

*NOTICE OF FINAL DECISION*

*OF BOARD OF APPEALS*

RE: Case No. V-33-10 Rosa Portillo & Oscar Cabellero, Jr.

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: October 6, 2010.

**CERTIFICATE OF SERVICE**

This is to certify that on October 20, 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: Petitioners  
Adjoining Property Owners  
M-NCPPC, Permit Review Section  
DER, Building Code Official, Permits & Review Group  
Thomas Matzen, Deputy Director, DER  
Clerk of the Council (ERR-208)  
Zoning Hearing Examiner (ERR-208)

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

Petitioners: Rosa Portillo & Oscar Caballero, Jr.

Appeal No.: V-33-10

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

Counsel for Petitioners: Traci R. Scudder, Esquire

Witnesses: Edmund Kalie, Department of Environmental Resources ("DER"), Licenses &  
Inspections Group

Michael Burke, Neighbor

Sibyl Peterson, Neighbor

Dorothy Ciendra, Neighbor

Evelyn Spencer, Neighbor

Heard: August 4, 2010

Decided: October 6, 2010

Board Members Present and Voting: Bobbie S. Mack, Chairperson  
Albert C. Scott, Vice Chairman

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 a side yard at least 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 4.5 feet front yard depth, 2.9 feet side yard width and 10.9% 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 7,888 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling and driveway. See Exhibits ("Exhs.") 5, 10-11, 36. The property was improved with a single-family dwelling in 1956. See Exh. 10.
2. Counsel for Petitioners explained that in December 2005, Petitioners determined that they needed additional space in their home, applied for a building permit from the County and the plans they submitted with their application were approved. Counsel explained that significant construction towards completion of Petitioners' addition then took place. In 2007, after the Maryland-National Capital Park and Planning Commission ("M-NCPPC") determined that the building permit issued to Petitioners in 2005 (11441-2005-RGU) to construct a 26' x 44' two-story addition had been erroneously issued, DER informed Petitioners that the permit was revoked and cited Petitioners with a correction notice to stop work until their site, floor,

framing and other plans were revised and all necessary variances were obtained. See Exhs. 2 (Atts. 1-5), 9 (p. 2).

3. In September 2007, without being represented by counsel, Petitioners filed an application with the Board requesting setback and lot coverage variances to validate and obtain a new building permit to complete the addition. See Exhs. 2, 8-9. In April 2008, the Board denied all of the variances requested, suggesting that Petitioners pursue the process available for validation of a building permit issued in error. See Exh. 2 (Att. 6), 8.

4. The County filed injunctive relief in the District Court to compel Petitioners to comply with the County Code and, in July 2008, Petitioners entered into a Consent Order agreeing to either obtain a valid building permit for the subject property or remove all structures built without the required permit, all within 120 days. See Exhs. 2 (Att. 8), 9 (p. 3). Within the required time period, Petitioners retained current counsel and filed an application with the Zoning Hearing Examiner (the "ZHE") for validation of a building permit issued in error ("ERR-208"). See Exhs. 2, 9 (p. 3). In March 2009, the ZHE recommended that the Prince George's County Council, sitting as the District Council ("District Council"), validate the building permit as amended in accordance with certain conditions. See Exh. 9.

5. On May 18, 2010, the District Council enacted Zoning Ordinance No. 9-2009<sup>1/</sup> in ERR-208, validating Petitioners' building permit subject to the ZHE's conditions, which include removal of certain structures, modification of others, limitation of the slope of the roof, modification of the building plans in accordance with the conditions, DER approval of modified building plan and approval of the necessary variances. See Exh. 2 (Att. 7).

6. On May 4, 2010, Petitioners filed an application with the Board requesting certain variances in order to complete the construction of a 44.9' x 26.7' two-story addition on the rear of the existing dwelling. See Exh. 36. Since the addition is located approximately 7 feet from the right side lot line, the front right corner of the "original" house is 5.1 feet from the right side lot line, and the covered front porch is 20.5 feet from the front street line, variances of 2.9 feet side yard width and 4.5 feet front yard depth were requested to validate existing conditions. Since development of the property prior to construction of the addition had already caused the allowed amount of lot coverage to be exceeded and the new addition causes that amount to be further exceeded, a variance of 10.9% net lot coverage was also requested to validate existing conditions. See Exh. 27.

7. Counsel for Petitioners argued that Petitioners are suffering exceptional hardship for a number of reasons. She explained that a prior variance that was approved was not large enough. See Exh. 31. She pointed out that the County missed identifying existing problems on the property, mistakenly approved Petitioners' building plans, and Petitioners went forward with construction based on those plans. Counsel further stated that the rear portion of the house has been open without a roof, protected by only a tarp, since construction was stopped in 2007.

8. Counsel further explained that to address concerns by any neighbors that the house was too tall, at the request of the ZHE, Petitioners hired a surveyor and dimensions of the house were confirmed. See Exhs. 36-37. Counsel stated that despite the height of Petitioners' structure complying with the current height regulation, the ZHE recommended imposing nine conditions on approval of ERR-208, one of which requires lowering the slope of the roof and another which requires that Petitioners obtain variances from the Board. See Exh. 9, pp. 5-6. Counsel reiterated that Petitioners simply want to bring the property into compliance by adhering to the ZHE's conditions, but they cannot do so without obtaining the requested variances.

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<sup>1/</sup>The first sentence of Zoning Ordinance No. 9-2009 erroneously refers to validation of "an apartment license", rather than a building permit, issued in error. The ordinance does, however, clearly validate the building permit issued in error (with conditions). Exh. 2 (Att. 7).

9. Michael Burke (adjoining property), Sibyl Peterson (see Exh. 30), Dorothy Ciendra and Evelyn Spencer, all neighbors who all live on Stanton Road within a block of Petitioners' property, expressed their opinion that the existing structure is out of character with the neighborhood and their opposition to allowing the existing structure to remain as is on the property.

#### 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 need for additional living space; an insufficient variance having been approved prior to Petitioners' ownership of the property; the County having missed identifying already existing problems on the property and mistakenly approving Petitioners' building plans for an addition; construction having gone forward based on approved plans until the County ordered construction stopped in 2007; the ZHE having recommended approval and the District Council approving ERR-208 to validate Petitioners' building permit as issued in error subject to conditions that include removal of certain structures, modification of others, limitation of the slope of the roof and modification of the building plans; Petitioners being unable to bring the property into compliance without obtaining the requested variances; 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 absent, that variances of 4.5 feet front yard depth, 2.9 feet side yard width and 10.9% net lot coverage in order to validate existing conditions and obtain a building permit to complete construction of a 44.9' x 26.7' 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 APPROVED. Approval of the variances is contingent upon development in conformance with the approved revised site plan, Exhibit 36, the approved revised elevation plan, Exhibit 37, and Conditions 1 through 9 listed in the final decision of the District Council in Case No. ERR-208 (Zoning Ordinance No. 9-2009).

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.