

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-1-14 Chinunso Iwundu

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: March 12, 2014 .

CERTIFICATE OF SERVICE

This is to certify that on May 29, 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: Petitioner
Adjoining Property Owners
M-NCPPC, Permit Review Section
DPIE/Building Code Official, Permitting
DPIE/Inspections Division
Other Interested Parties

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

Petitioner: Chimunso Iwundu

Appeal No.: V-1-14

Subject Property: Lot 1, Block C, Kentland Subdivision, being 7201 East Forest Road, Landover,
Prince George's County, Maryland

Witness: Sherry Struthers, neighbor

Heard: February 19, 2014; Decided: March 12, 2014

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 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 front yard at least 25 feet in depth; 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 shall be set back 60 feet from the front street line; and Section 27-420(a), which prescribes that on a corner lot, fences/walls in the front yard or 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 a retaining wall up to 5 feet in height, a wooden privacy fence and gate up to 6 feet in height, and new concrete parking area. Variances of 4 feet front yard depth, 21.2% net lot coverage, 4 feet front street line setback for an accessory building and waivers of the location and height requirements for a fence in the front and side yards 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 1948, contains 6,209 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling, shed and parking area. Exhibits ("Exhs.") 2, 4, 8 and 9. The existing single-family dwelling was built in 1950. Exhs. 8 and 9.
2. The property is a corner lot, with the dwelling facing the legal front street. Driveway access to the property is off of the legal side street. Exh. 2.
3. Petitioner was cited by the Department of Environmental Resources with Building Violation Notice BVN 4634-2012-1, dated February 28, 2012, requiring that Petitioner obtain a building permit for pouring a concrete surface in the rear of the property to park vehicles or remove it and restore the site to its original site. Exh. 5.
4. Petitioner's house location drawing (Exh. 2) indicates that an existing retaining wall is 4-5 feet in height close to the rear property line (shared with Lot 34).

5. Petitioner would like to obtain a building permit for a new concrete parking area (Exh. 4), wooden privacy fence and retaining wall, but variances are needed to obtain the building permit. Since construction of the new parking area (approximately 2,653 square feet, less the area of a 10' x 10' shed sitting on the concrete) causes the allowed amount of net lot coverage to be exceeded and a wooden privacy fence (up to 6 feet in height) extends into the front and side yards, a variance of 21.2% net lot coverage and waivers of the location and height requirements for a fence in the front and side yards on a corner lot were requested. Exhs. 12 and 13.

6. The following existing conditions also require validation prior to obtaining the building permit. Since the existing covered porch is located only 21 feet from the front street line and an existing shed is located only 57 feet from the front street line, variances of 4 feet front yard depth and 3 feet front street line setback for an accessory building were also requested. Exh. 13.

7. Petitioner testified that he had drainage problems on the property and he had 24 inches of concrete, a retaining wall and drain pipe put in. He explained that his neighbor's property sits up higher than his property, and water and mud travels down onto his property. He testified that the construction on his property did not adversely affect any neighbors and the retaining wall and a drain pipe prevented harmful runoff.

9. Petitioner stated that nothing on his property has changed since he requested variances in 2012 in Appeal No. V-56-12¹, but offered that his property has an unusual topographical situation that was not discussed at the previous hearing. He explained that his property sits lower than the ground level of an adjoining neighbor's property. He stated that water was not draining on his property and he had to traverse mud and puddles to get into his house.

10. The topography in the area indicates slopes along other properties.

11. Petitioner further testified that he lives at the property with his family, including two children, he has had more than six different vehicle break-ins and the fence is necessary for privacy and security.

12. Sherry Strother, a neighbor, testified that she has lived on the same block as Petitioner's property since 1983 and that the topography of "pretty much all the lots is the same." She states that Petitioner's property is flat and she is not aware of any runoff issue. She further stated that Petitioner removed trees from the property and changed the grading of the property when he flattened the lot with the concrete. She submits that Petitioner provided no evidence of nor has she heard of any drainage issues on the subject property. She testified that the Master Plan for the area has not changed to allow a use other than residential, but Petitioner is constantly parking commercial vehicles on the concrete area, leaving materials on the sidewalk for pick-up and leaving shipping containers on the street at the corner. Exhs. 21(A) through (O).

13. Deborah Green, another neighbor, also opposed Petitioner's request. 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.

¹ On August 8, 2012, the Board denied variances to validate existing conditions and obtain a building permit for the wooden privacy fence and gate and 2,524 square feet of new concrete parking area (Appeal No. V-56-12). Exh. 6.

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 topography or other conditions peculiar to the property. The Board further finds that the lot is regular in its size and shape and no evidence of any extraordinary situation or uniqueness of the lot was presented.
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.
3. The Board notes that Petitioner acknowledged that nothing has changed on the property since Petitioner requested variances in 2012 and that Petitioner's current argument about the topography could have been presented at the previous hearing.

BE IT THEREFORE RESOLVED, by majority vote, Mr. Scott abstaining, that variances of 4 feet front yard depth, 21.2% net lot coverage, 4 feet front street line setback for an accessory building and waivers of the location and height requirements for a fence in the front and side yards on a corner lot in order to validate existing conditions and obtain a building permit for a wooden privacy fence and gate up to 6 feet in height, new concrete parking area of approximately 2,553 square feet, and a retaining wall up to 5 feet in height on the property located at Lot 1, Block C, Kentland Subdivision, being 7201 East Forest Road, Landover, 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.