

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-53-13 Jacobus Shols & Margarita Schols-Deen

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: August 7, 2013 .

CERTIFICATE OF SERVICE

This is to certify that on September 11, 2013 , 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: Petitioners
Adjoining Property Owners
M-NCPPC, Permit Review Section
DPIE/Building Code Official, Permitting
Town of Berwyn Heights
Other Interested Parties

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

Petitioners: Jacobus Schols & Margarita Schols-Deen

Appeal No.: V-53-13

Subject Property: Lot 24, Block C, College Knolls Subdivision, being 5801 Bucknell Terrace, College Park,
Prince George's County, Maryland

Municipality: Town of Berwyn Heights

Witness: Martin Schols, Petitioners' son

Heard and Decided: August 7, 2013

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, Petitioners request 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 8 feet in width and a rear yard at least 20 feet in depth/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 27-420(a), which prescribes that fences and walls more than 6 feet high shall not be located in any required yard and shall meet the setback requirement for main buildings and that on corner lots consisting of one (1) acre or less, fences in the front yard or side yard shall not be more than four (4) feet high without the approval of a variance. Petitioners propose to validate existing conditions and replace a wooden privacy fence up to 10 feet 9 inches in height. Variances of 5.5 feet side yard width, 11.1 feet rear yard depth/width, 8.6% net lot coverage and waivers of the fence height and location requirements for a fence up to 10 feet 9 inches in height in the side yard 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 1960, contains 7,187 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, 9 and 10. The existing dwelling was built in 1961. Exhs. 9 and 10.
2. The property is a corner lot with the house facing the legal side street (Bucknell Terrace).
Exh. 2.
3. Petitioners would like to replace an existing wooden privacy fence, but variances are required before obtaining a building permit. Since the fence height varies up to 10 feet 9 inches in height, the property is a corner lot and the portion of the fence over 6 feet in height is located in the side yard, waivers of the fence height and location requirements were requested. Exhs. 2 and 13.

4. In addition to waivers for the replacement fence, the following existing conditions on the property need to be validated. Since an existing deck is only 2.5 feet from the side lot line, the house is only 9.9 feet from the rear lot line and the allowed amount of net lot coverage has been exceeded by development on the property, variances of 5.5 feet side yard width, 11.1 feet rear yard depth/width, 8.6% net lot coverage were also requested. Exhs. 2 , 12 and 13.

5. Petitioner Margarita Schols-Deen testified that the existing wooden fence has deteriorated and the deck has needed replacement since the property was purchased in 1991. She explained that the fence is so high because the deck sits up off the ground 4 feet or so and the proposed 6-foot fence will extend up from the floor of the deck. Exhs. 3(a) and (b); 5(B) through (I). She stated that the yard behind the house slopes down into a neighbor's yard. Exhs. 5(G) and (I).

6. Martin Schols testified that the deck is farthest off the ground where it wraps around the corner of the house. See also Exhs. 5(F), (G) and (H).

7. The Town of Berwyn Heights ("Town") recommended approval of the variances. The Town noted that the existing wooden privacy fence and deck have been on the property for 20 years and are critical to the livability of this corner lot house. It was pointed out that without the fence, both the houses to the rear and left can look down onto and into Petitioners' home. Exh. 17.

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 property being a corner lot, the wooden deck and 6-foot fence having existed for more than 20 years, the proposed fence height being measured from the ground to the top of the 6-foot fence which sits on the floor of the deck, the sloping topography of the lot causing the distance of the deck off the ground to vary up to more than 4 feet, the condition of the deck and fence having deteriorated, the proposed replacement wooden deck and wooden fence to be identical in design and location to the original deck and fence, the deck and fence providing privacy and allowing the rear yard to be usable, 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 owners of the property.

BE IT THEREFORE RESOLVED, unanimously, that variances of 5.5 feet side yard width, 11.1 feet rear yard depth/width, 8.6% net lot coverage and waivers of the fence height and location requirements in order to validate existing conditions and replace a wooden privacy fence up to 10 feet 9 inches in height in the side yard (of a corner lot) on the property located at Lot 24, Block C, College Knolls Subdivision, being

5801 Bucknell Terrace, College Park, 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) and 3(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.