

*NOTICE OF FINAL DECISION*

*OF BOARD OF APPEALS*

RE: Case No. V-23-17 Oscar Avila and Barbara Cabrera-Avila

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: April 12, 2017 .

**CERTIFICATE OF SERVICE**

This is to certify that on May 16, 2017 , 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: Petitioners  
Adjoining Property Owners  
M-NCPPC, Permit Review Section  
DPIE/Building Code Official, Permitting  
DPIE/Inspections Division

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

Petitioners: Oscar Avila and Barbara Cabrera-Avila

Appeal No.: V-23-17

Subject Property: Lot 5, Block 2, Hall's Addition to Adelphi Subdivision, being 1916 Dana Drive, Adelphi,  
Prince George's County, Maryland

Witnesses: Jose Raul Morales, Neighbor

Maria Morales, Neighbor

Arthur Turcotte, Neighbor

Heard and Decided: April 12, 2017

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), which prescribes that not more than 30% of the net lot area shall be covered by buildings and off-street parking; 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; and Section 27-442(e)(Table IV), which prescribes that each lot shall have two side yards totaling 17 feet in width with the minimum width of either side yard being 8 feet, and a rear yard at least 20 feet in depth/width. Petitioners propose to validate existing conditions and obtain a building permit for a retaining wall topped with a wrought iron fence. Variances of 5.9% net lot coverage, 17 feet total side yard width and 20 feet rear yard depth/width, and a waiver of the fence location requirement are requested.

**Evidence Presented**

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

1. The property was subdivided in 1966, contains 6,500 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling and driveway. Exhibits (Exhs.) 2, 4, 5 (A) thru (F), 9 and 11 (A) thru (G).
2. Petitioners would like to obtain a building permit for a retaining wall, up to 5 feet in height, topped with a two-foot wrought iron fence. The wall and fence are located along the side and rear lot lines around the back yard. Variances of 17 feet total side yard width and 20 feet rear yard depth/width, and a waiver of the fence location requirement were requested. Exhs. 2, 3 (a) thru (d) and 14.
3. As the existing development on the property exceeds the amount of lot coverage allowed, a variance of 5.9% net lot coverage is also required before a building permit can be obtained. Exhs. 2 and 14.
4. The Department of Permitting, Inspections and Enforcement, Inspections Division, issued Violation Notice No. 1653-17-0, dated December 31, 2016, requiring Petitioners to obtain the required

permit(s) for work done or remove. Work includes the retaining wall over 2 feet and a fence over 4 feet. Exh. 6.

5. Petitioner Oscar Avila testified that the work (rear brick and wrought iron fence) was completed 15 years ago. He explained that in the last year a concrete wall in the right corner of the front yard was failing and replaced. Exhs. 2, 3 (a) thru (d) and 20.

6. Petitioner further testified that he was cited by the County Inspector because of the recent replacement work and also work (wall and fence) performed in the rear in the past. He stated that permits were never obtained for any of the work. Exhs. 2, 5 (A) thru (F), 20 and 21.

7. Mr. Avila explained that it was determined by a new survey that the concrete work that was done in the front right corner of his property is actually on the Turcotte property. A blue flagged stake has been placed in the yard which indicates the correct property line. He testified that he will be relocating the affected portion of the wall to his side of the property line (the flagged stake). 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 complies with the applicable standards set forth in Section 27-230, more specifically:

Due to the failing condition of the wall in the right corner and the long preexistence of the overall wall/fence in the rear 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, unanimously, that variances of 5.9% net lot coverage, 17 feet total side yard width and 20 feet rear yard depth/width, and a waiver of the fence location requirement in order to validate existing conditions and obtain a building permit for a retaining wall, up to 5 feet in height, topped with a two-foot wrought iron fence on the property located at Lot 5, Block 2, Hall's Addition to Adelphi Subdivision, being 1916 Dana Drive, Adelphi, 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 approved elevation plans, Exhibits 3 (a) thru (d).

#### 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.