

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

Petitioners: Andrew and Karen Marshall

Appeal No.: V-104-18

Subject Property: Lot 104, Block B, Old Fort Hills Subdivision, being 2112 Powder Horn Drive, Fort Washington, Prince George's County, Maryland

Witnesses: Lolita Jacintho, Neighbor

Richard Janintho, Neighbor

Heard: October 24, 2018; Decided: November 14, 2018

Board Members Present and Voting: Bobbie Mack, Chairperson

Albert C. Scott, Vice Chairman

**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) of the Zoning Ordinance, which prescribes that fences and walls more than 6 feet in height shall not be located in any required yard, and shall meet the setback requirements for main buildings, and on corner lots 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 in height without the approval of a variance; and Section 27-442(e)(Table IV), which prescribes that each corner lot shall have a front yard at least 25 feet in depth and a minimum side yard along the side street at least 25 feet in depth, a side yard at least 8 feet in width, and a rear yard at least 20 feet in depth/width. Petitioners propose to construct a 6-foot to 6.5-foot wooden fence along the rear lot line and in the side yard of a corner lot. Variances of 25 feet side street yard depth and 18 feet rear yard depth/width for a fence over 6 feet in height, and waivers of the fence location and height requirements for a fence over 4 feet in height in the side yard (abutting Gunstock Court) are requested.

**Evidence Presented**

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

1. The property was subdivided in 1981, contains 13,399 square feet, is zoned R-R (Rural Residential) and is improved with a single-family dwelling, driveway and shed. The property, a corner lot with the dwelling facing the legal front street at an angle, is located in Aviation Policy Area 6. Exhibits (Exhs.) 2, 4, 11, 12 and 13 (A) thru (G).

2. Petitioners would like to construct a 6-foot wooden fence approximately 2 feet from the rear lot line towards the corner of the dwelling where it then extends to 6.5-feet in height to the side street line. As a portion of the fence exceeds the 6 foot height requirement, variances of 25 feet side street yard depth and 18 feet rear yard depth/width were requested, respectfully. Also, as the fence exceeds the 4 foot height requirement, waivers of the fence location and height requirement for a fence over 4 feet in height in the side yard (abutting Gunstock Court) were requested. Exhs. 2, 3, 5 (A) thru (E) and 6 (A) thru (B).

3. Petitioner Andrew Marshall testified that he wanted to continue building a fence along the side property line abutting Lot 103 for the security of his children. Exhs. 2, 3, 5 (A) thru (E) and 6 (A) thru (B).

4. Mr. Marshall further testified that there is a very large pine tree in the front yard near the sidewalk and, because of the slope of the property, the fence will vary from 6 feet to 6.5 feet in height. Exhs. 2, 3, 5 (A) thru (E) and 6 (A) thru (B).<sup>1</sup>

5. Old Fort Hills Homeowners Association (H & E Management Association, LTD) reviewed and approved the proposed fence. Exh. 7.

6. Richard Jacintho, who resides at 2008 Gunstock Court, stated he is concerned that because the fence is over 6 feet it will block his view of the street when pulling out of his driveway. Exhs. 2, 3, 5 (A) thru (E) and 6 (A) thru (B).

7. The Petitioners revised the site plan to show that the first fence panel along the sidewalk has been reduced to 4 feet in height from that point on to the rear property line. Exhs. 22, 23, 24 (A) thru (G) and 25.

#### 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 lot being a corner lot, the topography of the property, the need for security 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, by majority vote, Ms. Anastasia Johnson absent, that variances of 25 feet side street yard depth and 18 feet rear yard depth/width for a fence over 6 feet in height, and waivers of the fence location and height requirements for a fence over 4 feet in height in the side yard (abutting Gunstock Court) in order to construct a 6-foot to 6.5-foot wooden fence along the rear lot line and in the side yard of a corner lot on the property located at Lot 104, Block B, Old Fort Hills Subdivision, being 2112 Powder Horn Drive, Fort Washington, 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 25 and approved elevation plan, Exhibit 3.

---

<sup>1</sup> The Petitioner received a correction order and a Tag Notice on July 17, 2018 from the Department of Permitting, Inspections and Enforcement to stop work and obtain the necessary permits within 30 days. Exhs. 8 and 9.

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.