

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-41-09 Terrence & Erika Kelley

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: July 22, 2009.

CERTIFICATE OF SERVICE

This is to certify that on July 30, 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.

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

Petitioners: Terrence & Erika Kelley

Appeal No.: V-41-09

Subject Property: Lot 39, Block A, Cross Creek Club Subdivision, being 13109 Crossview Court,
Beltsville, Prince George's County, Maryland

Heard and Decided: July 22, 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 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, Petitioners request 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 rear yard at least 20 feet in depth/width. Petitioners propose to construct a deck. A variance of 11 feet rear yard depth/width is requested.

Evidence Presented

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

1. The property was subdivided in 2005, contains 7,446 square feet, is zoned R-R (Rural Residential) and is improved with a single-family dwelling and driveway. The property is located in an approved Recreational Community Development subdivision. The rear yard behind the house is quite shallow. See Exhibits ("Exhs.") 2, 4 & 7.
2. Petitioners would like to construct an 18' x 22' deck on the rear of the existing dwelling. Because the deck would be located 9 feet from the rear lot line, a variance of 11 feet rear yard depth/width was requested.
3. Petitioner Erika Kelley testified that their homebuilder told them he did not build decks. She explained that there is an existing door, now unusable because it is so far off the ground, that will be used to access the deck. She stated that a number of her neighbors hired the same builder to put the same basic deck on their homes.
4. Ms. Kelley further testified that they would like to have a deck on which to put some seating and an umbrella as well as potted plants and vegetables. She explained that there are many deer in the neighborhood and they eat the plants in their yard. She stated that their property backs up to a wooded area which backs up to a golf course fairway and then more wooded area. See Exhs. 5(A)&(C) & 8.
6. The Cross Creek Club Homeowners Association approved the request. See Exh. 6.
7. The Subdivision Section of the Maryland-National Capital Park and Planning Commission reviewed the request with regard to the description of the property contained on the record plat of

subdivision for Cross Creek Club (REP 206 @ 17 – Lot 39, Block A). The Subdivision Section stated that the proposed building development and requested variance are not in conflict with the record plat or the Plan of Development as approved under Detailed Site Plan DSP-03013. See Exh. 15.

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 shallowness of the rear yard, there being a problem with deer eating vegetation in the yard, the proposed deck providing an additional safety exit from the house, 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 11 feet rear yard depth/width in order to construct a deck on the property located at Lot 39, Block A, Cross Creek Club Subdivision, being 13109 Crossview Court, Beltsville, Prince George's County, Maryland, be and is hereby APPROVED. Approval of the variance is contingent upon development in compliance with the approved site plan, Exhibit 2, and the approved elevation plans, Exhibit 3(A)-(D).

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.