

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

Petitioners: Ever Guerrero Amaya and Rosa Munoz

Appeal No.: V-131-19

Subject Property: Lot 10, Block C, Holly Hill Manor Subdivision, being 2202 Lackawanna Street,  
Hyattsville, Prince George's County, Maryland

Witnesses: Louise Cullen, Neighbor  
Wilda Chisolm, Neighbor  
Mary Hargrove, Neighbor  
Russell Finn, Neighbor  
Mark Otto, Neighbor

Heard: January 8, 2020; Decided: January 22, 2020

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 27-420(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. Section 27-442(i)(Table VIII) which prescribes that accessory buildings be generally located only in the rear yard. Petitioners propose to validate an existing condition (shed) and obtain a building permit for a retaining wall, ten (10) 6-foot columns and a 5-foot metal fence in front of the house. A waiver of a fence and wall over 4 feet in location and height requirements in the front yard (abutting Lackawanna Street) and a waiver of the rear yard location requirement for an accessory building are requested.

**Evidence Presented**

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

1. The property was subdivided in 1950, contains 18,911 square feet, is zoned R-R (Rural Residential) and is improved with a single-family dwelling, driveway and shed. Exhibits (Exhs.) 2, 4, 10, 11 and 12 (A) thru (G).

2. Petitioners would like to validate an existing shed and obtain building permits to construct a retaining wall, ten (10) 6-foot columns and a 5-foot metal fence. Because the fence is over 4 feet in height in the front yard, a waiver of the fence height and location requirement is requested. Because the shed is in the side yard, a waiver of the rear yard location requirement for an accessory building is requested. Exhs. 2, 3 (a) thru (b) and 5 (A) thru (F).

3. The Department of Permitting, Inspections and Enforcement, Inspections Division, issued General Inspection Report on 9/16/19 to obtain a permit for retaining wall and stone pillars. A Correction Order was issued on 9/20/19 to stop work on pillars and revise site plan to demonstrate all new work. Exhs. 7 and 8.

4. Petitioner Ever Amaya stated that he purchased the subject property 5 months ago. His first priority is the safety of his young children and unfortunately, the back yard is a large hill and not the best area in which to play. The front yard is flat and level, so the children play in the front. Exhs. 2, 3 (a) thru (b) and 5 (A) thru (F).

5. Mr. Amaya stated that the columns are located along the front property line at 6-feet tall and 10-feet apart and he is planning on placing aluminum fencing in between the columns.<sup>1</sup> Exhs. 2, 3 (a) thru (b) and 5 (A) thru (F).

6. Ms. Louise Cullen (9708 Laconia Drive) objected to the 6-foot columns and the metal fencing. She stated that there are no fences of this nature anywhere in their community. She stated that her community was built in the early 1950s with covenants that included restrictions on fencing, but do not believe they are being used.

7. Wilda Chisolm (2404 Mistletoe Place) opined that the neighborhood objects to the columns because the majority of the properties do not have fencing. She stated that there are only two properties that have a fence in the front yard.

8. Mr. Amaya stated that he was unaware that the community had a homeowner's association or covenants. Otherwise, he would have gone through the HOA process to obtain approval prior to starting to erect the fence. He stated that the adjoining neighbors on each side of him did not object to the fence.

9. Ms. Mary Hargrove (9704 24<sup>th</sup> Avenue) stated that the stonework is beautiful, but the columns makes it look like a fortress.

10. Russell Finn (9707 Laconia Drive) stated that when he purchased his property in 1998, he received the covenants. He stated that there are 119 homes in Holly Hill Manor and only 2 properties have a fence in the front yard. He explained that there is an active HOA "Holly Hill Manor Citizens Association", but it became dormant for a while but there was an Architectural Committee. He does not know what happened to the committee. Exhs. 19 and 20 (covenants).

11. Mark Otto (2302 Lackawanna Street) stated that the fence tends to look like a security compound.

12. Mr. Amaya stated that he does not want to upset his neighbors and agreed to reduce the fence and columns to 4-feet high. The fencing in between the columns will not be site tight. You will be able to see through the fence. Mr. Amaya revised the site plan and elevation plan to show the reduced size 4-foot fence. Exhs. 5 (A) thru (F) and 21 and 22.

#### 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:

<sup>1</sup> He stated that he did obtain a building permit (43839-2019-RGW / 4 ft retaining wall) for the retaining wall which was built to level the ground area.

Due to the rear yard topography being extremely steep, the need for safety as his children play in the front yard, the fence is reduced to four feet, the fence will not be site tight (consistent with the covenants), 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 a waiver of the rear yard location requirement for an accessory building in order to validate an existing condition (shed) and obtain a building permit for a 4-foot retaining wall, 10 (ten) 4-foot stone columns and a 4-foot metal fence on the property located at 2202 Lackawanna Street, Hyattsville, Prince George's County, Maryland, be and are hereby APPROVED. Approval of the variances is contingent upon development in compliance with the approved revised site plan, Exhibit 21 and approved revised elevation plan, Exhibit 22.

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.