

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-16-14 Willie & Miyoshi Davis

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: June 18, 2014.

CERTIFICATE OF SERVICE

This is to certify that on August 25, 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
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: Willie Davis

Appeal No.: V-16-14

Subject Property: Lot 14, Block H, Booker T. Homes Subdivision, being 1156 Booker Drive, Seat Pleasant,
Prince George's County, Maryland

Witnesses: Ronald Davis, Petitioners' son
Dwight Carmon, neighbor
Samantha Jones, neighbor
Andrea Boose, neighbor
Thomas Worth, neighbor

Heard: May 7, 2014; Decided: June 18, 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, Petitioner requests that the Board approve variances from Section 27-442(e)(Table IV), which prescribes that each corner lot shall have front and side street yards at least 25 feet in depth, a side yard at least 8 feet in width and a rear yard at least 20 feet in depth/width; 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; Section 27-442(i)(Table VIII), which prescribes that accessory buildings on a corner lot shall be set back 10 feet from the rear lot line; Section 27-420(a), which prescribes that fences and walls more than 6 feet high shall not be located in any required yard and shall meet the setback requirement for main buildings, and on a corner lot 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; and Section 27-421, which prescribes that on a corner lot, no visual obstruction more than three (3) feet high (above the curb level) shall be located within the triangle formed by the intersection of the street lines and points on the street lines twenty-five (25) feet from the intersection. Petitioner proposes to validate existing conditions and obtain a building permit for an existing wrought iron fence (with brick columns) up to 52 inches in height and brick wall (topped with wrought iron fence) 76 inches in height. Variances of 4 feet front yard depth for a covered front porch, 6.5 feet rear yard depth/width for an attached carport, 16.9% net lot coverage, 8 feet rear lot line setback for an accessory building; 25 feet side street yard depth, 8 feet side yard width and 20 feet rear yard depth/width for a brick wall/fence over 6 feet in height; and waivers of the fence/wall location and height requirements for fence/wall structures in the front and side yards and in the triangle area of a corner lot are requested.

Evidence Presented

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

1. The property was subdivided in 1951, contains 4,232 square feet, is zoned R-35 (One-Family Semi-Detached Residential) and is improved with a semi-detached single-family dwelling, attached carport, driveway and shed. Exhibits ("Exhs.") 2, 5, 10 and 11. The existing semi-detached single-family dwelling was built in 1955. Exhs. 10 and 11.

2. The property is regular in its size and shape. Exhs. 2 and 5. The property is a corner lot with the house facing the legal front street (Booker Drive). Driveway access to the property is off of the legal side street (Carrington Avenue). Exh. 2.

3. The Department of Environmental Resources, Licenses and Inspections Group, issued Building Violation Notice 20189-13-01, dated June 12, 2013, requiring that Petitioners obtain a building permit for a 5-foot block wall which is "causing a nuisance drainage and ponding problem at the property next door" or remove it. Exhs. 7 and 9.

4. Petitioner would like to validate existing conditions and obtain a building permit for a wrought iron fence with brick columns and a brick wall topped with wrought iron fencing, but variances are needed. The fence, located along the front and side lot lines and in the triangle area of the corner portion of the lot (at Carrington Avenue and Booker Drive), has a height up to 52 inches. Exhs. 2; 3(A) through (D); 6(A) through (C), (E) and (G); 25. Since the fence/wall exceeds 4 feet in height, waivers of the fence location and height requirements were requested. The brick wall along the side lot line and a portion of the rear lot line is 49 inches high and topped with a wrought iron fence of 27 inches, for a total of 76 inches, and the brick wall along the remainder of the rear lot line is 43 inches high and topped with a wrought iron fence of 33 inches, also totaling 76 inches in height. Exhs. 2; 3(D); 4(A) and (B); 6(C), (D) and (F). Since the wall with fencing exceeds 6 feet in height and must meet main structure setbacks, variances of 25 feet side street yard depth, 8 feet side yard width and 20 feet rear yard depth/width were also requested. Exh. 15.

5. Based on the site plan (Exh. 2), the following existing conditions on the property also require validation: 1) an existing covered front porch is located only 21 feet from the front street line at the closest point, 2) an existing attached carport is located only 13.5 feet from the rear lot line, 3) the existing development on the property causes the allowed amount of net lot coverage to be exceeded, and 4) an existing shed is located 2 feet from the rear lot line (10 feet required on a corner lot). As a result, variances of 16.9% net lot coverage, 4 feet front yard depth for the covered front porch, 6.5 feet rear yard depth/width for the attached carport, and 8 feet rear lot line setback for an accessory building are necessary, respectively. Exh. 15.

6. Petitioner Willie Davis testified as follows: When she purchased the property in 1991 drainage problems did not exist. The original owner of the property next door at 1158 Booker Drive had an issue with water standing in her back yard and installed a drainage system that carried water to the street on the opposite side of her house which eliminated her water problem. When the owner passed away, the property was purchased by new owners (Hamiltons) who removed the drainage system resulting in debris in the stairwell and water coming in under their basement door. Petitioner also started getting water in her basement causing her to install a drainage system in her basement (Exhs. 26, 32(A) and 32(D)). Exh. 24.

7. Ms. Davis further testified she constructed the wall because of teenagers constantly running through her yard, jumping over the chain link fence and hiding from the police. She stated that construction of the wall had nothing to do with any water problems.

8. Ms. Davis further testified that Mr. Carmon purchased the Hamilton property in April of 2012 but did not replace the drainage system that had been removed by the Hamiltons. She stated that Mr. Carmon has contributed to the water problem by taking up all the shrubbery that bordered his back yard, leaving nothing to help absorb the excess water in his yard. She stated that Mr. Carmon placed a makeshift sump pump next to her wall and has put a hose over the top of her wall to expel the water into her carport. She stated that Mr. Carmon insists that her wall is causing his water problems when in fact his water problems are caused by his failure to replace the drainage system that was put into place by the initial owner of his property.

