

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-89-15 Alex Olivares

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: September 30, 2015.

CERTIFICATE OF SERVICE

This is to certify that on October 14, 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
Mark Maier, Spanish Language Interpreter

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

Petitioner: Alex Olivares

Appeal No.: V-89-15

Subject Property: Lot 24, Block B, Birmingham Estates Subdivision, being 4238 Kenny Street, Beltsville, Prince George's County, Maryland

Spanish Language Interpreter: Mark Maier

Witnesses: Claudia Aguirre, wife of Petitioner

Lauren Clagett, Property Standards Inspector, Department of Permitting, Inspections and Enforcement

Heard: September 9, 2015; Decided: September 30, 2015

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, 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 prescribes that each lot shall have two side yards totaling 17 feet in width, with the minimum width of either side yard being 8 feet. Petitioner proposes to validate and obtain a building permit for a deck and attached carport. A variance of 8.4 feet side yard width is requested.

Evidence Presented

1. The property was subdivided in 1952, contains 11,025 square feet, is zoned R-R (Rural Residential) and is improved with a single-family dwelling and driveway. Exhibits ("Exhs.") 5, 12, 13 and 28. The existing dwelling was built in 1961. Exhs. 12 and 13.

2. Petitioner was cited by the County's Department of Permitting, Inspections and Enforcement with Building Violation Notice 41588-14-00, dated October 30, 2014 ("Violation Notice"), for work done on the property, including but not limited to a deck, awning, driveway extension, 6-foot fence, sump pump and retaining wall, and instructed to obtain the required permit(s) or remove the work. Exhs. 7 and 8.

3. Petitioner would like to obtain a building permit for a 34' x 40.5' deck and 11' x 25' attached carport (Exh. 28), but variances are needed to obtain the permit. Since the deck and carport are both located at the left side lot line, the right side yard is 8.6 feet in width, and both side yards must be at least a total of 17 feet in width, a variance of 8.4 feet side yard width was requested. Exh. 17.

4. Petitioner testified that 3 years ago he built the deck, carport and veranda on the property without permits. *Compare* Exhs. 6(A) through (C) with Exhs. 6(D) and (E). He stated that the deck was built to provide a flat area in back for his daughters to play. He stated that he also recently removed a roof extending from the right side of the house. Exh. 26(A).

5. Petitioner further testified the rear yard slopes towards the house and when it rained water entered the basement. He explained that there is a drainage system under the deck and he constructed a retaining wall.

6. Inspector Lauren Clagett testified that when she inspected the retaining wall (Exhs. 26(A) through (C)) after receiving a complaint, she discovered the other construction done without a permit and issued the Violation Notice. She stated that subsequently a permit was obtained for the 4-foot retaining wall.

7. Petitioner stated that gutters are on the carport and contends that water does not drain towards his neighbor. He stated that the covered patio on the back of the house existed when they moved to the property. Exh. 27.

8. Pronoti Mohanty, owner of neighboring property at 4306 Kenny Street, opposed the request because of water drainage issues. Exh. 21.

9. Narciso Leon, owner of neighboring property at 4236 Kenny Street next to the carport and deck, did not oppose the construction of the driveway, carport, deck and fence. Exh. 25.

10. The Historic Preservation Section of M-NCPPC commented that the subject property is located within 400 feet of Historic Site Orme-Shaw House (61-002) and the request has no effect on Historic Sites, Historic Resources or Historic Districts. 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 slope of the rear yard, the existing conditions on the property, variances being needed to obtain permit(s) for structures constructed too close to the left side lot line, 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 owner of the property.

BE IT THEREFORE RESOLVED, by majority vote, Vice Chairman Albert Scott abstaining, that a variance of 8.4 feet side yard width in order to validate and obtain a building permit for a 34' x 40.5' deck and 11' x 25' attached carport on the property located at Lot 24, Block B, Birmingham Estates Subdivision, being 4238 Kenny Street, Beltsville, 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 28, and the approved elevation plans, Exhibits 3(A) through (C) (Carport) and Exhibits 4(A) through (E) (Deck).

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.