

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-99-10 Zenith Investing, LLC

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: January 5, 2011.

CERTIFICATE OF SERVICE

This is to certify that on January 18, 2011, 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: Petitioner
Adjoining Property Owners
M-NCPPC, Permit Review Section
DER, Building Code Official, Permits & Review Group

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

Petitioner: Zenith Investing, LLC

Appeal No.: V-99-10

Subject Property: Lots 24 thru 27, Block 10, Greater Capitol Heights Subdivision, being 800 Opus Avenue,
Capitol Heights, Prince George's County, Maryland

Counsel for Petitioner: Arthur J. Horne, Jr., Esq.

Witness: Yusara Alvarez, Agent, Zenith Investments, LLC

Heard and Decided: January 5, 2011

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, Petitioner requests 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 side yard at least 8 feet in width. Petitioner proposes to validate existing conditions in order to obtain a building permit to complete construction of a two-story addition. A variance of 5 feet side yard width is requested.

Evidence Presented

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

1. The subject property was subdivided in 1909, contains 8,683 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling, detached garage and driveway. See Exhibits ("Exhs.") 3, 9-10, 23. The property was developed in 1929. See Exhs. 9, 22.

2. The property consists of four zoning lots, three of which are rectangular and the remaining one where most of the dwelling sits is almost triangular. See Exhs. 2, 3, 23. The property contains sloping topography on the left side and is located downhill from the adjoining property to the north, necessitating a retaining wall on that property close to the common side property line. See Exhs. 4(A)-(P), 11(F), 23. A vacant lot adjoins the subject property to the south. See Exhs. 11(A)-(E).

3. Petitioner would like to complete construction of a 28' x 30.8'/13.7' x 3.9' second-floor addition, but a variance is needed to obtain a building permit. Since the dwelling is located 3 feet from the left side lot line, a variance of 5 feet side yard width was requested. See Exhs. 6, 13, 23.

4. Yusara Alvarez, Petitioner's agent, testified that she buys and develops properties for resale and that Petitioner purchased the subject property in August 2010. See Exhs. 5, 5a. She stated that the previous owner must have constructed the existing second-story addition after there was a fire, but never finished the work. She explained that the construction of the upstairs addition does not change the structural footprint of the house. See Exhs. 6, 23. She further explained that no improvements have been done on the house since Petitioner purchased the property. She stated that Petitioner intends on completing the interior of the house,

but must obtain a building permit and other permits to do the electrical, plumbing and other work. See Exhs. 4(T)-(AA). She opined that the improvements that would be made to the interior and exterior of the house will be in conformance with the design and character of existing homes in the neighborhood. She believes that it would be a hardship if the variance were denied because it would be impossible to meet the building code requirements for the R-55 Zone without a variance and the original part of the house built in 1929 would have to be torn down if the partially-completed addition had to be removed.

5. Counsel for Petitioner presented aerial photographs (Exhs. 20(A), 21(A) to show the proximity of surrounding houses to each other to support Petitioner's contention that approval of the requested variance for the subject property would not be inconsistent with other lots in the general neighborhood.

6. Counsel asserted that approval of the request will not substantially impair the intent, purpose or integrity of the General Plan or Master Plan. He explained that the property is located within the General Plan's Developed Tier and the variance request is consistent with the General Plan's goals of strengthening existing neighborhoods and encouraging appropriate infill (new remodeling and structure that will be a vast improvement that will help enhance and strengthen local property values and perhaps stimulate other housing reinvestment and infill) and Developed Tier Policy 1, which encourages flexible development standards and building requirements when reusing or rehabilitating older buildings, encourages revisions to the Zoning Code to accommodate development patterns in older communities and remove obstacles to quality infill/redevelopment, and encourages infill/redevelopment that contribute to the character and quality of the community. Counsel further explained that the variance is also consistent with the vision of the Master Plan (Subregion 4), which encourages development on underutilized and vacant lots that complements the existing urban/neighborhood scale and character, and consistent with the Master Plan's housing stabilization and neighborhood conservation goals to improve housing stock that has outstanding code violations (new redevelopment will be in accordance with all building codes) and ensure infill is compatible with surrounding properties (by validating building footprint, consistent with General Plan policy encouraging flexible standards and requirements). See Exh. 22.

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 subdivided in 1909, the property being developed in 1929, the property being located in an older community, the unusual shape of the lot on which most of the dwelling sits, the sloping topography of the property, the adjoining property (north side) sitting uphill from the subject property, the existing dwelling being located only 3 feet from the side property line, the dwelling being damaged in a fire and requiring rehabilitation, the second-story addition not altering the structural footprint of the dwelling, rehabilitation of the dwelling improving the property and enhancing the neighborhood, redevelopment of the property requiring current building code compliance, redevelopment of the property

being consistent with 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 5 feet side yard width in order to validate existing conditions in order to obtain a building permit to complete construction of a 28' x 30.8'/13.7' x 3.9' two-story addition on the property located at Lots 24 thru 27, Block 10, Greater Capitol Heights Subdivision, being 800 Opus Avenue, Capitol Heights, 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 23.

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.