

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-129-16 Jose Rivera

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: November 30, 2016 .

CERTIFICATE OF SERVICE

This is to certify that on December 8, 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: Petitioner
Adjoining Property Owners
M-NCPPC, Permit Review Section
DPIE/Building Code Official, Permitting
DPIE/Inspections Division
Town of Fairmount Heights
Mark Maier, Spanish Language Interpreter

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

Petitioner: Jose Rivera

Appeal No.: V-129-16

Subject Property: Lots 399 & 400, Block 0, Sylvan Vista Subdivision, being 5444 Addison Road, Fairmount Heights, Prince George's County, Maryland

Municipality: Town of Fairmount Heights

Spanish Language Interpreter: Mark Maier

Heard: November 9, 2016; Decided: November 30, 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, Petitioner requests that the Board approve variances from Section 27-442(e)(Table IV), which prescribes that each lot shall have a side yard at least 5 feet in width and Section 27-442(c)(Table II), which prescribes that not more than 30% of the net lot area shall be covered by buildings and off-street parking. Petitioner proposes to validate existing conditions and obtain a building permit for a new driveway. Variances of 1.5 feet side yard width and 9.2% net lot coverage are requested.

Evidence Presented

1. The property was subdivided in 1923, contains 5,000 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling, two driveways and a shed. Exhibits ("Exhs.") 2, 3, 7 and 8. The existing dwelling was built in 1930. Exh. 7.

2. Petitioner was issued Violation Notice No. 57689-15-0, dated October 1, 2015, by the Department of Permitting, Inspections and Enforcement, requiring that the required permit(s) be obtained for work done at the property, including but not limited to a new driveway, or the work be removed. Exh. 5.

3. Petitioner would like to obtain a building permit for a new 7' x 66' driveway on the right side of the property (Exh. 2), but variances are needed to obtain the permit. Since construction of the driveway caused the allowed amount of net lot coverage (30%) to be exceeded, a variance of 9.2% net lot coverage was requested. Exhs. 13 and 14.

4. A variance is also required to validate the location of an existing porch on the left side of the dwelling because the porch is located 3.5 feet from the side lot line. A variance of 1.5 feet side yard width was requested. Exh. 14.

5. Petitioner testified that his son and his wife each have a vehicle and the parking area on the left side of the house accommodates only one vehicle. He explained that the Town of Fairmount Heights decided not to issue a permit to build the driveway.

6. He stated that the driveway was put in anyway for security. He testified that there is no space to park on the street and cars travel 30-40 mph down the street. He argued that other properties exist with double driveways. Exhs. 21(A) thru (H).

7. The Town of Fairmount Heights opposed the request. Exh. 22.

8. The Historic Preservation Section of M-NCPPC commented that the subject property is located within the Fairmount Heights National Register Historic District (72-009-00), within 1,000 feet of Historic Resources including the Hargrove House (72-009-17), Tarmmell-Taylor House (72-009-26) and Coles House (72-009-31), and the Historic Site the Armstrong House (72-009-24) and that the variance request will have no effect on Historic Sites, Historic Resources or Historic Districts. Exh. 17.

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 topography or other conditions peculiar to the property. The Board further finds that the lot is regular in its size and shape and 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.

BE IT THEREFORE RESOLVED, by majority vote, Chairperson Mack abstaining, that variances of 1.5 feet side yard width and 9.2% net lot coverage in order to validate existing conditions and obtain a building permit for a new 7' x 66' driveway on the property located at Lots 399 & 400, Block 0, Sylvan Vista Subdivision, being 5444 Addison Road, Fairmount Heights, Prince George's County, Maryland, be and are hereby DENIED.

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 27-234 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.