

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-88-14 Eythel Ventura

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: December 3, 2014 .

CERTIFICATE OF SERVICE

This is to certify that on December 18, 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: Eythel Ventura

Appeal No.: V-88-14

Subject Property: Lots 80 & 81, Block 6, Tolson Heights Addition to Maryland Subdivision, being 5819
Burgundy Street, Capitol Heights, Prince George's County, Maryland

Spanish Language Interpreter: Marvin Sanchez

Witness: Lauren Claggett, Inspections Division, Department of Permitting, Inspections and Enforcement

Heard and Decided: December 3, 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(b)(Table I) of the Zoning Ordinance, which prescribes that each lot shall have a minimum net lot area of 5,000 square feet, Section 27-442(e)(Table IV), 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, and Section 27-120.01(c), 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 validate existing conditions and obtain a building permit for a one-story addition with basement. Variances of 1,000 square feet net lot area, 16.5 feet front yard depth, 12.8% net lot coverage and a waiver of the parking area location requirement are requested.

Evidence Presented

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

1. The property was subdivided prior to 1909, contains 4,000 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling, driveway and shed. Exhibits ("Exhs.") 2, 4, 10 and 11. The dwelling was built in 1916. Exhs. 10 and 11.
2. The property consists of two record lots and is long and narrow (40' x 100'). Exhs. 2 and 4.
3. The Board approved variances in 1998 (Appeal No. V-79-98) for lot size, front yard depth, side yard width and lot coverage to validate existing conditions and construct a driveway. The variance approval was rescinded shortly thereafter when it was found that the addition on the left side of the house shown on the site plan submitted with the variance request was not consistent with the 1994 building permit plan for the addition. Exhs. 7 and 8.
4. Building Violation Notice No. 29564-14-04 ("Violation Notice"), dated August 21, 2014, was issued to Petitioner by the Inspections Division of the Department of Permitting, Inspections and

Enforcement, requiring that the required permit(s) be obtained for work done, including but not limited to the addition at the rear of the house, or it be removed. Exh. 6.

5. Petitioner would like to obtain a building permit for a 2.5' x 13.5'/3' x 7.5' one-story addition, with basement, which has been partially constructed on the rear of the existing dwelling (Exh. 2), but variances are needed to validate existing conditions and obtain the permit. Since the allowed amount of net lot coverage was already exceeded by existing development on the property and construction of the addition causes an additional overage, a variance of 12.8% net lot coverage was requested. Exh. 15.

6. Since the size of the property does not meet the current minimum net lot area requirement, a variance of 1,000 square feet net lot area was also requested to validate that existing condition. Exh. 15.

7. Since the existing sunroom on the front of the house is located only 8.5 feet from the front street line and a portion of the existing driveway is located in the area of the front yard prohibited by Section 27-120.01(c), a variance of 16.5 feet front yard depth and a waiver of the parking area location requirement were also requested to validate those existing conditions. Exh. 15.

8. Petitioner testified that he is trying to keep the property from deteriorating. He stated that there was a shed with a door where he has constructed the addition on the back of the house. Exhs. 12(C) and (D). He explained that the shed was built of very old lumber and was falling apart, but at first he did not have the money to fix it. Finally, when he was able to put together enough money to take care of it, he decided to not only fix what was bad, but remove it and square off that part of the house with the two-level addition (Exhs. 5(C) through (E)). The inspector from the County told him to stop doing what he was doing and he received the Violation Notice. He acknowledged that it was his mistake that he built another level without a permit.

9. Petitioner further testified that he had some professional people who did almost all the work on the new addition who were going to take care of everything, but it turned out they did nothing, and he went to the County himself with his drawings to find out what happened. He was surprised to find out that there was a problem with lot coverage, he could not get a permit and he was sent to the Board of Appeals. Exhs. 26 and 27. It was a surprise because when he bought the property, the house was exactly as it is shown on his plan except for the second level (of the new addition).

10. Petitioner stated that he has lived at the property for almost four years. He stated that the sunroom on the front of the house, the stone patio off the back of the house and a gravel driveway all existed when he moved to the property. He stated that he paved the gravel driveway with concrete. He explained that he put a second level on the addition because the kitchen was very tight and he needed more space.

11. Lauren Claggett, the building inspector who cited Petitioner with the Violation Notice, testified that after she received a complaint from the Enforcement Division about the construction that was ongoing on the property she did an inspection on August 20, 2014. She explained that she saw the addition being built and spoke with the contractor who was working without having obtained a building permit. She pointed out that it is clear when comparing the photographs taken by the inspector from the Enforcement Division in July (Exhs. 22 through 24), when that inspector was probably mainly looking into trash and debris on the property, and those she took when she did her inspection in August (Exhs. 25(A) through (E)), that the addition was built sometime between the two visits.

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 narrowness of the property, the lots making up the subject property being subdivided prior to 1909, Petitioner having constructed a two-level addition where there was an old shed on the rear of the house, the new addition squaring off the rear corner of the house, there being existing conditions on the property needing validation before a building permit may be obtained for the addition, the addition not infringing into any required setback, the need for more kitchen space, 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 1,000 square feet net lot area, 16.5 feet front yard depth, 12.8% net lot coverage and a waiver of the parking area location requirement in order to validate existing conditions and obtain a building permit for a 2.5' x 13.5'/3' x 7.5' one-story addition, with basement, on the property located at Lots 80 & 81, Block 6, Tolson Heights Addition to Maryland Subdivision, being 5819 Burgundy Street, 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 elevation plans, Exhibits 3(a) through (c).

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.