

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-120-08 Mario Bernal & Maria Mata

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: January 21, 2009 .

CERTIFICATE OF SERVICE

This is to certify that on February 11, 2009 , 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: Petitioners
Adjoining Property Owners
M-NCPPC, Permit Review Section
DER, Building Code Official, Permit & Review Div.
DER, Licenses & Inspections, Div

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

Petitioners: Mario Bernal & Maria Mata

Appeal No.: V-120-08

Subject Property: Parcel 20, Map 145, Grid F-1, being 13005 Old Indian Head Road, Brandywine,
Prince George's County, Maryland

Heard: January 7, 2009; Decided: January 21, 2009

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, Petitioners request that the Board approve variances from Section 27-442(i)(Table VIII) of the Zoning Ordinance, which prescribes that accessory buildings shall be set back 60 feet from the front street line and generally be located only in the rear yard. Petitioners propose to validate and obtain a building permit for a detached carport, bus shelter and shed. A variance of 36 feet front street line setback for one accessory building and a waiver of the rear yard location requirement for two accessory buildings are requested.

Evidence Presented

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

1. The property was created by deed in 1950, contains 3.0532 acres, is zoned R-R (Rural Residential) and is improved with a single-family dwelling, driveway, detached carport, shed and bus shelter. The property was developed in 2002. See Exhibits ("Exhs.") 2, 6 & 11.
2. The house is located almost 200 feet back from the street. See Exh. 2. The area on each side of and behind the house is heavily wooded. See Exh. 9.
3. Building Violation Notice No. 31481-08-00 was issued on September 23, 2008, by the Licenses & Inspections Division of the Department of Environmental Resources for construction of the shed, carport and bus shelter without a building permit and required that Petitioners either obtain a building permit for the construction or remove the structures. See Exh. 10.
4. Petitioners would like to retain the structures on the property, but variances are needed to validate the new 20' x 20' detached carport and 5' x 5' bus shelter before a permit may be issued. Since the bus shelter is located 24 feet from the front street line and in front of the dwelling and the carport is located to the left side the dwelling, a variance of 36 feet front street line setback for the bus shelter and a waiver of the rear yard location requirement for the carport and bus shelter were requested. See Exh. 2.
5. Petitioner Mario Bernal testified that he built the bus shelter, which is enclosed, to shelter his children from bad weather and protect them from unleashed dogs. Mr. Bernal further explained that

because the school bus driver will not wait for the children to walk to the street from the house and since they are not notified when the bus will be late, or does not show up at all, the children need a safe, dry, warm place to wait.

6. Mr. Bernal testified that the shed, which is located just beyond an existing driveway, existed when he moved to the property and he put the carport up over driveway area in front of the shed. He stated that he needs the carport so that he can protect his van and a truck from pine sap from the trees surrounding the house.

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 existing conditions on the property, the area on either side of and behind the house being heavily wooded, the driveway and shed existing when Petitioners purchased the property, the carport being erected over existing driveway area in front of the shed, the carport providing vehicles protection from tree sap, the house being located almost 200 feet back from the street, the bus shelter providing protection for the children from adverse weather conditions and unleashed dogs in the neighborhood while they wait for the school bus, 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. Johnson abstaining, that a variance of 36 feet front street line setback for one accessory building and a waiver of the rear yard location requirement for two accessory buildings in order to validate and obtain a building permit for a detached carport, bus shelter and shed on the property located at Parcel 20, Map 145, Grid F-1, being 13005 Old Indian Head Road, Brandywine, 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 the approved elevation plans, Exhibits 3, 4(a) and 5(e).

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.