

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-86-10 Steven Brier

Enclosed herewith is a copy of the Board Order setting forth the action taken by the Board of Appeals in your case on the following date: November 17, 2010.

CERTIFICATE OF SERVICE

This is to certify that on December 8, 2010, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

(Original Signed) _____
Anne F. Carter
Administrator

cc: Petitioner
Adjoining Property Owners
M-NCPPC, Permit Review Section
DER, Building Code Official, Permits & Review Group
DER, Licenses & Inspections Group
Municipality
Hyattsville Community Development Corporation
Hyattsville Preservation Association, Inc.
Other Interested Parties

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

Petitioner: Steven Brier

Appeal No.: V-86-10

Subject Property: Lot 17, Block B, Wine & Johnson's 2nd Addition to Hyattsville Subdivision, being 4305
Gallatin Street, Hyattsville, Prince George's County, Maryland

Municipality: City of Hyattsville

Counsel for Petitioner: Robert J. Kim, Esq.

Witness: Francis Silberholz, AICP, Ben Dyer Associates, Inc.

Heard and Decided: November 17, 2010

Board Members Present and Voting: 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; Section 27-442(c)(Table II), which prescribes that not more than 30% of the net lot area shall be covered by buildings and off-street parking; and Section 27-442(i)(Table VIII), which prescribes that not more than 25% of the rear yard shall be covered by accessory buildings. Petitioner proposes to validate and obtain a building permit for a new single-family dwelling, detached garage and driveway in order to obtain a use and occupancy permit. Variances of 4.5 feet front yard depth, 16.2% net lot coverage and .1% rear yard coverage are requested.

Evidence Presented

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

1. The property, subdivided in 1884 and recorded in 1930, contains 6,296 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling, detached garage and driveway. See Exhibits ("Exhs.") 3-4, 11-12. The single-family dwelling on the property was constructed in 2005. See Exh. 11.
2. The property is located within the municipal limits of the City of Hyattsville. See Exhs. 11-12. The property is also located in the Gateway Arts District ("GAD") Development District Overlay Zone.¹
3. The property is a long, narrow, rectangular lot, being 45 feet wide at the street and 140 feet deep. See Exhs. 3-4.
4. Staff of the Permit Review Section of the Maryland-National Capital Park and Planning Commission stated that in 2001 a fire damage repair/reconstruction permit was approved for work on the property, but a new permit must be obtained because the dimensions of the original structure were changed. See Exh. 10. Also see Exh. 9.

¹ GAD regulations do not apply to R-55 zoned properties in the City of Hyattsville. See Exhs. 10, 12.

5. The Department of Environmental Resources issued Violation Notice BVN 18320-2009, dated June 17, 2009 ("Violation Notice"), requiring that Petitioner obtain a building permit for the garage that was built and fire-damaged home that was repaired without permits, or remove the structures. See Exhs. 7, 9. Court action by the County resulted in a Consent Order to enforce compliance with the violation notice. See Exh. 8.

6. Petitioner would like to validate and obtain a building permit for the 21.1' x 38.2' dwelling (with a 21.1' x 8' covered front porch), 20' x 10' sunroom, 31' x 23' detached garage and driveway (1012 sq. ft.) in order to obtain a use and occupancy permit. See Exhs. 1, 3. In order to obtain the required building permit, variances must be obtained to validate the following conditions on the property. Since the covered front porch is located only 20.5 feet from the front street line and the maximum net lot and rear yard coverage allowances have been exceeded by existing development, variances of 4.5 feet front yard depth, 16.2% net lot coverage and .1% rear yard coverage, respectively, were requested. See Exh. 18.

7. Counsel for Petitioner argued that after title searches of the property and 6-7 months after the purchased of the property, Petitioner unexpectedly received the Violation Notice and subsequently subjected to a Petition for Injunctive Relief in the District Court that was filed by the County. See Exh. 7. He further stated that a pending case against the previous owner of the subject property for the same violations was dismissed shortly after Petitioner was served the Petition for Injunctive Relief. Counsel noted that Petitioner entered into a Consent Order (see Exh. 8) and in attempting to obtain the necessary permits, discovered the zoning issues involved and the variances needed. Counsel explained that the inability to obtain the proper permits would ultimately affect the marketability of the property.

