

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-52-16 Yalil Medina and Glenda Soto

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: July 13, 2016.

CERTIFICATE OF SERVICE

This is to certify that on July 27, 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
Mark Maier, Spanish Language Interpreter

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

Petitioners: Yalil Medina and Glenda Soto

Appeal No.: V-52-16

Subject Property: Lot 18, Block C, Miller Estates Subdivision, being 1409 Nicholson Street, Hyattsville,
Prince George's County, Maryland

Spanish Language Interpreter: Mark Maier

Witness: James Smith, Jr., neighbor

Heard: June 22, 2016; Decided: July 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(c)(Table II) of the Zoning Ordinance, 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 on corner lots consisting of one (1) acre or less, fences in the front or side yards shall not be more than four (4) feet high without the approval of a variance. Petitioners propose to construct a driveway and 6-foot wooden privacy fence in the front yard and side yard abutting a street. A variance of 2.9% net lot coverage and waivers of the fence height and location requirements for a fence over four (4) feet in height in the front and side yards of a corner lot are requested.

Evidence Presented

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

1. The property was subdivided in 1956, contains 7,257 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling and driveway. Exhibits ("Exhs.") 2, 4, 7 and 8. The existing dwelling was built in 1956. Exh. 7.
2. The property is a corner lot at the intersection of Nicholson Street and 15th Avenue with the dwelling facing the legal side street (Nicholson Street). Exhs. 2, 9(B) and (C).
3. The land on Petitioners' property is basically flat. Exhs. 5(A), (B) and (D).
4. Petitioners would like to construct a 20' x 60' concrete driveway to replace the existing driveway and a 6-foot wooden privacy fence (Exh. 2), but variances are required to obtain a building permit. Since construction of the driveway, which would access the property off of the side street (Nicholson Street), would cause the allowed amount of net lot coverage (30%) to be exceeded, a variance of 2.9% net lot coverage was requested. Exhs. 10 and 11.
5. In addition, since the proposed fence would enclose the legal front yard (along 15th Street) and extend to the street line of the legal side street (Nicholson Street) on the other side of the dwelling (Exh. 2), waivers of the fence height and location requirements for a fence over four (4) feet in height in the front and side yards of a corner lot were also requested. Exh. 11.

6. Petitioner Yalil Medina testified that he has a 4-foot fence next to the property line along 15th Avenue (Exhs. 5(A) and (B)) and that is where he would like to put the proposed 6-foot fence but also have it cross the yard to meet his house. He stated that the proposed 6-foot privacy fence is for privacy and the safety of his two-year-old child. He explained that his house is on a corner where there is a tremendous amount of traffic. He mentioned that there is a wire fence along the property line behind his house. Exh. 5(E). He explained that the fence he is proposing would extend along that property line and also the shared property line on the right side, extending all the way to the sidewalk along Nicholson Street. He did not believe any part of proposed fence would affect traffic visibility.

7. Mr. Medina further testified that he would like to extend the proposed driveway all the way to the rear property line and double the width of the existing driveway. He stated that he has three cars and now parks two on his driveway. He expressed that he wants to park all of his cars off the street because he has seen cars on the street that have been struck or are missing tires.

8. James Smith, Jr., who resides at the property next door (Lot 17) on Nicholson Street, testified that he opposes any construction by Petitioners if it encroaches onto his property. Exh. 16.

9. Concerns were expressed about the large size of the proposed driveway and the close proximity of the proposed fence to both streets and the intersection. Petitioners were provided the opportunity to submit a revised site plan to address these concerns.

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 Petitioners' lot has no exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition of specific parcels of property. The Board further finds that no evidence of any extraordinary situation or uniqueness of the lot was presented.

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. Petitioners currently have a driveway large enough to park at least two vehicles. The Board notes that after concern was expressed by the Board as to the size of the proposed driveway and the close proximity of the proposed fence to the intersection and both streets, Petitioners were extended the opportunity to revise the site plan.

BE IT THEREFORE RESOLVED, unanimously, that a variance of 2.9% net lot coverage and waivers of the fence height and location requirements for a fence over four (4) feet in height in the front and side yards of a corner lot in order to construct a 20' x 60' driveway and a 6-foot wooden privacy fence in the front yard and side yard (abutting Nicholson Street) on the property located at Lot 18, Block C, Miller

Estates Subdivision, being 1409 Nicholson Street, Hyattsville, Prince George's County, Maryland, be and are hereby DENIED.

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 27-234 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.