

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-312-06 Sandra Whetstone

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 24, 2015.

CERTIFICATE OF SERVICE

This is to certify that on October 1, 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
Office of Law

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

Petitioner: Sandra Whetstone

Appeal No.: V-312-06

Subject Property: Lot 14, Block F, Rosedale Estates Subdivision, being 3006 Ivy Bridge Road, Fort Washington, Prince George's County, Maryland

Counsel for Petitioner: Darryl A. Kelley, Darryl A. Kelley & Associates, LLC

Heard: June 10, 2015; Decided: June 24, 2015

Board Members Present and Voting: Albert C. Scott, Vice Chairman
Anastasia T. Johnson, Member

RESOLUTION OF THE BOARD ON REMAND
FROM THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

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 27-442(e)(Table IV) of the Zoning Ordinance, which prescribes that each lot shall have a side yard at least 8 feet in width. Petitioner proposes to validate existing conditions and construct a one-story extension on the front of an existing garage. A variance of 4.2 feet side yard width is requested.

In 1985, in Appeal No. 7806, the Board approved a variance of 3.63 feet side yard setback for the subject property to construct a two-story addition. Exh. R-11. On December 12, 2007, in Appeal No. V-312-06, the Board denied Petitioner's request for a variance of 4.2 feet side yard setback to construct a one-story extension on the front of an existing garage (and validate the location of the previously-constructed two-story addition) on the subject property and issued its final decision on June 26, 2008. Exh. Rem-2. On July 25, 2008, Petitioner filed a Petition for Judicial Review with the Circuit Court for Prince George's County ("Circuit Court"). On April 3, 2015, the Circuit Court issued an order (revising its order of May 27, 2009) reversing the final decision of the Board and remanding the matter to the Board for further proceedings. Exh. Rem-1.

Evidence Presented

1. The property was subdivided in 1965, contains 10,060 square feet, is zoned R-80 (One-Family Detached Residential) and is improved with a single-family dwelling, attached garage and driveway. Exhibits ("Exhs.") 3, 4, 5(A) through (D), 6. The dwelling was constructed in 1973. Exh. 6.
2. The property contains less land area than all other lots, except one, on the block. Exh. 4. The rear yard slopes upward behind the house. Exhs. R-10(B) and (G).
3. Petitioner would like to construct a 6' x 19' one-story extension on the front of the existing attached garage,¹ but a variance is needed to obtain a building permit. Since the garage extension would follow the line of the house which is located 3.8 feet from the side lot line, a variance of 4.2 feet side yard width was requested to validate the location of the house and construct the garage extension. Exh. Rem-4.

¹ The size of the existing garage is 18' x 19'. Exh. 3.

4. In 1985, the Board approved a variance of 3.63 feet side yard setback (Appeal No. 7806) to construct a two-story addition on the side of the house which contains the existing attached garage. Exh. R-11. The current site plan submitted with the subject request indicates, however, that the right side of the house is actually 3.8 feet from the side lot line, resulting in the current setback variance request for the slightly larger 4.2 feet side yard. Exh. 3.

5. Petitioner testified that the extension to the garage is needed because it is sub-sized (18' x 19') and too small to accommodate the size of her automobile. Exhs. 3, R-7(A) and R-10(H).

6. Counsel for Petitioner stated that there have been no substantive changes on the property since the issuance of the prior Board determination in Appeal No. 7806. He noted that no objections from anyone were made in either Appeal No. 7806 or the current appeal. *Also see* Exhibit R-8. Counsel explained that the topography of Petitioner's lot is the determinative factor in the decision for the garage to be built in its present location on the side of the house (Exh. R-11). He stated that other houses in the neighborhood have larger garages and/or bumped-out car porches or garages (Exhs. R-2, R-7(B) through (F)).

7. Counsel also noted that essentially the same type of variance was approved by the Board for the two-story addition in 1985 (Exh. R-11) and emphasized that no front setback variance is necessary for the construction of the 6-foot garage extension.

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 sloping topography in the rear of the lot, the existing location of the dwelling on the property, the Board having previously approved a side yard setback variance to construct the two-story addition which included the existing attached garage, the two-story addition and existing garage to be extended having been built on the side of the house because of the topography of the property, the proposed construction only extending the existing line of the side of the dwelling, the existing garage being too shallow to accommodate Petitioner's vehicle, 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, by majority vote, Ms. Mack abstaining, that a variance of 4.2 feet side yard width in order to validate existing conditions and construct a one-story extension on the front of an existing attached garage on the property located at Lot 14, Block F, Rosedale Estates Subdivision, being

3006 Ivy Bridge Road, Fort Washington, Prince George's County, Maryland, be and is hereby APPROVED. Approval of the variance is contingent upon development in compliance with the approved site and elevation plans, Exhibit 3, and the approved supplemental elevation plan, Exhibit R-12.

BOARD OF ZONING APPEALS

By: (Original Signed)
Albert C. Scott, Vice Chairman

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.