

*NOTICE OF FINAL DECISION*


*OF BOARD OF APPEALS*

RE: Case No. V-149-07 Rosa Portillo & Oscar Caballero

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: December 12, 2007 .

**CERTIFICATE OF SERVICE**

This is to certify that on April 22, 2008 , the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

  
\_\_\_\_\_  
Anne F. Carter  
Administrator

cc: Petitioners  
Adjoining Property Owners  
Thomas Matzen, Deputy Director, DER  
DER, Building Code Official, Permit & Review Div.  
M-NCPPC, Permit Review Section  
Other Interested Parties

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

Petitioners: Rosa Portillo & Oscar Caballero

Appeal No.: V-149-07

Subject Property: Lot 76, Block H, Woodlawn Heights Subdivision, being 6722 Stanton Road,  
Hyattsville, Prince George's County, Maryland

Witnesses: Michael Burke, Adjoining property owner

Bernardine Johnson, Adjoining property owner

Pedro Perez, Adjoining property owner

Rosa Rogel, Adjoining property owner

Interpreter: Sylvia Bonilla

Heard: October 3, 2007; December 12, 2007

Decided: January 16, 2008

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(e)(Table IV) of the Zoning Ordinance, which prescribes that each lot shall have a front yard at least 25 feet in depth and two side yards totaling 17 feet, with no side yard less than 8 feet in width; and 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. Petitioners propose to validate existing conditions and obtain a building permit to complete construction of a two-story addition. Variances of 3.5 feet front yard depth, 3.5 feet left side yard width, 3 feet right side yard width and 11.7% net lot coverage are requested.

Evidence Presented

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

1. The property was subdivided in 1954, contains 7,887 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling, driveway and shed.
2. The lot is average in size for the neighborhood (Exhibit 4).
3. Although the Board approved a variance for one foot side yard width in 1976 for the subject property (Appeal No. 4578) for a previous owner to construct an attached carport on the right side of the house (Exhibit 15), it appears from the site plan submitted with the subject request that a larger side yard variance was needed and any carport that may have been constructed has subsequently either been enclosed or has had living space constructed above it (Exhibits 2 & 16).

4. Petitioners would like to complete construction of a 44' x 26' two-story addition on the rear of the existing dwelling. The new addition, which follows the lines of the existing dwelling, is located about 7 feet from the right side lot line, but the front right corner of the existing house is 5 feet from the right side lot line. A deck in the left side yard is only 5.5 feet from the left side lot line and the covered front porch is 22 feet from the front street line. Since development on the property prior to construction of the addition caused the allowed amount of lot coverage to be exceeded, the new addition causes that amount to be further exceeded. Variances of 3.5 feet front yard depth, 3.5 feet left side yard width, 3 feet right side yard width and 11.7% net lot coverage were requested in order to obtain a building permit to complete construction of the addition.

5. On August 16, 2007, the Department of Environmental Resources revoked Permit No. 11441-2005 after the Maryland-National Capital Park and Planning Commission ("M-NCPPC") informed Petitioners that the permit was issued in error because approval was erroneously granted based on the submitted site plan which indicated an overage of lot coverage and probable setback deficiencies (Exhibit 6).

6. Petitioner Rosa Portillo testified that a building permit for the addition was obtained in 2005, but the Department of Environmental Resources revoked the permit stating that it was issued in error (Exhibit 6). Petitioner testified that construction was stopped in August 2007 after a County inspector instructed her to discontinue construction. She further stated that they have only construction materials in the back yard and they keep the yard as clean as possible.

7. Ms. Portillo further testified that they purchased the property in 1997 and the carport, with a room above, existed at that time. She explained that the house is very small and additional living space is needed. She stated that the proposed addition would make the house be taller by one floor plus the attic.

8. Michael Burke, an owner of adjoining property next door (Lot 77), testified that Petitioners' property has been filled with trash in the back yard for two years and has resulted in the infestation of rodents in his house. He submitted photographs of the condition of the subject property (Exhibit 14(A-L)). He testified that there are only a few houses with raised attics in the area and there are no other houses as tall or large as Petitioners' house with the addition.

9. Bernardine Johnson, owner of adjoining property (Lot 8) to the rear, opposed the request. She testified that the size of Petitioners' house is too large, bigger than any other house in the neighborhood.

10. Pedro Perez and Rosa Rogel, owners of adjoining property (Lot 9) to the rear, supported Petitioners' request.

11. The Subdivision Section of the M-NCPPC reviewed the request with regard to the description of the property contained on the record plat of subdivision for Woodlawn Heights (WWW 24 @ 42 – Lot 76, Block H). The Subdivision Section stated that the requested variance is not in conflict with the subject record plat because the proposed building development is located behind the existing front yard building restriction line shown on the plat along Stanton Road.

12. The site plan submitted with Petitioners' variance application (Exhibit 2) was revised to reflect various overhangs that became evident during review of Petitioners' elevation plans (Exhibit 3). See revised site plan, Exhibit 16.

#### 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 do not comply with the applicable standards set forth in Section 27-230, more specifically:

1. The Board finds that Petitioners' lot has no exceptional topography or other conditions peculiar to the property. The Board further finds that the lot is regular in its size and no evidence of any extraordinary situation or uniqueness of the lot was presented. See, Exhibits 2, 3 & 16.
2. Because the conditions of the property are ordinary, the Board does not deem it necessary to consider the other requirements of Section 27-230.
3. The Board notes that Petitioners' revised site plan (Exhibit 16) does not show a second story over the existing house, only that the proposed addition would be two stories. The Board further notes that the proposed enlargement of the house appears totally out of character with the rest of the neighborhood.
4. Petitioners are afforded the option of pursuing validation through the permit issued in error process. See Exhibit 6, attached Gallagher Memorandum.

BE IT THEREFORE RESOLVED, unanimously, that variances of 3.5 feet front yard depth, 3.5 feet left side yard width, 3 feet right side yard width and 11.7% net lot coverage in order to validate existing conditions and obtain a building permit to complete construction of a two-story addition on the property located at Lot 76, Block H, Woodlawn Heights Subdivision, being 6722 Stanton Road, Hyattsville, Prince George's County, Maryland, be and are hereby DENIED.

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 27-234 of the Prince George's County Code states:

If the Board denies an appeal involving a variance, no further appeal covering the same specific subject on the same property shall be filed within the following twelve (12) month period. If the second appeal is also denied, no other subsequent appeals covering the same specific subject on the same property shall be filed within each eighteen (18) month period following the respective denial.