

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-22-16 Jessica Machado and Danilo Guzman

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: May 11, 2016.

CERTIFICATE OF SERVICE

This is to certify that on June 7, 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
Other Interested Parties

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

Petitioners: Jessica Machado and Danilo Guzman

Appeal No.: V-22-16

Subject Property: Lot 17, Block H, Seabrook Acres Subdivision, being 6706 96th Avenue, Lanham,
Prince George's County, Maryland

Witnesses: Suzanne Hurge-Moore, President, Seabrook Acres Neighborhood Association
Emily Hickey, neighbor

Heard: April 27, 2016; Decided: May 11, 2016

Board Members Present and Voting: 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 27-420(a) of the Zoning Ordinance, which prescribes that on a corner lot, fences in the front yard or side yard shall not be more than four (4) feet high without the approval of a variance. Petitioners propose to construct a 6-foot wooden privacy fence and a 6-foot black aluminum picket fence in the front and side street yards of a corner lot.¹ Waivers of the fence location and height requirements for a fence over 4 feet in height in the front yard and side yard abutting a street were initially requested.²

Evidence Presented

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

1. The property was subdivided in 1951, contains 11,414 square feet, is zoned R-80 (One-Family Detached Residential) and is improved with a single-family dwelling and driveway. Exhibits ("Exhs.") 3, 5, 10 and 11. The existing dwelling was built in 1960. Exh. 10.

2. The property is a corner lot, with the house facing the legal front street (96th Avenue). Exhs. 3 and 6(A) thru (I). The existing driveway accesses the property off of 96th Avenue. Exh. 3.

3. Petitioners would like to construct a 6-foot fence around the entire property at or close to the property lines, except where prohibited at the corner (Exh. 3), but variances are needed to obtain a building permit. Since the proposed fence is over 4 feet in height and would be located in the side street yard of a corner lot, waivers of the fence location and height requirements were requested.

4. Petitioners proposed to erect a wooden privacy fence along all property lines except black aluminum picket fence was proposed to be erected along the front street line and across the corner of the property next to the street intersection. Exh. 3.

¹ Revised site and elevation plans were submitted by Petitioners indicating that only a 6-foot wooden privacy fence is proposed and that it would not extend into the front yard. Exhs. 24 and 25.

² With revision of the site plan, the waivers for fence height and location requirements are not required for a fence in the front yard, but only for a fence in the side yard abutting a street. *Compare* Exhs. 3 and 24.

5. Petitioners submitted a letter in which they stated that the 6-foot fence is proposed for safety and security reasons. Exh. 2.

6. Petitioner Danilo Guzman testified that he would like the fence constructed for his children's safety. *See Exh. 21.*

7. Mr. Guzman submitted photographs of fences on other properties in the area. Exhs. 22(A) thru (E). He explained that he has an existing 4-foot chain link fence which does not extend into the front yard. Exh. 23.

8. Emily Hickey stated that she has lived in the neighborhood for 50 years. She sympathized with Petitioners' safety concerns, but opposed encircling the house with the proposed 6-foot fence.

9. Suzanne Hurge-Moore, on behalf of Seabrook Acres Neighborhood Association, opposed a 6-foot fence encircling the entire property, but was not opposed to a 6-foot wooden privacy fence replacing the 4-foot chain link fence in its current location.

10. The Historic Preservation Section of M-NCPPC commented that the subject property is located within 500 feet of Historic Site 70-004 site of the Franklin Pierce House and that the variance request will have no effect on Historic Sites, Historic Resources or Historic Districts. Exh. 19.

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 the property being a corner lot, the proposed 6-foot fence replacing an existing 4-foot chain link fence in the side yard abutting the street, the 6-foot fence privacy fence being needed for family security, 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, by majority vote, Chairperson Mack abstaining, that waivers of the fence location and height requirements for a fence over 4 feet in height in the side yard abutting a street in order to construct a 6-foot wooden privacy fence in the side yard of a corner lot on the property located at Lot 17, Block H, Seabrook Acres Subdivision, being 6706 96th Avenue, Lanham, Prince George's County, Maryland, be and are hereby APPROVED. Approval of the variances is contingent upon development in compliance with the approved revised site plan, Exhibit 24, and approved revised elevation plan, Exhibit 25.

BOARD OF ZONING APPEALS

By: (Original Signed)
Albert C. Scott, Vice Chairman

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.