

*NOTICE OF FINAL DECISION*

*OF BOARD OF APPEALS*

RE: Case No. V-71-09 Kazuo & Kathleen Tsubata

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 7, 2009.

**CERTIFICATE OF SERVICE**

This is to certify that on November 12, 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, Permits & Review Div.  
West Lanham Hills Citizens Association

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

Petitioners: Kazuo & Kathleen Tsubata

Appeal No.: V-71-09

Subject Property: Lot 16, Block 108, West Lanham Hills Subdivision, being 7752 Decatur Road,  
Hyattsville, Prince George's County, Maryland

Heard and Decided: October 7, 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 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(i)(Table VIII), which prescribes that accessory buildings shall be set back 2 feet from any side or rear lot line. Petitioners propose to validate existing conditions and construct a roof over an existing deck. Variances of 1 foot front yard depth, 8 feet side yard width and 1 foot side and rear lot line setbacks for an existing shed are requested.

Evidence Presented

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

1. The property was subdivided in 1940, contains 7,287 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling and shed. The property was developed in 1939. See Exhibits ("Exhs.") 3, 5 & 7.

2. The property is a long and narrow lot (137.5 feet long and only 53 feet wide) with a severe upward slope behind the house. There is only enough usable rear yard for a walkway of decking on the rear of the dwelling. See Exhs. 3, 5 & 6.

3. Petitioners would like to construct a roof over a 10' x 25.5' deck on the side of the dwelling. The proposed roof would overhang the deck by one foot and be located 5.3 feet from the side lot line. A lower adjoining deck that is slightly above grade extends to the side lot line. A variance of 8 feet side yard width was requested to validate both decks and obtain a building permit for the proposed roof. See Exhs. 2, 3 & 9.

4. Other existing conditions on the property must also be validated to obtain the building permit. The covered front porch is located 24 feet from the front street line and a shed in the rear yard is located 1 foot from the side and rear lot lines, requiring variances of 1 foot front yard depth for the porch and 1 foot side and rear lot line setbacks for the shed, respectively. See Exhs. 3 & 9.

5. Petitioner Kathleen Tsubata testified that the proposed roof would protect the house's foundation from the affects of water. She also explained that her street was widened and sidewalks added in 1987-88. She stated that the covered deck would provide a point of exit from the second floor bedroom windows in the event of an emergency. See Exh. 2.

6. Ms. Tsubata testified that her neighbors are supportive of her request and that the West Lanham Hills Citizens Association (which has offered no comments) is aware of the proposed development.

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 narrowness of the property, the severely sloping topography of the rear yard, there being only enough usable rear yard for a walkway of decking on the rear of the dwelling, the proposed roof providing a point of exit from second floor bedroom windows in the event of an emergency, the proposed roof helping to protect the deck structure and house foundation from the adverse affects of runoff water, 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 variances of 1 foot front yard depth, 8 feet side yard width and 1 foot side and rear lot line setbacks for an existing shed in order to validate existing conditions and construct a roof over an existing 25.5' x 10' deck on the property located at Lot 16, Block 108, West Lanham Hills Subdivision, being 7752 Decatur Road, Hyattsville, Prince George's County, Maryland, be and are hereby APPROVED. Approval of the variances is contingent upon development in compliance with the approved site plan, Exhibit 3, and the approved elevation plan, Exhibit 4.

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.