

*NOTICE OF FINAL DECISION*

*OF BOARD OF APPEALS*

RE: Case No. V-16-16 Anthony and Francia Rembert

Enclosed herewith is a copy of the Board Order setting forth the action taken by the Board of Appeals in your case on the following date: April 13, 2016.

**CERTIFICATE OF SERVICE**

This is to certify that on May 11, 2016, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

(Original Signed) \_\_\_\_\_  
Anne F. Carter  
Administrator

cc: Petitioners  
Adjoining Property Owners  
M-NCPPC, Permit Review Section  
DPIE/Building Code Official, Permitting  
DPIE/Inspections Division

***BEFORE THE BOARD OF APPEALS FOR PRINCE GEORGE'S COUNTY, MARYLAND***  
***Sitting as the Board of Zoning Appeals***

Petitioners: Anthony and Francia Rembert

Appeal No.: V-16-16

Subject Property: Part of Lots 24 & 25, Block 57, Bradbury Heights Subdivision, being 4303 Quinn Street,  
Capitol Heights, Prince George's County, Maryland

Witness: Lauren Clagett, Construction Standards Inspector, Department of Permitting,  
Inspections and Enforcement ("DPIE")

Heard and Decided: April 13, 2016

Board Members Present and Voting: Bobbie S. Mack, Chairperson  
Albert C. Scott, Vice Chairman  
Anastasia T. Johnson, Member

RESOLUTION

This appeal is brought before the Board of Appeals, sitting as the Board of Zoning Appeals for the Maryland-Washington Regional District in Prince George's County, Maryland (the "Board"), requesting variances from the strict application of the provisions of Subtitle 27 of the Prince George's County Code (the "Zoning Ordinance").

In this appeal, a proceeding pursuant to Section 27-229 of the Zoning Ordinance, Petitioners request that the Board approve variances from Section 27-442(b)(Table I) of the Zoning Ordinance, which prescribes that each lot shall have a minimum net lot area of 5,000 square feet; Section 27-442(e)(Table IV), which prescribes that each lot shall have two side yards totaling 17 feet in width with the minimum width of either side yard being 8 feet and a rear yard at least 20 feet in depth/width; Section 27-442(c)(Table II), which prescribes that not more than 30% of the net lot area shall be covered by buildings and off-street parking; and Section 27-420(a), which prescribes that fences and walls more than 6 feet high shall not be located in any required yard and shall meet the setback requirements for main buildings. Petitioners propose to validate existing conditions and obtain a building permit for white vinyl privacy fence varying in height up to 6 feet with an additional 3 feet of lattice on top (fence/lattice has maximum height of 9 feet). Variances of 200 square feet net lot area, 17 feet total side yard width,<sup>1</sup> 16 feet rear yard depth/width, 2.5% net lot coverage and a waiver of the fence location requirements are requested.

Evidence Presented

The following testimony and record evidence were considered by the Board:

1. The property contains 3,800 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling and driveway. Exhibits ("Exhs.") 4, 16 and 17.
2. The property is made up of two zoning lots that were subdivided in 1909. Exh. 6. Sometime between 2004 and 2008, 200 square feet at the front of the property was conveyed to Prince George's County. See Exhs. 10 and 11.
3. In 2006, the Board approved variances of 1,000 square feet net lot area and 10 feet front building line width in order to construct a new single-family dwelling and driveway on the property. Exh. 14.

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<sup>1</sup> It was later determined that Section 27-442(e)(Table IV)(Footnote 22) provides that each side yard is only required to be 5 feet in width. Therefore, a variance of 10 feet total side yard width is sufficient to meet main structure setback requirements for a fence over 6 feet in height that is located at or near the side lot lines.

4. Petitioners were cited by DPIE with Building Violation Notice No. 2881-2016-0 ("Violation Notice"), dated December 5, 2015, requiring that the required permit(s) for work done at the property be obtained or the work removed and the property restored to its original condition. The notice noted that work includes but is not limited to the installation of a fence over 4 feet and a rear concrete slab without the required permits and inspections. Exh. 13.

5. Petitioners would like to obtain a building permit for an existing white vinyl privacy fence with lattice that varies in height up to 9 feet, but variances are needed to obtain the permit. Since the fence is over 6 feet in height, is located along the side lot lines and 4 feet from the rear lot line at the closest point (in required yards), variances of 10 feet total side yard width, 16 feet rear yard depth/width and a waiver of the fence location requirement were requested. Exh. 21.

