

*NOTICE OF FINAL DECISION*  
*OF BOARD OF APPEALS*

RE: Case No. V-9-10 Cesar & Sulma Escobar

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 21, 2010.

**CERTIFICATE OF SERVICE**

This is to certify that on June 14, 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 Div.  
DER, Licenses & Inspections Div.  
Municipality  
Ernesto Luna, Language Translation Services

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

Petitioners: Cesar & Sulma Escobar

Appeal No.: V-9-10

Subject Property: Lot 1, Block J, Queens Chapel Manor Subdivision, being 5701 31st Avenue,  
Hyattsville, Prince George's County, Maryland

Municipality: City of Hyattsville

Interpreter (Spanish): Ernesto Luna

Heard: March 24, 2010; Decided: April 21, 2010

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 (the "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; 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; and Section 27-442(i)(Table VIII) which prescribes that accessory buildings shall be set back 60 feet from the front street line and generally be located only in the rear yard. Petitioners propose to validate existing conditions and obtain a building permit to complete construction of a shed. Variances of 3.6 feet front yard depth, 2.7% net lot coverage and 34.97 feet front street line setback and a waiver of the rear yard location requirement for an accessory building are requested.

Evidence Presented

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

1. The property was subdivided in 1940, contains 6,514 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling and driveway. The property is located in the Gateway Arts District Development District Overlay Zone within the municipal limits of the City of Hyattsville (the "City"). The property was developed with a single-family dwelling in 1943. See Exhibits ("Exhs.") 1-2, 4, 10.
2. The property is a corner lot with the house facing the legal front street (31st Avenue). An existing driveway in the rear yard accesses the legal side street (Lancer Drive). See Exhs. 2, 11.
3. On October 23, 2009, the City issued a Warning Notice to Petitioners of a zoning violation, requiring that Petitioners immediately obtain a County building permit for a structure built on the side of their home. See Exh. 7. On October 26, 2009, Petitioners applied for a County building permit. See Exh. 8.

4. Petitioners would like to complete construction of a 7.84' x 31.35' shed, constructed along the side wall of the existing dwelling, but variances must first be obtained to validate the following existing conditions before a building permit may be issued. Because the shed is located in the side yard rather than the rear yard, is set back only 25.03 feet from the front street line, rather than the required 60 feet, and causes the allowed 30% net lot coverage to be exceeded, variances of 2.7% net lot coverage and 34.97 feet front street line setback and a waiver of the rear yard location requirement for an accessory building were requested. In addition, since the existing 6.35' x 3.60' covered front porch on the house is located 21.4 feet from the front street line, a variance of 3.60 feet front yard depth was also requested to validate that existing condition. See Exhs. 2, 12-13.

5. Petitioner Cesar Escobar testified that the shed of a prior owner was located in the far rear yard corner of the property and was knocked down when a tree fell on it. See Exh. 27. He stated that he wanted to build a new shed closer to the house for security reasons and where trees could not fall on it.

6. Mr. Escobar further testified that they have lived at the property for nearly 5 years and was informed that he needed to build some sort of shed in which to store material or rent storage space. See Exhs. 5-7. He never spoke to the City or the County about the new shed's location.

7. The City did not object to granting a front yard setback variance to validate the front of the house, but opposed the granting of variances for the accessory building in the side yard. See Exhs. 20, 29.

8. 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 Queens Chapel Manor, Section 1 (BB 8 @ 6 – Lot 1, Block J). The Subdivision Section stated that the requested variance is not in conflict with the subject record plat because no new development is proposed that would violate the existing 25-foot building restriction line shown on the plat along 31st Avenue and Lancer Drive (aka Longfellow Street on the record plat). See Exh. 19.

#### 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

1. Without first obtaining a building permit, Petitioners began construction of a shed in the side yard which does not meet the 60-foot setback requirement from the front street line or the rear yard location requirement that it be located in the legal rear yard, and construction of the shed caused net lot coverage on the property to exceed the maximum 30% allowed.

2. The Board finds that Petitioner's lot has no exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition as it relates to the construction of the shed.

See, Exhibits 2, 4, 9, 11. As such, the Board makes no further formal determinations related to the other statutory requirements of Section 27-230 and Petitioners' request related to the shed must be denied.

3. The Board notes that any hardship related to not permitting the completion of construction of the shed is self-imposed since Petitioners began the construction without a building permit. The Board notes that adequate open space (free of tree danger) in the rear yard exists for a secured or locked storage shed to be erected without the need for a variance. See Exhs. 2, 9(I).

4. The Board further finds, however, that because the house was built many years ago a special situation or condition exists and granting the relief requested with regard to validation of pre-existing conditions of the dwelling is in character with the neighborhood, would not substantially impair the intent, purpose and integrity of the General Plan or Master Plan, and denying that portion of Petitioners' request would result in a peculiar and unusual practical difficulty upon the owner of the property.

BE IT THEREFORE RESOLVED, by majority vote, Mr. Scott absent, that a variance of 2.7% net lot coverage, and a variance of 34.97 feet front street line setback and a waiver of the rear yard location requirement for an accessory building, to complete construction of the partially-constructed 7.84' x 31.35' shed on the property located at Lot 1, Block J, Queens Chapel Manor Subdivision, being 5701 31st Avenue, Hyattsville, Prince George's County, Maryland, be and are hereby DENIED; and

BE IT FURTHER RESOLVED, by majority vote, Mr. Scott absent, that a variance of 3.6 feet front yard depth in order to validate the location of the 3.6' x 6.35' covered front porch on the property located at Lot 1, Block J, Queens Chapel Manor Subdivision, being 5701 31st Avenue, Hyattsville, Prince George's County, Maryland, be and is hereby APPROVED.

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.