

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-84-14 Tarus & Yolanda Nelson

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: November 19, 2014.

CERTIFICATE OF SERVICE

This is to certify that on December 10, 2014, 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
DPIE/Building Code Official, Permitting

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

Petitioners: Tarus and Yolanda Nelson

Appeal No.: V-84-14

Subject Property: Lot 5, Block A, Oxford Run Subdivision, being 213 Blackberry Drive, Fort Washington, Prince George's County, Maryland

Heard and Decided: November 19, 2014

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 27-420(a) of the Zoning Ordinance, which prescribes that on corner lots consisting of one (1) acre or less, fences and walls in the front yard or side yard shall not be more than four (4) feet high without the approval of a variance. Petitioners propose to construct a 6-foot white vinyl privacy fence. Waivers of the fence location and height requirements for a fence in the front yard 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 1986, contains 11,727 square feet, is zoned R-R (Rural Residential) and is improved with a single-family dwelling, driveway and shed. Exhibits ("Exhs.") 2, 4, 8 and 9. The existing dwelling was built in 1988. Exhs. 8 and 9.
2. The property is located within an approved cluster subdivision. Exh. 4. The property is a corner lot with the house facing the legal side street. Exh. 2.
3. Petitioners would like to construct a 6-foot white vinyl privacy fence around a portion of the yard behind the house, which is considered the legal side yard, and past the side line of the house into the legal front yard. Since the proposed fence would exceed 4 feet in height and extend into the front yard on a corner lot, waivers of the fence location and height requirements were requested. Exh. 12.
4. Petitioner Tarus Nelson testified that a spa is being installed at one end of their deck and because the County requires a 6-foot fence around pools and spas¹, the spa installation cannot be completed unless the fence is constructed. He stated that due to the subject property being a corner lot and the house facing the side street, they are unable to meet the fence location requirement for a 6-foot fence.
5. The Subdivision Section of The Maryland-National Capital Park and Planning Commission reviewed the request and commented that Section 27-229(b)(27) grants the Board the authority to grant

¹ Section 4-255 of the Prince George's County Code prescribes that an outdoor swimming pool, hot tub or spa shall be surrounded by a barrier the top of which shall be at least six (6) feet above grade.

variances for home improvements in cluster developments and that the proposed development does not alter the land uses described in the preliminary plan of subdivision. Exh. 17.

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 property being a corner lot, the house facing the legal side street, a 6-foot safety barrier being required for the spa being installed on Petitioners' deck, 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 waivers of the fence location and height requirements for a fence in the front yard on a corner lot in order to construct a 6-foot white vinyl privacy fence on the property located at Lot 5, Block A, Oxford Run Subdivision, being 213 Blackberry Drive, Fort Washington, 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 2, and the approved elevation plan, Exhibit 3.

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.