6. In addition, variances are needed to validate other existing conditions. Since 200 square feet of the property was conveyed to the County and the lot size does not meet the minimum requirements even with the variance granted in 2006, a variance of 200 square feet net lot area was also requested. Exh. 21.

7. Also, since the allowed amount of net lot coverage (30%) is exceeded by existing development on the property, a variance of 2.5% net lot coverage was also requested. Exhs. 20 and 21.

8. Petitioners stated that when they purchased the property in 2008, the property located directly behind at 4226 Rail Street was vacant. The natural "privacy" barrier provided by the then existing trees and shrubbery shielded foot traffic and peering eyes of wanderers traveling on Rail Street. In October 2012, the occupants of the property behind them (Lots 14-18) cut down trees. As a result because Petitioners' property sits below the roadway grade on Rail Street, their house became the focus of Rail Street gawkers and the situation became unbearable. They stated a fence company recommended installing privacy lattice on top of the existing 6-foot vinyl fence which was done for security and enjoyment reasons. Exh. 2.

9. Anthony Rembert testified that when the trees were cut down behind their property, their privacy was taken. *Compare* Exhs. 8(A) thru (E) *with* Exh. 9. He explained that a "peeping tom issue" exists. *See* Exh. 7(J). As a result, he stated that his wife and 80-year-old mother are constantly in distress.

10. He further testified that neighbors supported the lattice on top of the fence in the rear of the property. He further explained that the trees they planted just inside the fence in the rear of the \subject property do not provide sufficient coverage. Exhs. 7(D) thru (F). He stated that the patio they put in their back yard (Exhs. 7(C) thru (F)) will be torn up to come into compliance and they will try to find taller shrubs to plant for coverage at the rear.

11. Inspector Lauren Clagett testified that a previous inspector who issued the Violation Notice discovered that the height of Petitioners' fence was over 4 feet and a slab was built without permits. She submitted aerial photographs taken of the property in 2009 and 2014 to show the improvements made between those years. Exhs. 27(A) and (B).

#### Applicable Code Section and Authority

Section 27-230 of the Zoning Ordinance authorizes the Board to grant variances when, by reason of exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition of specific parcels of property, the strict application of the Zoning Ordinance would result in peculiar and unusual practical difficulties or an exceptional or undue hardship upon the owner of the property, provided such relief can be granted without substantial impairment of the intent, purpose and integrity of the General Plan or Master Plan.

#### Findings of the Board

After hearing all the testimony and reviewing the evidence of record, the Board finds that the requested variances comply with the applicable standards set forth in Section 27-230, more specifically:

Due to existing conditions on the property, certain variances having been granted to construct the dwelling on the property, additional land area at the front of the property having been conveyed to the County, the subject property sitting lower than the property to the rear, the natural privacy barrier at the rear having been removed when a neighbor's trees were cut down, the 6-foot privacy fence with lattice on top having been erected only along the rear property line and a portion of the side lot lines to provide a measure of privacy along the rear of the property, the fence with lattice being over 6 feet in height and requiring main structure setbacks, and the character of the neighborhood, granting the relief requested would not substantially impair the intent, purpose and integrity of the General Plan or Master Plan, and denying the request would result in a peculiar and unusual practical difficulty upon the owners of the property.

BE IT THEREFORE RESOLVED, unanimously, that variances of 200 square feet net lot area, 10 feet total side yard width, 16 feet rear yard depth/width, 2.5% net lot coverage and a waiver of the fence location requirements in order to validate existing conditions and obtain a building permit for white vinyl privacy fence varying in height up to 6 feet with an additional 3 feet of lattice on top (fence/lattice has maximum height of 9 feet) on the property located at Part of Lots 24 & 25, Block 57, Bradbury Heights Subdivision, being 4303 Quinn Street, Capitol Heights, Prince George's County, Maryland, be and are hereby APPROVED. Approval of the variances is contingent upon development in compliance with the approved site plan, Exhibit 4, and the approved elevation plans, Exhibits 5(a) thru (c).

#### BOARD OF ZONING APPEALS

By: (Original Signed)  
Bobbie S. Mack, Chairperson

#### **NOTICE**

Within thirty (30) days from the date of this decision, any person, firm, corporation, or governmental agency who was a party to the Board's proceedings and is aggrieved by its decision may file an appeal to the Circuit Court of Prince George's County.

Further, Section 27-233(a) of the Prince George's County Code states:

A decision of the Board, permitting the erection of a building or structure, shall not be valid for more than two (2) years, unless a building permit for the erection is obtained within this period and the construction is started and proceeds to completion in accordance with the terms of the decision and the permit.