9. Petitioner testified that the county inspector instructed her to tear down the entire wall surrounding her home and claiming multiple other violations on her property that she stated existed prior to her purchase of the subject property. She was also informed by the clerk in the Permits and Licenses office that because she now lives there, it is her responsibility to rectify any issues. She feels that she is being unfairly targeted. Exh. 24.

10. Ms. Davis stated that she has not had water problems on her property since installation of the drainage system in her basement. She stated that the neighbors at 1158 Booker Drive want her to take care of their water problem by putting holes in her privacy fence and allowing a drain pipe to carry their water through her yard. She further stated that it was when she resisted their request she was taken to court, where she accepted the option of 30 days to remove the portion of her wall between the two properties. Exhs. 7, 8, 9 and 30.

11. Ms. Davis clarified that the porch with awning, carport and shed existed when she purchased the property in 1999. Exhs. 3(A) and (D); 6(C); 12(B) through (F). She explained that the only things she built was the privacy wall and the brick and wrought iron fences/wall which replaced a chain link fence and wrought iron fence with brick pillars. She stated that she kept the part of the chain link fence that is inside her privacy wall. She testified that the two cement driveway strips existed when she moved to the property, but when she put up the fence/wall in 2004 she also put in the concrete driveway. She stated that other neighbors drain water along the sides of their houses and out to the street, but Mr. Carmon wants to run a drainage system across her driveway, which would create a problem if that water freezes on her driveway.

12. Dwight Carmon, owner of 1158 Booker Drive (the other half of the duplex), testified that a slope travels along the rear of properties on the same side of the street as his and Petitioner's properties, causing water to build up next to Petitioner's wall, which has no holes in it, thus causing water to accumulate and destroy his (Mr. Carmon) basement. Exhs. 27(A) through (I). He stated that he has a young son and does not want mold in his house. He explained that he has had to remove carpet from the house and cannot sleep at night when it rains because he stays up to wet-vac. He stated that Petitioner refused to put holes in her wall to provide relief for the problem. He explained that he uses three sump pumps which still do not handle the problem. He stated that the drainage issues were not disclosed to him when he purchased his property.

13. Samantha Jones, who also lives at the property next door (1158 Booker Drive), explained that water rises knee deep in their yard and she has also requested Petitioner to put in two or three holes in the wall and allow a hose to run from their property around Petitioner's shed to take water to the street.

14. Ronald Davis, Petitioner's son, testified about the existence of a sump pump in the rear area of 1158 Booker Drive.

15. Andrea Boose, who lives directly across the street from the subject property, testified that the previous owners of 1158 Booker Drive informed her about problems with their basement flooding because of the disputed wall.

16. Jon Rasmussen, Construction Standards Inspector, Department of Permitting, Inspections and Enforcement, submitted the following report and provided photographs to support the County's concerns with the subject property:

1. The owner [Petitioner] constructed a fence made of cinder blocks, brick and iron without permits.
2. The fence is located on County property on the corner of Booker and Carrington.
3. The cinder block fence boarding the property of 1156 Booker and 1158 Booker is causing the water to back up onto 1158 and causing severe damage to the property at 1158.

4. The owner of 1158 Booker [Drive] Mr. Dwight Carmon has been forced to install several sump pumps in his yard and basement to protect his property from the water back up caused by the fence.
5. On 3-19-14 Mrs. Davis agreed in open court to remove the fence causing the backup.

Exh. 29.

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 water flows onto Petitioner's property (and the property of neighbors) because of the topography in the rear of the adjoining property at 1158 Booker Drive.
2. The Board further finds that Petitioner attempted to rectify that problem by constructing a wall of cinder blocks, brick and iron which restricts the natural water flow through Petitioner's property.
3. Petitioner's wall/fence was constructed without building permits. Exh. 29.
4. The wall/fence has caused and is causing water accumulation on the adjoining property at 1158 Booker Drive. The owner of that property testified that he has attempted to mitigate the water problem by using sump pumps to no avail and the water accumulation has caused water damage to his basement.
5. Inspector Jon Rasmussen inspected the property and verified the property conditions at both 1156 Booker Drive and 1158 Booker Drive. He represented that the "fence" is on "County property." Exh. 29.
6. The Board further notes that with expansion of her driveway and construction of her wall, Petitioner increased the impervious area on her property and interrupted the natural flow of runoff water from the adjoining property.
7. We note that Petitioner apparently agreed (in open court) to remove the fence.
8. As such, we conclude that the strict application of the Zoning Ordinance would not result in peculiar and unusual practical difficulties or an exceptional or undue hardship upon Petitioner.

BE IT THEREFORE RESOLVED, unanimously, that variances of 4 feet front yard depth for a covered front porch, 6.5 feet rear yard depth/width for an attached carport, 16.9% net lot coverage, 8 feet rear lot line setback for an accessory building; 25 feet side street yard depth, 8 feet side yard width and 20 feet rear yard depth/width for a brick wall/fence over 6 feet in height; and waivers of the fence/wall location and height requirements for fence/wall structures in the front and side yards and in the triangle area of a corner lot in order to validate existing conditions and obtain a building permit for an existing wrought iron fence (with brick columns) up to 52 inches in height and brick wall (topped with wrought iron fence) 76 inches in

height on the property located at Lot 14, Block H, Booker T. Homes Subdivision, being 1156 Booker Drive, Seat Pleasant, 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.