

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-7-09 Roger & Helen Wirin

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: April 1, 2009.

CERTIFICATE OF SERVICE

This is to certify that on April 22, 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.
Other Interested Parties

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

Petitioners: Roger & Helen Wirin

Appeal No.: V-7-09

Subject Property: Lot 25, Block 4, Brock Hall Subdivision, being 14711 Cambridge Drive, Upper Marlboro, Prince George's County, Maryland

Counsel for Petitioners: R. Calvert Stuart, Esq.

Witnesses: Robert Meshako, adjoining property owner

Melina Meshako, adjoining property owner

Heard and Decided: April 1, 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(i)(Table VIII) of the Zoning Ordinance, which prescribes that accessory buildings shall be set back 2 feet from any side lot line. Petitioners propose to validate an existing craft cabana in order to obtain a building permit to construct a deck and screened room. A variance of 2 feet side lot line setback for an accessory building is requested.

Evidence Presented

The testimony and record evidence presented to the Board for its consideration included, but was not limited to:

1. The property was subdivided in 1955, contains 1.5854 acres, is zoned R-E (Residential-Estate) and is improved with a single-family dwelling, driveway, detached carport, in-ground swimming pool, shed and one-story brick/frame cabana with attached deck. The existing house was built in 1958. See Exhibits ("Exhs.") 3, 4, 7 & 18.

2. The property is a corner lot (Lot 25) with the existing house facing the corner. The existing driveway accesses both the front street (Cambridge Drive) and the side street (Willoughby Drive), and runs behind the house. A carport is located to one side of the driveway approximately 45 feet from Willoughby Drive. An in-ground pool, cabana, deck and shed are located behind the house toward the southwest corner of the property with the roof overhang of the cabana encroaching slightly over the side property line onto the adjoining property (Lot 24). See Exhs. 3 & 18.

3. In 2003, Petitioners purchased the subject property. See Exh. 7. In September 2008, the owners of adjoining Lot 24, Robert and Melina Meshako, recorded an easement for existing encroachments by Petitioners but requiring Petitioners to remove or relocate any encroaching structure to

meet setback requirements prior to Petitioners' marketing, sale, and conveyance of their property. See Exhs. 5 & 14.

4. Petitioners would like to construct a 12' x 24' deck and 12' x 18' screened room over a portion of the new deck. The existing brick/frame cabana (approximately 15' x 20'), which extends to the side lot line and encroaches .7 foot onto the adjoining property, must be validated, however, before a permit can be obtained for the deck and screened room. A variance of 2 feet side lot line setback for an accessory building was requested to validate the location of the cabana on the subject property.

5. Counsel for Petitioners explained that all of the structures now on the subject property existed when Petitioners purchased the property except for the shed. He stated that a court action involving Petitioners and the Mushenkos resulted in a settlement being reached and Petitioners removing the portion of the existing deck that encroached onto Lot 24 and any portion located within 2 feet of the side property line, as well as the sunroom that existed over a portion of the deck. The terms and conditions of the easement stated that the Mushenkos agreed to an easement for the cabana overhang for the duration of Petitioners' ownership of the subject property. Petitioners would like to rebuild the deck in a legal location, but will not be able to obtain a permit unless validation of the location of the cabana up to the property line is approved.

6. Robert and Melina Meshako acknowledged the terms of the easement agreement, but oppose the granting of any variance. They expressed apprehension that the variance will run with the land rather than who owns the land, creating a loophole for the current encroachment to remain after Petitioners are no longer the owners, contrary to the easement agreement. See Exhs. 5 & 14.

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 the property being a corner lot with the house facing the corner, the existing conditions on the property, the existing driveway bisecting the property, the cabana being located directly behind the house, Petitioners having removed all encroaching structures except the cabana, a recorded easement stipulating that the cabana will be removed or moved to meet the legally-required setback (two feet) before the subject property is transferred to different ownership, 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, unanimously, that a variance of 2 feet side lot line setback for an accessory building in order to validate an existing craft cabana in order to obtain a building permit to

construct a deck and screened room on the property located at Lot 25, Block 4, Brock Hall Subdivision, being 14711 Cambridge Drive, Upper Marlboro, Prince George's County, Maryland, be and is hereby APPROVED. Approval of the variance is contingent upon development in compliance with the approved revised site plan, Exhibit 18.

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.