

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

Petitioner: Elias Guzman Gonzales

Appeal No.: V-116-19

Subject Property: Lot 5, Block A, Connemara Hills Subdivision, being 10501 Harry Street, Clinton,
Prince George's County, Maryland

Witnesses: Ruthie Deese, Neighbor

Marseille Deese, Neighbor's daughter

David Deese, Neighbor

Juan Swann, Department of Permitting, Inspections and Enforcement (DPIE)

Heard and Decided: December 4, 2019

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 a variance 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 a variance from 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; on lots consisting of one (1) acre or less, fences and walls in the front yard shall not be more than four (4) feet high without the approval of a variance; 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. Petitioner proposes to obtain a permit building for a proposed a 6-foot wooden fence on a corner lot. A waiver of the fence location and height requirements for a fence over 4 feet in height in the side yard is requested.

Evidence Presented

1. The property was subdivided in 1973, contains 18,716 square feet, is zoned R-80 (One-Family Detached Residential) and is improved with a single-family dwelling, and a 6-foot wooden fence. Exhibits (Exhs.) 2, 4, 7, 8 and 9 (A) thru (F).

2. The property is located on a corner lot with the dwelling facing the legal front yard (Harry Street). Exhs. 2, 4, 7, 8 and 9 (A) thru (F).

3. Petitioner would like to construct a 6-foot wood privacy fence around the "backyard" of property. Because the subject property is a corner lot, the side street requires a waiver of the fence location and height requirements for a fence over 4 feet in height in the side yard (abutting Killarney Street). Exhs. 2, 3, 4, 7, 8 and 9 (A) thru (F).

4. Petitioner Elias Guzman Gonzales stated that he is proposing to build a 6-foot wooden fence to enclose the rear yard to provide a safe area of play for children along Killarney Street, which is a very busy street. The fence will start at the rear corner of the dwelling, along Killarney Street, along Lots 3 and 4 to the

rear and along lot 6, ending at the front corner of the dwelling.¹ He believes the fence will in not block motorist site views. Exhs. 2, 3 and 5 (A) thru (F).

5. Mr. David Deese, who lives at 6301 Killarney Street, stated there was a drainage area system for several lots, but Petitioner covered up his drain by placing a man hole cover over it. He is concerned that the proposed fence will not allow water to drain. Exhs. 2 and 9 (A) thru (F).

6. Mr. Guzman responded that water issues were resolved with approved County permits and inspections under Special Drain Permit 6286-2019. Exh. 6.

7. County Inspector Juan Swann explained that if a County swale exists, Petitioner will be required to hold the fence 6 inches off the ground to allow for proper water flow. He stated that when the County inspector inspects the proposed fence, the inspector will determine if the water flow requirement has been satisfied and if the fence is not 6 inches off the ground, the inspector will order it to be adjusted.

8. Mr. Guzman noted that the fence is also needed for the protection of his child and his own pet because a neighbors Doberman Pincher has gotten loose on numerous occasions. Exhs. 2, 3, 4, 7, 8 and 9 (A) thru (F).

9. Mrs. Ruthie Deese testified that the Doberman does get loose and is a nuisance. 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 variance complies with the applicable standards set forth in Section 27-230, more specifically:

Due to the property being a corner lot, with the house facing the legal front yard, the side yard abutting Killarney Street, the need for protection and safety of the child and pet, 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 owner of the property.

BE IT THEREFORE RESOLVED, unanimously, that a waiver of the fence location and height requirements for a fence over 4 feet in height in the side yard (abutting Killarney Street) in order to obtain a permit building for a proposed a 6-foot wooden fence on a corner lot on the property located at 10501 Harry Street, Clinton, Prince George's County, Maryland, be and is hereby APPROVED. Approval of the variances is contingent upon development in compliance with the approved revised site plan, Exh. 16 and approved elevation plan, Exhibit 3.

¹ The original site plan showed a 4-foot fence installed around the front of the property. Mr. Guzman testified that he will not be installing the 4-foot fence in the front yard and revised the site plan to remove that portion of the fence from the site plan. Exhs. 2 and 16.

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.