

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-27-11 Monique Davis

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: June 15, 2011.

CERTIFICATE OF SERVICE

This is to certify that on July 6, 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/Building Code Official, Permits & Review Group

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

Petitioner: Monique Davis

Appeal No.: V-27-11

Subject Property: Lot 23, Block 28, Hollaway Estates Subdivision, being 9701 Penguin Place, Upper Marlboro, Prince George's County, Maryland

Witness: Jeffrey Robinson

Heard: May 18, 2011; Decided: June 15, 2011

Board Members Present and Voting: Bobbie S. Mack, Chairperson
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 27-420(a) of the Zoning Ordinance, which prescribes that on corner lots consisting of one (1) acre or less, fences in the front yard or side yard shall not be more than four (4) feet high without the approval of a variance. Petitioner proposes to construct a 6-foot white vinyl fence. A waiver of the fence height requirement for a fence in the front and side yards of a corner lot is requested.

Evidence Presented

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

1. The property was subdivided in 1967, contains 10,888 square feet, is zoned R-R (Rural Residential) and is improved with a single-family dwelling and driveway. See Exhibits ("Exhs.") 2, 4, 7-8. The property was improved with a single-family dwelling in 2001. See Exh. 8.

2. The property is slightly irregular in shape and is a corner lot with the house facing the legal side street. See Exh. 2.

3. Petitioner would like to construct a 6-foot white vinyl fence about 1 foot inside of the front, side and rear lot lines. The proposed fence would extend from approximately the middle of the side walls of the house to the front street line (Toucan Drive) and rear lot line, along the front and rear property lines to join the side lot line, and the entire length of the side lot line. Since the property is a corner lot and the fence is located in the front and side yards, in violation of Section 27-420(a), a waiver of the fence height requirement for a fence in the front and side yards of a corner lot was requested. See Exhs. 1-2, 11.

4. Jeffrey Robinson, Petitioner's husband, testified that they would like to erect the proposed fence to curtail trespassing and littering, to safeguard their pet dog and to have a fence in place for a future pool. He stated that they tried putting small trees at the point of entry at the corner, but that just caused the problem area to move over to the edge of the trees. See Exh. 17(B).

5. Mr. Robinson testified that the fence would extend to within approximately one foot of the sidewalk on Toucan Drive.

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

1. The Board finds that Petitioner's lot has no exceptional topography or other conditions peculiar to the property. The Board further finds that the lot is essentially regular in its size and shape and no evidence of any extraordinary situation or uniqueness of the lot was presented. See Exhibits 2,4, 9(A)-(E).
2. Because the conditions of the property are ordinary, the Board does not deem it necessary to consider the other legal requirements of Section 27-230.
3. The Board notes, however, its concern that the proposed fence would extend within one foot of the sidewalk and emergency entry into the property may be hindered if the proposed 6-foot fence is located so close to the corner. The Board proposed that dense shrubs may help to alleviate Petitioner's concern with trespassing and litter.

BE IT THEREFORE RESOLVED, by majority vote, Mr. Scott abstaining, that a waiver of the fence height requirement for a fence in the front and side yards of a corner lot in order to construct a 6-foot white vinyl fence on the property located at Lot 23, Block 28, Hollaway Estates Subdivision, being 9701 Penguin Place, Upper Marlboro, Prince George's County, Maryland, be and is 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.