

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-108-15 Crestwood Partners LLC

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: October 28, 2015.

CERTIFICATE OF SERVICE

This is to certify that on December 8, 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

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

Petitioner: Crestwood Partners LLC

Appeal No.: V-108-15

Subject Property: Lot 2, Block C, Crestwood Subdivision, being 6505 59th Avenue, Riverdale,
Prince George's County, Maryland

Counsel for Petitioner: Lawrence N. Taub, Esq.

Witnesses: Stephen Ness, Member, Crestwood Partners LLC

Mike Twigg, Member, Crestwood Partners LLC

Ken Dunn, Soltesz

Heard and Decided: October 28, 2015

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 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 27-120.01(c) of the Zoning Ordinance, which prescribes that no parking space, parking area, or parking structure other than a driveway no wider than its associated garage, carport, or other parking structure may be built in the front yard of a dwelling in the area between the front street line and the sides of the dwelling. Petitioner proposes to construct a new two-story single-family dwelling and driveway. A waiver of the parking area location requirement is requested.

Evidence Presented

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

1. The property was subdivided in 1994, contains 7,003 square feet, is zoned R-55 (One-Family Detached Residential) and is vacant land proposed to be improved with a single-family dwelling and driveway. Exhibits ("Exhs.") 3, 5, 9 and 10.
2. The property is located within Aviation Policy Area 6. Exh. 10.
3. Petitioner would like to obtain a building permit to construct a new 29' x 42' two-story dwelling and 18' x 20' driveway on the property (Exh. 3), but a variance is needed for the location of the proposed driveway. Since the driveway would be located in the area of the front yard prohibited by Section 27-120.01(c), a waiver of the parking area location requirement was requested. Exh. 13.
4. A driveway apron has already been put in at the front of the property.¹ Exh. 11(B).
5. In addressing criterion (1) for granting of a variance contained in Section 27-230(a), Petitioner stated the following: The property is 65 feet wide with required side yard setbacks that total 17 feet with a minimum of 8 feet wide. In order to place parking area outside of the front yard, the width of the house

¹ Section 27-568(a)(1) of the Zoning Ordinance prescribes that off-street parking area large enough to park two vehicles be provided on lots developed with new homes.

would need to be reduced to a minimum width of 28 feet. This does not include the space needed to allow for adequate grading for drainage. The average cross slope of the property is approximately 8%. The narrowness of this lot in conjunction with the requirement to place the parking area outside of the front yard creates a situation where the maximum width of a house would not be much wider than a typical 24-foot-wide townhouse. Since two off-street parking spaces are required on the lot, placing the required parking spaces on the street is not a viable option. The rear of the lot is encumbered by a 10-foot surface drainage easement. These conditions create an environment that is unique to the property and generally not applicable to other properties. Exh. 2, pp. 1-2.

6. In addressing criterion (2) for granting of a variance contained in Section 27-230(a), Petitioner stated the following: The strict application of the Subtitle will make it difficult to encourage appropriate development for infill communities within the Beltway. In addition to producing smaller, undesirable housing, there will be increase in impervious surface which will increase the need for more stormwater filtration devices. Exh. 2, p. 2.

7. In addressing criterion (3) for granting of a variance contained in Section 27-230(a), Petitioner stated the following: The granting of the variance will not impair the intent, purpose, or integrity of the General or Master Plans. Rather, the approval of the variance will allow the property to continue to act as part of a redevelopment project, thus contributing to the General Plan's goal of providing increase opportunities for redevelopment and investment in inner-beltway communities of Prince George's County. The addition of a garage to this unit would increase the cost of the home while decreasing the amount of livable space for this unit. The additional indoor space created by approving the variance will increase flexibility and accessibility with the floor pattern layout. It will also create a larger home without expanding beyond the current footprint. This area will become part of a revived, revitalized community, with a varied housing stock and a diverse mixed-income community. Exh. 2, p. 2.

8. Counsel for Petitioner stated that the subject lot was created by plat approved in 1994 (Exh. 5), eight years later Council Bill 34-2002 was enacted to address driveways in front of dwellings in Zoning Ordinance Section 27-120.01, and one year after that the language was amended by CB-82-2003 (Exh. 19). Counsel opined that this shows that the timing was an extraordinary situation or condition because it is unusual that a lot is created and later on a law is passed that changed certain assumptions. He stated that when the lot was created, a number of things could have been done to address parking on the property, but those options were restricted after the fact.

9. Counsel further stated that without the granting of the variance Petitioner is only able to put one house model on the lot, a model that includes a one-car garage. Exh. 20. Counsel explained that if Petitioner is to offer options to potential homebuyers, other alternatives need to be considered.

10. Renderings of the three models Petitioner proposes to offer homebuyers, two of which have no garage, were submitted into the record. Exhs. 20, 21 and 22. A comparison of the models illustrates the differences in room sizes and total living space. Exh. 23. Renderings of the two models without a garage showing the 18' x 20' parking pads proposed were submitted. Exhs. 24 and 25.

11. Stephen Ness testified that the two models without a garage (but with more living space) have a lower purchase price than the model with a garage. He explained that they purchased the subject property in July 2015 as a foreclosure. He stated that the previous owner went into bankruptcy in 2006 after building three houses and the construction now proposed is consistent with what was previously built. *See* Exh. 29. He further stated that the location of the existing curb cuts and driveway apron at least partly determines how the lot needs to be graded.

12. Counsel explained that curb cuts were put in several years ago. Counsel pointed out that the driveway would be in the same location as it would be if the model built on the lot had a garage. It was explained that there will be little visual difference except the driveway with a garage would be longer and without a garage would be wider. Counsel stated that driveways in front of houses with no garage are very common in the neighborhood. Exh. 26. The driveway on the corner lot across the street from the subject

property is in the side yard but visually is as much in the front of the dwelling structure as any of the other driveways. Exh. 26 (Star "A").

13. Petitioner sent a letter to neighboring property owners to inform them of the construction project and explain the variance request. Exh. 27.

14. Counsel stated that construction of the proposed home is consistent with the R-55 Zone. It was further stated that the Bladensburg, New Carrollton & Vicinity Master Plan (the "Plan") for the area was approved in 1994, the same year that subdivision of the subject property was approved. Counsel noted that one of the goals of the Plan is to "provide decent, safe and sanitary housing for all residents by providing a broad range of housing opportunities and neighborhood choices which can meet the needs of different age groups, family sizes, lifestyles and income capabilities." Exh. 28.

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 narrowness of the property, the property being subdivided in 1994, the law affecting the location of driveways in front yards going into effect in 2002, the Zoning Ordinance requiring that two off-street parking spaces be provided on lots developed with new homes, the curb cuts and driveway apron having been put in while the property was under previous ownership, the limitation on driveway location preventing Petitioner from offering more than one house model to potential homebuyers, 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 a waiver of the parking area location requirement in order to construct a new 29' x 42' two-story dwelling and an 18' x 20' driveway on the property located at Lot 2, Block C, Crestwood Subdivision, being 6505 59th Avenue, Riverdale, Prince George's County, Maryland, be and is hereby APPROVED. Approval of the variance is contingent upon development in compliance with the approved site plan, Exhibit 3, and the approved elevation plans, Exhibits 4(a) and (b).

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.