

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-95-16 Decarol Smith and Joycine Lomax

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: September 14, 2016 .

CERTIFICATE OF SERVICE

This is to certify that on October 24, 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

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

Petitioners: Decarol Smith and Joycine Lomax

Appeal No.: V-95-16

Subject Property: Lot 3, Block 11, Marlton Subdivision, being 9301 Midland Turn, Upper Marlboro,
Prince George's County, Maryland

Heard and Decided: September 14, 2016

Board Members Present and Voting: Bobbie S. Mack, Chairperson
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(i)(Table VIII), which prescribes that accessory buildings shall be set back 30 feet from the side street line and generally be located only in the rear yard, and Section 27-420(a), which prescribes that on a corner lot consisting of one (1) acre or less, fences and walls 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 validate an existing condition and construct a 6-foot wooden privacy fence in the side yard of a corner lot. A variance of 15 feet side street line setback and a waiver of the rear yard location requirement for an accessory building and waivers of the fence location and height requirements for a fence over 4 feet in height in the side yard (abutting Fairhaven Avenue) are requested.

Evidence Presented

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

1. The property was subdivided in 1967, contains 15,641 square feet, is zoned R-R (Rural Residential) and is improved with a single-family dwelling, attached carport, driveway and shed. Exhibits ("Exhs.") 2, 4, 9 and 10. The existing dwelling was built in 1977. Exh. 9.
2. The property is a corner lot with the dwelling facing the legal front street at an angle. Exh. 2.
3. The Board approved a side yard setback variance in 1976 (Appeal No. 4720) to construct a carport on the side of the house. Exh. 7.
4. Petitioners would like to construct a 6-foot wooden privacy fence around a portion of the back yard, but variances are needed to obtain a building permit. Since the fence would be over 4 feet in height and extend into the side yard abutting Fairhaven Avenue, waivers of the fence location and height requirements for a fence over 4 feet in height in the side yard of a corner lot were requested. Exh. 13.
5. In addition, variances are needed to validate the location of an existing shed. Since the shed is located in the side street yard 15 feet from the side street line, a variance of 15 feet side street line setback and a waiver of the rear yard location requirement for an accessory building were requested. Exh. 13.
6. Petitioner Joycine Lomax testified that the fence is needed to protect her grandchildren from the vehicular traffic on Fairhaven Avenue, the property from foot traffic along Fairhaven Avenue and for privacy.

7. Petitioner Decarol Smith testified the fence would be 85 feet from the corner and would not impede traffic visibility at all. *See* Exh. 2. She explained that the shed was placed in a spot where it would sit outside the fence if they are not allowed to extend the fence closer to Fairhaven Avenue. She stated that without the variance they will lose 30-40 feet of usable yard area. She further explained that there is limited usable yard area behind the house and the shed was put in its current location because of the incline up to woods in the rear. *See* Exhs. 5(A), (C) and (D); 11(B) thru (E); 19(A) thru (J).

8. Ms. Smith further testified that Fairhaven Avenue is a through street and a stop sign is located on Midland Turn at the intersection. She stated that the intersection at Fairhaven Avenue and Midland Turn is very busy and there is pedestrian traffic because school buses stop at the corner. She further stated the fence will provide security and keep out debris left by pedestrians.

9. Ms. Lomax stated that a property across the street on Midland Turn has a privacy fence of the same type that is being proposed. *See* Exhs. 6(A) and (B). She further stated that a property across Fairhaven Avenue also has a privacy fence.

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 sloping topography of the rear yard, the fence being needed for child safety, security and privacy, the limited amount of usable yard area behind the house, 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, Vice Chairman Scott absent, that a variance of 15 feet side street line setback and a waiver of the rear yard location requirement for an accessory building and waivers of the fence location and height requirements for a fence over 4 feet in height in the side yard (abutting Fairhaven Avenue) in order to validate an existing condition and construct a 6-foot wooden privacy fence in the side yard of a corner lot on the property located at Lot 3, Block 11, Marlton Subdivision, being 9301 Midland Turn, Upper Marlboro, 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 2, and the approved elevation plan, Exhibit 3.

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.