the street from his property, and that while golfers are supposed to aim away from his property, he picks up between six and twelve golf balls on his property every weekend.

The Petitioner testified that due to the topography of his property, the existing four-foot fence is at a lower elevation than the road, and that it sometimes appears that the road is higher than the fence. For this reason, he testified that a standard height privacy fence would not afford his property the same protections that would be realized from such a fence if his property were level.

The Petitioner testified that the fence line is set back 35 feet from Warfield Road, and accordingly that the new fence would not impact traffic or obscure views. He testified that the style of the proposed fence keeps with the style of the fence on the opposite side of his property, which he noted was installed prior to his purchase of the subject property or his neighbor's purchase of their property, and with the style of other fences in the

neighborhood. Finally, the Petitioner testified that he had spoken with his abutting and confronting neighbors, and that all were comfortable with his proposed fence. He testified that because his neighbor to the rear wants to keep the existing split rail fence, the proposed board and batten fence would be transitioned down to meet that fence across the rear of the property.

## CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-7.3.2.E, as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds, based on the Statement, photographs, and testimony of the Petitioner, that the elevation of the subject property along its south (side street) lot line and fence line is lower than the elevation of abutting Warfield Road, and that this constitutes an unusual condition peculiar to this property, in satisfaction of this element of the variance test. See Exhibits 3 and 5(b)-(c).

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the Petitioner purchased this property six years ago, and is not responsible for its topography, in satisfaction of this element of the variance test.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that there is a golf course confronting the south side of this property, across Warfield Road, and that the subject property's lower elevation along this side limits the utility of a standard height privacy fence with respect to screening from the golf course and the road, and with respect to protection from errant golf balls, causing the Petitioner a practical difficulty. The Board further finds that the Petitioner is seeking to install a privacy fence that is 18 inches taller than would otherwise be allowed along the existing fence line, and finds that this increase in height is the minimum needed for the Petitioner to overcome the practical difficulty posed by his property's lower elevation in the fence line area. The Board notes that the increase in the height of the fence renders the fence an accessory structure for setback purposes and triggers the need for the variance relief, and finds that the requested variances are the minimum needed to allow the Petitioner to install the proposed fence along the existing fence line and thus to overcome the practical difficulty caused by the topography of his property, in satisfaction of this element of the variance test.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that allowing the Petitioner to proceed with the proposed construction will continue the residential use of this home, and thus can be granted without substantial impairment to the intent and integrity of the applicable master plan.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

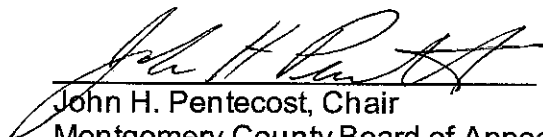
The Board finds, based on the Statement and the testimony of record, that the proposed fence is set back 35 feet from Warfield Road, and will not affect traffic. See Exhibit 3. The Board further finds that this setback and the topography of the subject property will mitigate the apparent height of the fence. In addition, the Board notes, per the testimony of the Petitioner, that he has spoken with his neighbors, and that none object to the proposed fence. Finally, the Board finds that the record contains emails supporting the grant of the variances, including from the neighbor most affected. See Exhibits 8(a)-(b). Thus the Board finds that granting the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test.

Accordingly, the requested variances are **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5(a).

Therefore, based upon the foregoing, on a motion by Bruce Goldensohn, Vice Chair, seconded by Mary Gonzales, with John H. Pentecost, Chair, Richard Melnick, and Caryn Hines in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 11th day of June, 2021.

  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.