

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-32-16 Jose Garcia and Florencia Zaldivar

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 25, 2016 .

CERTIFICATE OF SERVICE

This is to certify that on June 29, 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: Jose Garcia and Florencia Zaldivar

Appeal No.: V-32-16

Subject Property: Lot 3, Block B, Buck Lodge Subdivision, being 2509 Cherokee Street, Adelphi,
Prince George's County, Maryland

Witness: Mario Garcia, Petitioners' son

Heard: May 11, 2016; Decided: May 25, 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 27-420(a) of the Zoning Ordinance, which prescribes that on a lot consisting of one (1) acre or less, fences and walls in the front yard shall not be more than four (4) feet high without the approval of a variance. Petitioners propose to validate and obtain a building permit for a 6-foot white vinyl privacy fence in the front yard. Waivers of the fence location and height requirements for a fence over 4 feet in height in the front yard are requested.

Evidence Presented

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

1. The property was subdivided in 1954, contains 8,574 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling, driveway and shed. Exhibits ("Exhs.") 2, 4, 6 and 7. The existing single-family dwelling was built in 1956. Exh. 6.
2. Petitioners were cited with Violation Notice BVN 5604-8016-0, dated January 12, 2016, by the Department of Permitting, Inspections and Enforcement, stating that the required permit(s) must be obtained for work done at the property, including but not limited to a fence over 4 feet, or the work must be removed. Exh. 14.
3. Petitioners would like to validate and obtain a building permit for a 6-foot white vinyl privacy fence in the front yard, but variances are needed. Since the fence is over 4 feet in height and extends into the front yard, waivers of the fence height and fence location requirements were requested. Exh. 10.
4. Mario Garcia testified that the fence was built in October 2015 for privacy and security. He explained that part of the 6-foot white vinyl privacy fence extends to the front property line at both side property lines. Exhs. 2, 3(a) thru (e). He explained that the fence across the front at the property line, with a gate across the driveway, is a 4-foot white vinyl picket fence,
5. He explained that there is a bus stop where 25th Place ends in front of their property and before the fence was constructed kids came into their garden and ruined plants/flowers. He pointed out that there is an elementary school located directly behind their property. Exh. 8(A).

6. He believed that because other neighborhood properties have 6-foot fences along the sides, he could have the same. Exhs. 19(A) thru (L).

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 do not comply with the applicable standards set forth in Section 27-230, more specifically:

1. The Board finds that Petitioner's lot has no exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition of specific parcels of property.
2. Because the conditions of the property are ordinary, the Board does not deem it necessary to consider the other requirements of Section 27-230.
3. The Board notes that other fences in the neighborhood may have been constructed prior to enactment of the current law¹ affecting fence height in front yards and no evidence was offered to the contrary.
4. The Board further notes that since the fence across the front yard at the street line is 4 feet high, a 6-foot fence on the sides of the front yard would provide limited security.

BE IT THEREFORE RESOLVED, unanimously, that waivers of the fence location and height requirements for a fence over 4 feet in height in the front yard in order to validate and obtain a building permit for a 6-foot white vinyl privacy fence in the front yard on the property located at Lot 3, Block B, Buck Lodge Subdivision, being 2509 Cherokee Street, Adelphi, Prince George's County, Maryland, be and are hereby DENIED.

BOARD OF ZONING APPEALS

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

¹ See Council Bill 72-2008, adopted November 18, 2008.

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 27-234 of the Prince George's County Code states:

If the Board denies an appeal involving a variance, no further appeal covering the same specific subject on the same property shall be filed within the following twelve (12) month period. If the second appeal is also denied, no other subsequent appeals covering the same specific subject on the same property shall be filed within each eighteen (18) month period following the respective denial.