

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

Petitioner: Richard Smith

Appeal No.: V-35-18

Subject Property: Lot 20, Block 22, Berwyn Heights Subdivision, being 8626 Cunningham Drive, Berwyn Heights, Prince George's County, Maryland

Municipality: Town of Berwyn Heights

Witnesses: John Reamy, Neighbor

Phillip Newsom, Neighbor

Heard: June 13, 2018; Decided: June 27, 2018

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 corner lot shall have a side yard along the side street at least 25 feet in depth and Section 27-442(i)(Table VIII), which prescribes that accessory buildings shall be set back 60 feet from the front street line, 30 feet from the side street line and 10 feet from the rear lot line. Petitioner proposes to validate existing conditions (existing dwelling, shed, tent/shed) and obtain a building permit for a tent/shed.

Variances of 6 feet side street yard depth for the dwelling, 20 feet front street line setback for one accessory building and 4 feet side street line and 5 feet rear lot line setbacks for a second accessory building are requested.

Evidence Presented

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

1. The property was subdivided in 1954, contains 9,311 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling, driveway, shed and tent/shed. The property is a corner lot with the dwelling facing the legal side street. Exhibits (Exhs.) 2, 4, 12, 13 and 14 (A) thru (F).

2. Petitioner would like to obtain a permit for an existing 10' x 20' tent/shed located 26 feet from the side street line and 5 feet from the rear lot line. The structure is placed at the back end of the existing driveway. Variances of 4 feet side street line and 5 feet rear lot line setbacks for a second accessory building were requested. Exhs. 2, 3 (a) thru (b), 5 (A) thru (F) and 15.

3. The existing covered front porch is located 19 feet from the side street line and an existing shed, located in the rear corner of the property, is 40 feet from the front street line. Variances of 6 feet side street yard depth for the dwelling and 20 feet front street line setback for one accessory building were requested. Exhs. 2, 3 (a) thru (b), 5 (A) thru (F) and 15.

4. The Town of Berwyn Heights Code Compliance Office issued a violation notice, dated February 6, 2018, requiring Petitioner to obtain a permit for the tent. Exh. 6.

5. Likewise, the Department of Permitting, Inspections and Enforcement, Inspections Division, issued Building Violation Notice No. 6261-2018-0, dated January 3, 2018, requiring Petitioner to "Obtain the required permit(s) for work done. . . or remove the same. Work includes but not limited large pop up tent shed." Exh. 7.

6. The Town of Berwyn Heights is in support of the requested variances. Exh. 25.

7. Petitioner Richard Smith explained that he has had a fabric canopy/shed erected on his driveway for 17 years. He further explained that because of the topography (incline) of his rear yard there is no other suitable location for the canopy/shed.

8. Mr. Smit stated that the canopy/shed is used as a shaded sitting area as the subject property has no trees for shade. Exhs. 2, 3 (a) thru (b), 5 (A) thru (F).

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, the front of the house facing the side street, the topography being an incline of the rear yard precluding the location of the canopy/shed in the rear 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 variances of 6 feet side street yard depth for the dwelling, 20 feet front street line setback for one accessory building and 4 feet side street line and 5 feet rear lot line setbacks for a second accessory building in order to validate existing conditions (existing dwelling, shed, tent/shed) and obtain a building permit for a 10' x 20' tent/shed on the property located at Lot 20, Block 22, Berwyn Heights Subdivision, being 8626 Cunningham Drive, Berwyn Heights, 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 (b).

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.