8. Francis Silberholz, AICP, testified that the property is improved with a two-story residence with a footprint of approximately 1,860 square feet, a one-story detached garage with a footprint of approximately 713 square feet and a concrete driveway with an area of approximately 813 square feet that connects the house to the alley in the rear of the site. He stated that both structures and the driveway existed before Petitioner purchased the property on January 13, 2009. He further stated that the principal building on the site was destroyed by fire circa 2001 and was rebuilt on the original foundation. See Exh. 2. He stated that based on permit records, the rebuilding of the house began sometime in 2001 and permit activity continued up to Petitioner's purchase of the property. See Exh. 29.

9. Mr. Silberholz stated that the extraordinary situation or condition is that the dwelling which the current dwelling replaced was built in a subdivision originally platted in 1884 with many of the residential lots being nonconforming when compared to the requirements of the current zoning regulations. He explained that because 1938 aerial photogrammetric information indicates that the subject property and the neighboring lots were improved with residential structures, and State tax assessment records indicate that the lots on both sides of the subject property were originally improved with residential dwellings between the late 1800's to the very early 1900's, it can be concluded that the subject property was developed with a dwelling before the first County zoning ordinance was adopted. He noted that 2009 aerial imagery reveals that the small, narrow lots along Gallatin Street are developed with smaller street setbacks, with dwellings being set back an average of 20 feet, the historic average front yard setback established on the block long before zoning regulations were established, versus the 25 feet required by current regulations. See Exhs. 2, 33-35.

10. Mr. Silberholz opined that since no other administrative avenue for relief is available to Petitioner, he must have the requested variances approved by the Board in order to occupy his property. He believes that Petitioner would suffer an extreme and undue hardship if he were forced to remove the front porch, driveway, rear second floor sunroom and/or garage to comply with the lot coverage requirements. See Exh. 2.

11. Mr. Silberholz stated that the required variances will not contribute to any perceptible degradation or impairment of the intent, purpose or integrity of the General Plan, Master Plan or Sectional

Map Amendment for the *Approved Sector Plan and Sectional Map Amendment for the Prince George's County Gateway Arts District*, which recommends a continuation of the property's current R-55 zoning. He explained that development on the subject property is in keeping with the Master Plan's goals of maintaining the single-family residential neighborhood character, protecting historic houses from encroachment or significant loss of integrity and retention of block face and scale of residential streets. He remarked that photographs taken along Gallatin Street in the vicinity of the subject property (see Exhs. 6(A)-(G), 30-35) show how well the architecture and structural massing of the subject dwelling integrate with the neighboring dwellings and illustrate that removal of the front porch cover would totally disrupt the architectural harmony of the structure. He noted that had the Master Plan not exempted R-55 properties that are located within the incorporated City of Hyattsville from the development district standards, the subject property would be entire in compliance with that district's 20-foot front setback standards and only require a lot coverage variance of 1.2 percent. See Exh. 2.

12. The City of Hyattsville supported the request and stated that the property owner (Petitioner) has been forced to expend significant funds in order to correct errors and to validate conditions of the property that should have been enforced by the County against the previous owner years ago. See Exh. 24.

13. Donald and Patricia Sullins, owners of adjoining property, supported Board approval of the requested variances. See Exh. 27.

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 variances comply with the applicable standards set forth in Section 27-230, more specifically:

Due to the property being subdivided in 1884, the exceptional narrowness of the property, the principal building on the site being destroyed by fire in approximately 2001, the replacement development on the property not meeting certain setback and lot coverage requirements of the current zoning regulations, State assessment records and 1938 aerial images indicating that the lots on both sides of the subject property were originally improved with residential dwellings between the late 1800's to the very early 1900's, the lot size being nonconforming when compared to the current zoning regulations, the inability to obtain the proper permits affecting the ability to legally occupy the dwelling and the marketability of the property, the dwelling having the same front yard setback as that established on the block long before zoning regulations were established, the property being exempt from the development district standards within the City of Hyattsville, the architecture and structural massing of the subject dwelling integrating well with the neighboring dwellings, 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, by majority vote, Ms. Mack absent, that variances of 4.5 feet front yard depth, 16.2% net lot coverage and .1% rear yard coverage in order to validate and obtain a building permit for the 21.1' x 38.2' dwelling, with a 21.1' x 8' covered front porch and a 20' x 10' second-floor sunroom, 31' x 23' detached garage and driveway (1012 sq. ft.) in order to obtain a use and occupancy permit on the property located at Lot 17, Block B, Wine & Johnson's 2nd Addition to Hyattsville Subdivision, being 4305 Gallatin 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 site plan, Exhibit 3.

BOARD OF ZONING APPEALS

By: (Original Signed)
Albert C. Scott, Vice Chairman

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.