

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-85-16 Ronald Heiligh

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: December 14, 2016 .

CERTIFICATE OF SERVICE

This is to certify that on December 23, 2016 , the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

(Original Signed)

Barbara J. Stone
Acting Administrator

cc: Petitioner
Adjoining Property Owners
M-NCPPC, Permit Review Section
DPIE/Building Code Official, Permitting
DPIE/Inspections Division
Town of Capitol Heights
Other Interested Parties

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

Petitioner: Ronald Heiligh

Appeal No.: V-85-16

Subject Property: Lot 31, Block 5, Greater Capitol Heights Subdivision, and Lot N, Block 51, Otway B. Zantzinger's Subdivision of Capitol Heights Subdivision, being 626 Elfin Avenue, Capitol Heights, Prince George's County, Maryland

Witnesses: India Heiligh (Petitioner's wife)

Alonzo Galloway (Neighbor)

Alease Darby (Neighbor)

Municipality: Town of Capitol Heights

Heard: November 30, 2016; Decided: December 14, 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, Petitioner requests that the Board approve variances from Section 27-442(e)(Table IV) of the Zoning Ordinance, which prescribes that each lot shall have one side yard 9 feet in width; Section 27-120.01(c), which prescribes that no parking space, parking area, or parking structure other than a driveway no wider than its associated garage, carport, or other parking structure may be built in the front yard of a dwelling in the area between the front street line and the sides of the dwelling; and Section 27-420(a), which prescribes that fences and walls more than 6 feet high shall not be located in any required yard, and shall meet the setback requirements for main buildings, specifically here a side yard at least 8 feet in width and rear yard at least 20 feet in depth/width. Petitioner proposes to validate existing conditions and obtain a building permit for a new one-story addition with basement. Variances of 9 feet side yard width for the dwelling, a waiver of the parking area location requirement and variances of 7 feet side yard width and 13 feet rear yard depth/width for a wall over 6 feet in height are requested.

Evidence Presented

1. The subject property is made up of two lots, one subdivided in 1905 (Lot N) and one subdivided in 1909 (Lot 31). Exhibits ("Exhs.") 2 and 4. The property contains 12,646 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling, driveway, detached deck, basketball court, shed and accessory building (play room). Exhs. 2, 10 and 11.

2. The property was improved with a single-family dwelling in 1967. Exh. 10. The dwelling has since been enlarged with an L-shaped addition. Exh. 2.

3. Petitioner was issued Violation Notice No. 17063-14-0, dated May 21, 2014, by the Department of Permitting, Inspections and Enforcement, requiring that all work be stopped and the required County permits for the addition be obtained or the addition be removed. Exh. 8.

4. Petitioner would like to obtain a building permit for a 10.5' x 37.5'/10.4' x 28' L-shaped one-story addition with basement (Exh. 2). Because the addition, which wraps around the left side and rear of the existing dwelling, extends over the side lot line, a variance of 9 feet side yard depth was requested. Exhs. 2 and 5(A) thru (F).

5. Variances are also needed to validate other existing conditions on the property. Since construction of the addition placed the existing driveway in the area of the front yard prohibited by Section 27-120.01(c), a waiver of the parking area location requirement was requested. Exhs. 2 and 5(A). The accessory building in the rear yard is surrounded by a 12-foot block wall which must meet main structure setbacks. Since the wall is located one foot from the side lot lines and 7 feet from the rear lot line, variances of 7 feet side yard width and 13 feet rear yard depth/width for a wall over 6 feet in height were requested. Exh. 2.

6. Petitioner testified that he had hired a contractor in 2013 to build a one story addition with a basement but permits were not obtained by the contractor and a fine was issued to him. Exhs. 2 and 8.

7. India Heiligh stated that an inspector advised her that the contractor was not licensed to work in the County. She stated she attempted to pull permits and was informed that variances were needed. Exh. 8

8. Alease Darby, strongly opposed the addition because she believes a portion of the addition is built on her property. She stated the addition is so close to her fence that the contractor had to remove the caps on the fence columns to build the addition. She stated now her fence columns are cracked and damaged. She also stated that there are copper drainage pipes from the addition that push through her fence. Exhs. 2 and 23(A) thru (J).

9. Ms. Darby believes that the addition was poorly constructed and recommended demolition.

10. Mr. Alonzo Galloway, opposed the addition because of the quality of work.

11. The Town of Capitol Heights twice expressed opposition to the variances. Exhs. 21 and 24.

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 the subject 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.

BE IT THEREFORE RESOLVED, unanimously, that variances of 9 feet side yard width for the dwelling, a waiver of the parking area location requirement and variances of 7 feet side yard width and 13 feet rear yard depth/width for a wall over 6 feet in height in order to validate existing conditions and obtain a building permit for a new 10.5' x 37.5'/10.4' x 28' one-story addition with basement on the property located at

Lot 31, Block 5, Greater Capitol Heights Subdivision, and Lot N, Block 51, Otway B. Zantzingers Subdivision of Capitol Heights Subdivision, being 626 Elfin Avenue, Capitol Heights, Prince George's County, Maryland, be and are hereby DENIED.

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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.