

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-53-15 Hanok Lakew

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 14, 2015.

CERTIFICATE OF SERVICE

This is to certify that on January 19, 2015, 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
DPIE/Building Code Official, Permitting
DPIE/Inspections Division
Office of Law
Other Interested Parties

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

Petitioner: Hanok Lakew

Appeal No.: V-53-15

Subject Property: Lot 100, Block B, Chillum Manor Subdivision, being 6408 Riggs Road, Hyattsville,
Prince George's County, Maryland

Witnesses: John Morgan III, neighbor

Keith Morgan, brother of John Morgan III

Clarence Shaw, President, Chillum-Ray Citizens Association

Heard: August 19, 2015; September 30, 2015

Decided: October 14, 2015

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, Petitioner requests that the Board approve variances from Section 27-420(a) of the Zoning Ordinance, which prescribes that fences and walls more than 6 feet high shall not be located in any required yard, and shall meet the setback requirements for main buildings, and that on corner lots consisting of one (1) acre or less, fences and walls in the side yard shall not be more than four (4) feet high without the approval of a variance. Petitioner proposes to validate existing conditions and obtain a building permit for an 8.2-foot wooden privacy fence, a wall up to 4.9 feet in height topped with a 6-foot white vinyl fence, columns 6.3 and 6.4 feet in height, a brick wall up to 4.4 feet in height, a 3.6-foot wall topped with a 4-foot chain link fence and a 2.1-foot brick wall topped with a 7-foot wooden privacy fence. Variances of 8 feet side yard width for walls/fences, 25 feet side street yard depth for a wall/fence and columns, 20 feet rear yard depth/width for a wall/fence, and waivers of the location and height requirements for walls/fences in the side yard abutting a street on a corner lot are requested.

Evidence Presented

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

1. The property was subdivided in 1925, contains 10,935 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling, driveway, shed and fences/walls. Exhibits ("Exhs.") 2, 4, 11 and 12. The dwelling was built in 1948. Exhs. 11 and 12.
2. The property is a corner lot, with the house facing the legal front street. Exh. 2.
3. The Department of Environmental Resources issued Building Violation Notice 239-12-01, dated August 8, 2012, requiring that Petitioner obtain a building permit for work being done to the left side of the carport or remove the work. Exh. 21. The Department of Permitting, Inspections and Enforcement, Inspections Division, issued Building Violation Notice No. 4580-14-01, dated March 12, 2014, requiring that

Petitioner obtain a building permit for the fence over 4 feet on the left side of the house or remove the fence. Exh. 7.

4. In 1998, the Board denied a side street setback variance (Appeal No. V-27-98) to validate and obtain a building permit for a carport. Exh. 8. The Board approved a side street setback variance in 2003 (Appeal No. V-32-03) to construct a 16' x 24' addition. Exh. 9.

5. Petitioner has requested variances to validate the existing conditions on the property. Variances are needed to validate and obtain a building permit for an 8.2-foot wooden privacy fence on the side lot line, a wall up to 4.9 feet in height topped with a 6-foot white vinyl fence next to a 45-foot -long portion of the driveway parallel to the side street, Red Top Road, columns 6.3 and 6.4 feet in height, next to the driveway, a brick wall up to 4.4 feet in height which extends from the side of the house to the street line at Red Top Road, a 3.6 foot wall topped with a 4-foot chain link fence along the rear lot line, and a 2.1-foot brick wall topped with a 7-foot wooden privacy fence extending from the side of the house to about 3 feet from the side lot line. Exh. 2. Since fences/walls over 6 feet in height must meet main structure setbacks and fences/walls over 4 feet in height on corner lots are not permitted in the front yard or side yard abutting a street, 8 feet side yard width for a fence, 25 feet side street yard depth for a wall and fence, 20 feet rear yard depth/width for a wall and fence, and waivers of the fence location and height requirements for retaining walls and fences in the side yard abutting a street on a corner lot were requested. Exh. 16.

