

*NOTICE OF FINAL DECISION*

*OF BOARD OF APPEALS*

RE: Case No. V-86-13 Nathaniel Brown

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: May 21, 2014.

**CERTIFICATE OF SERVICE**

This is to certify that on June 6, 2014, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

(Original Signed)

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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: Nathaniel Brown

Appeal No.: V-86-13

Subject Property: Parcel 178, Tax Map 73, Grid A3, being 1115 Brooke Road, Capitol Heights,  
Prince George's County, Maryland

Witnesses: Clarence Mills, friend

Darryl Miller, Capitol Heights resident and councilman

Heard and Decided: May 21, 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) of the Zoning Ordinance, which prescribes that each lot shall have a side yard at least 7 feet in 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; and Section 27-442(i)(Table VIII), which prescribes that accessory buildings shall be set back 60 feet from the front street line and generally be located only in the rear yard. Petitioner proposes to validate existing conditions and obtain a building permit for a deck with steps under construction. Variances of 5.5 feet side yard width<sup>1</sup>, 3.1% net lot coverage and 19 feet front street line setback and a waiver of the rear yard location requirement for an accessory building are requested.

Evidence Presented

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

1. The property contains 5,000 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling, driveway and shed. Exhibits ("Exhs.") 2, 12 and 13. The existing single-family dwelling was built in 1944. Exhs. 12 and 13.
2. The property was created by deed in 1948. Exh. 4. A private right-of-way provides access to the public street (Brooke Road). Exhs. 18-20. An existing shed is located in the left side yard. Exh. 2. The rear yard is extremely shallow, being less than 10 feet deep, and the right side yard is only 6½ feet wide at the widest point. Exh. 2.
3. Petitioner was cited with Building Violation Notice No. 34662-2012-0, dated November 7, 2012, by the Department of Environmental Resources, Licenses and Inspections Division, which ordered Petitioner to stop work and obtain a building permit for a deck with steps or remove it. Attachment to Exh. 8.

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<sup>1</sup> The hearing notice mistakenly stated that the subject lot should have a side yard at least 8 feet in width and a variance of 6.5 feet side yard width was requested. Exh. 24.

4. Petitioner would like to complete construction of a 5' x 14' deck with steps, but variances are needed in order to obtain a building permit. Since the deck would be located only 1.5 feet from the side lot line, a variance of 5.5 feet side yard width was requested. Exh. 24.

5. In addition, since an existing shed which is located 41 feet from the front street line and is in the side yard needs to be validated, a variance of 19 feet front street line setback and a waiver of the rear yard location requirement for the shed were requested. Exh. 24.

6. The allowed amount of net lot coverage is exceeded by existing development on the property and a variance of 3.1% net lot coverage was also requested to validate this existing condition. Exhs. 23 and 24.

7. Petitioner testified that he has lived at the property for 8 years and is near the woods where deer and other animals are a constant nuisance. He explained that if he has a deck above ground level, it would help alleviate the problem.

8. Petitioner further testified that the shed preexisted.

9. Petitioner stated that he discussed his proposed development with his civic association.

10. Clarence Mills, a friend of Petitioner's, added that there is no suitable area to place the shed in the rear.

11. Darryl Miller, a resident of and councilman for the Town of Capitol Heights, stated that he, as a resident, supported the development.

#### 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 house being built in 1944, the property being created in 1948, the shallowness of the rear yard, the narrowness of the side yard, the preexisting shed unable to fit in the rear yard, the property being next to wooded area, variances being needed to validate existing conditions before a permit will be issued, 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, unanimously, that variances of 5.5 feet side yard width, 3.1% net lot coverage and 19 feet front street line setback and a waiver of the rear yard location requirement for an accessory building in order to validate existing conditions and obtain a building permit for a 5' x 14' deck with steps under construction on the property located at Parcel 178, Tax Map 73, Grid A3, being 1115 Brooke Road, Capitol Heights, 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 revised elevation plan, Exhibit 31.

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.