

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

Petitioner: Maria Hernandez

Appeal No.: V-88-18

Subject Property: Lot 13, Block D, Jefferson Heights Subdivision, being 6016 Jefferson Heights Drive,
Fairmount Heights, Prince George's County, Maryland

Witnesses: William Hernandez, Petitioner's husband
Brenda Abel Williams, Neighbor
Greg Cabbagestalk, Ms. William's Fiancé
Juan Swann, DPIE Inspector

Spanish Interpreter Service: Julie Rotter

Heard and Decided: January 9, 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 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 a front yard at least 25 feet in depth and a side yard at least 8 feet in width and 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. Petitioner proposes to validate existing conditions (dwelling, driveway) and obtain a building permit for a new enclosed front porch, driveway in the front yard and retaining wall up to 4 feet in height. Variances of 6 feet front yard depth, 1-foot side yard width and a waiver of the parking area location requirement are requested.

Evidence Presented

1. The property was subdivided in 1938, contains 6,300 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling, driveway and shed. Exhibits (Exhs.) 2, 4, 11, 12, 13 (A) thru (F) and 14 (A) thru (F).

2. Petitioner would like to obtain a building permit for a 6' x 12' enclosed front porch, which is located 19 feet from the front street line, a 9' x 13' driveway in the front yard and a retaining wall up to 4 feet in height along the front street line. The existing dwelling is located 7 feet from the side lot line. Variances of 6 feet front yard depth and 1-foot side yard were requested. Exhs. 2, 3, 5 (A) thru (L).

3. Section 27-120.01(c) states that construction of driveways not leading to a carport or garage is not permitted in the area of the front yard between the front street line and the sides of the dwelling. Since part of Petitioner's driveway is located in this area of the front yard, a waiver of the parking area location requirement was requested. Exhs. 2, 3, 5 (A) thru (L).

4. The Department of Permitting Inspections and Enforcement, Inspections Division, issued a Correction Order, dated June 1, 2018, requiring Petitioner to "Obtain a building permit for porch enclosure

and retaining wall higher than 2 feet or remove" also to "Obtain a grading permit for front yard." Exhs. 7 and 8.

5. William Hernandez testified that the porch was enclosed with a new door for their very large dog, windows were added as well. The retaining wall (concrete block) which was existed but in poor condition and falling down was replaced with a stone wall of the same height. He stated that the driveway was also existing at the time the property was purchased. Exhs. 2, 3, 5 (A) thru (L).

6. Inspector Juan Swann stated that he received a complaint regarding the driveway. The complaint included the retaining wall and flooding of the neighbor's property. Upon investigation he noticed additional work was performed without permits. He observed that the wall was constructed with drainage weep holes which he believes may have contributed to the water issue.

7. Mr. Hernandez contended that there is no flooding issue as the water (naturally) runs down. He contended that the neighbor is having water problems because that area is at a lower elevation. He submitted that he did not complete the construction of the wall because of confusion about the property line. Exhs. 2, 3, 5 (A) thru (L).

8. Ms. Brenda Abel Williams (6018 Jefferson Heights Drive) testified that Petitioner dug out the driveway to put up the wall. She agreed that there was some confusion regarding the property line.¹ She would like Petitioner to complete the retaining wall and back fill to prevent erosion.²

9. Mr. Cabbagestalk (528 Elvis Lane, Lanham) testified that there is a terrible erosion problem because of all the rain.

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 topography of the front yard and side yard, the existing wall being in disrepair 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 front yard depth, 1 foot side yard width and a waiver of the parking area location requirement in order to validate existing conditions (dwelling, driveway) and obtain a building permit for a new 6' x 12' enclosed front porch, 9' x 13' driveway in the front yard and retaining wall up to 4 feet in height on the property located at Lot 13, Block D, Jefferson Heights Subdivision, being 6016 Jefferson Heights Drive, Fairmount Heights, Prince George's

¹ The site plan indicated that the wall was constructed on the Petitioner's property and not on the neighbor's property. Exh. 2.

² Mr. Hernandez stated that when the wall is completed, he will assure that it will be back filled.

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 plan, Exhibit 3.

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.