

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-114-16 Marcus Moses and Dgessey Major

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: October 26, 2016.

CERTIFICATE OF SERVICE

This is to certify that on November 16, 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: Marcus Moses and Dgessey Major

Appeal No.: V-114-16

Subject Property: Lot 43, Block D, Cheltenham Park Cluster Subdivision, being 9501 Wilton Place, Clinton,
Prince George's County, Maryland

Witness: Tasha Moses

Heard: October 5, 2016; Decided: October 26, 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 27-420(a) of the Zoning Ordinance, which prescribes that on corner lots 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 in height without the approval of a variance. Petitioners propose to validate and obtain a building permit for a new 6-foot white vinyl privacy fence. Waivers of the fence location and height requirements for a fence over 4 feet in height in the side yard (abutting Helmsley Drive) 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 1992, contains 10,671 square feet, is zoned R-R (Rural Residential) and is improved with a single-family dwelling and driveway. Exhs. 2, 4, 8 and 9. The existing house was built in 2011. Exh. 8.

2. The property is located within an approved cluster subdivision (Exh. 4) and within the Military Installation Overlay Zone (Exh. 9).

3. The property is a corner lot with the dwelling facing the legal side street (Wilton Place). Exh. 2.

4. Petitioners would like to obtain a building permit for a new 6-foot white vinyl privacy fence, but variances are needed. Since the fence is over 4 feet in height and a portion of the fence is located in the side yard, waivers of the fence location and height requirements for a fence over 4 feet in height in the side yard (abutting Helmsley Drive) of a corner lot were requested. Exh. 12.

5. Petitioner Marcus Moses testified that although a permit was issued for the 6-foot fence, after it was put up by the fence company (Exh. 20) he learned that only a 4-foot fence was allowed without a variance because of the location of the fence. He explained that a 6-foot fence is needed for his very large dog that can easily jump a 4-foot fence.

6. He added that 8-9 foot trees were planted by the builder along the property line behind the house for privacy. Exhs. 5(B) and 10(C) thru (E).

7. He further testified that traffic on both streets has a clear view and the fence location is no issue.

8. Tasha Moses testified that their son plays soccer in the yard and it would be hazardous for him to retrieve an errant ball.

9. William McCall and Trinita Johnson-McCall (adjoining Lot 42D) had no objections to the request. Exh. 17.

10. Cheltenham Park Homeowners Association approved the request. Exh. 6.

11. The Subdivision Section of The Maryland-National Capital Park and Planning Commission commented that the property has an approved preliminary plan of subdivision, 4-88223 (PGCP Resolution No. 89-38) and an approved detailed site plan, SP-9010 (PGCP Resolution No. 91-46), and that a homeowner's minor amendment or revision to the approved detailed site plan is not required for the proposed 6-foot fence. Exh. 21.

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 house facing the legal side street, a taller fence being necessary to contain a large dog, the fence providing a protective barrier for a child playing in the yard, 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 abstaining, that waivers of the fence location and height requirements for a fence over 4 feet in height in the side yard (abutting Helmsley Drive) are requested in order to validate and obtain a building permit for a new 6-foot white vinyl privacy fence on the property located at Lot 43, Block D, Cheltenham Park Cluster Subdivision, being 9501 Wilton Place, Clinton, 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 plans, Exhibits 3(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.