6. Petitioner testified that he purchased the property with the (problematic) existing conditions in 2011 and has only engaged in maintenance (painting, etc.) of what was there on the property. He stated that he believes the walls and fences have no negative effect on the neighborhood and in fact improve the appearance of the property. He would like to retain the walls because of privacy which is important to him. He stated that no one has complained to him. He argued that the fence along the left side property line is visible only to the adjoining neighbor.

7. John Morgan, the next-door neighbor at 6406 Riggs Road, opposed the request. He testified that he has lived his property for 15 years. He stated that the plywood fence (over 8 feet in height) (Exh. 22, Attachments ("Atts.") 1 through 3) in the side yard is poorly constructed and constitutes a "hazard" to anyone in his yard. Exh. 22, pp. 1b and 1c. He also testified that a wooden gate in the plywood fence is located along the side lot line where anyone using the gate has to go through a part of his (Mr. Morgan's) front yard. Exhs. 22, Atts. 1 and 2; 34(A) and (H). He stated that when Petitioner replaced the fence between their properties, he needed to get a permit and he complained to the County in 2013. He explained that the previous owner had a 6-foot privacy fence and then Petitioner put up the plywood fence which is not a residential fence. He believed Petitioner should remove the wall/fence next to his (Mr. Morgan's) property to the extent that a new gate can be built.

8. Petitioner testified that he replaced a fence along the side property line next to Mr. Morgan's property that had graffiti with a fence of the exact same height.

9. Keith Morgan testified that the stockade fence that was located next to his brother's property was old, but not unsightly. He explained that Petitioner replaced what was at the front of the stockade fence (Exh. 34(A)) with the white fence on the brick wall and replaced the rest of the stockade fence with plywood (Exh. 34(B)) and it is painted only on Petitioner's side of the fence (Exh. 5(B)).

10. Clarence Shaw testified that he has been familiar with the neighborhood for 48 years, has seen the subject property many times and does not understand why it has taken so long to address illegal structures on the subject property. He stated that there have been problems associated with the property for more than ten years (after a change in ownership) involving the retaining wall, fences on top of it and the addition. He explained that a previous owner had a recreational vehicle, put in the parking pad and put the fence on top of the wall to screen that area. Exhs. 3(C), 23(A) through (C), 34(C) through (E). He stated that the walls appear "to be giving way" and he is concerned that the walls were not built according to (the requirements) of the Code. He argued that simply because the current owner (Petitioner) purchased the property without

performing due diligence, that should not be a reason for the illegal conditions to continue. He contended that Petitioner does not have any more of a right to privacy than anyone else. He stated that the appearances of the fences and walls are unsightly.

11. The Subdivision Section of M-NCPPC ("Subdivision Section") reviewed the request and commented that the location drawing (Exh. 2) shows a fence atop a wall, totaling over 6 feet in height, beyond the platted building restriction line ("BRL") along Red Top Road.; however, if the condition is existing, no minor final plat to remove the BRL is required. The Subdivision Section further commented that any proposed new structures that encroach beyond the BRL will require a minor final plat to remove the BRL. Exh. 20.

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 do not comply with the applicable standards set forth in Section 27-230, more specifically:

1. The Board finds that Petitioner's lot has no exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition of specific parcels of property.
2. Because the conditions of the property are ordinary, the Board does not deem it necessary to consider the other requirements of Section 27-230.

BE IT THEREFORE RESOLVED, unanimously, that variances of 8 feet side yard width for walls/fences, 25 feet side street yard depth for a wall/fence and columns, 20 feet rear yard depth/width for a wall/fence, and waivers of the location and height requirements for walls/fences in the side yard abutting a street on a corner lot in order to validate existing conditions and obtain a building permit for an 8.2-foot wooden privacy fence, a wall up to 4.9 feet in height topped with a 6-foot white vinyl fence, columns 6.3 and 6.4 feet in height, a brick wall up to 4.4 feet in height, a 3.6-foot wall topped with a 4-foot chain link fence and a 2.1-foot brick wall topped with a 7-foot wooden privacy fence. on the property located at Lot 100, Block B, Chillum Manor Subdivision, being 6408 Riggs Road, Hyattsville, Prince George's County, Maryland, be and are hereby DENIED.

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.