

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-100-10 Berthil James

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: May 4, 2011 .

CERTIFICATE OF SERVICE

This is to certify that on May 26, 2011 , 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/Code Official, Permits & Review Group
Glenn Dale Citizens Association
Other Interested Parties

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

Petitioner: Berthil James

Appeal No.: V-100-10

Subject Property: Lot 6, Block A, Strawberry Glenn Subdivision, being 11300 Strawberry Glenn Lane,
Glenn Dale, Prince George's County, Maryland

Witnesses: Tommie Thomas, Petitioner's architect

Adrian McGibbon, President, Strawberry Glenn Homeowners Association

Paulette Lee, adjoining property owner

John Lee, adjoining property owner

Heard: January 5, 2011; Decided: May 4, 2011

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 a variance 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 a variance from Section 27-442(e)(Table IV) of the Zoning Ordinance, which prescribes that each lot shall have a side yard at least 17 feet in width. Petitioner proposes to construct a deck and a gazebo. A variance of 9 feet side yard width is requested.

Evidence Presented

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

1. The property was subdivided in 2001, contains 40,000 square feet, is zoned R-E (Residential-Estate) and is improved with a single-family dwelling and driveway. See Exhibits ("Exhs.") 2, 4, 7-8, 22. The property was improved with a single-family dwelling in 2003. See Exh. 7.
2. The property is a corner lot, with the house facing the corner. Due to the angle of the house on the rectangular lot, the right rear corner of the house extends to within a foot of the required side yard setback. See Exh. 22.
3. Petitioner applied for permission to construct a 22' x 26' deck and 14' x 14' gazebo on the rear of the house. Because the corner of the deck and gazebo would be located 8 feet from the side lot line at the closest point, a variance of 9 feet side yard width was requested in order to obtain a building permit. See Exhs. 2-3, 11.
4. Petitioner testified that the property had been used for a model home, had been sitting vacant, and the existing 12' x 14' deck on the house had splintering wood and was falling apart. He stated that the deck is in such bad condition that he and his grandchildren are unable to enjoy it.

5. Tommie Thomas, Petitioner's architect, testified that the house sat empty for a few years and the old deck, which is only 12' x 14' and extends to the 17-foot building restriction line, was like a "place holder" on the model home to show that a deck could be added. See Exh. 16. Mr. Thomas stated that Petitioner proposes to replace that deck, which is deteriorating, with a new two-level deck and a gazebo. He explained that a ground-level patio would fill in the space between the deck and an existing areaway coming from the basement. He further explained that because of the way the house sits on the lot, with the corner of the house almost at the building restriction line, modifications cannot be made on the rear without infringing beyond the building restriction line. See Exhs. 5(A)-(D), 9(A)-(E).

6. John and Paulette Lee, owners of the property next to the proposed deck (Lot 7), opposed construction of the deck so close to a line of trees she planted to act as a living fence next to the property line. See Exhs. 5(C) & (D), 9(A)-(F). Mrs. Lee believes that Petitioner should have a deck and gazebo in keeping with what others in the community have, but expressed concern for the roots of the trees and wondered why the deck and gazebo could not be shifted to the left of the property. She pointed out that Petitioner's plan shows a gazebo with an individual pad, whereas most of the other gazebos in the community are set inside the decks.

7. Adrian McGibbon, president of the Strawberry Glenn Homeowners Association, stated that any construction proposals must be submitted for review by the association's architectural review committee. He stated that he learned from the management company that no proposal had been received from Petitioner.

8. Petitioner stated that at the time of the hearing before the Board, he had not submitted the request to the homeowners association for approval because he had been out of the country when Mr. Thomas filed the application for a variance. Petitioner later revised his request, submitting revised site and elevation plans with a slightly smaller 12' x 12' gazebo to be located within the required 17-foot side yard setback at the left rear corner of the proposed deck. See Exh. 22. Petitioner submitted the revised request to the homeowners association for approval.

9. Strawberry Glenn Homeowners Association approved Petitioner's revised request subject to two conditions: that the color of the decking, railing and risers be redwood and that a standard construction barrier be erected to protect a neighbor's (11302 Strawberry Glenn Lane) trees. See Exhs. 20-21.

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 subject lot being extremely visible in the neighborhood, a deck having been part of a model home for the community, the house facing the corner, the angle of the house in relation to the side property line, the property having been vacant for several years, the existing small size and deteriorating condition of the deck making it unusable, the proposed replacement deck extending beyond the required 17-foot setback, the proposed gazebo being located at a corner of the deck

and meeting the required setback, 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 a variance of 9 feet side yard width in order to construct a 22' x 26' deck and 12' x 12' gazebo on the property located at Lot 6, Block A, Strawberry Glenn Subdivision, being 11300 Strawberry Glenn Lane, Glenn Dale, Prince George's County, Maryland, be and is hereby APPROVED. Approval of the variance is contingent upon development in compliance with the approved revised site plan, Exhibit 22, and the approved revised elevation plans, Exhibits 23(a) & (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.