

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-27-13 Edy Najeras & Esmeraldu Ciciliano

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: July 10, 2013 .

CERTIFICATE OF SERVICE

This is to certify that on August 30, 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
DPIE/Inspections Division
Town of Colmar Manor

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

Petitioners: Edy Najeras & Esmeraldu Ciciliano

Appeal No.: V-27-13

Subject Property: Part of Lots 27 & 28, Block 10, Colmar Manor Subdivision, being 3404 40th Avenue,
Brentwood, Prince George's County, Maryland

Municipality: Town of Colmar Manor

Heard and Decided: July 10, 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(b)(Table I) of the Zoning Ordinance, which prescribes that each lot shall have a minimum net lot area of 6,500 square feet; Section 27-442(d) (Table III), which prescribes that each lot shall have a minimum width of 65 feet measured along the front building line; Section 27-442(e)(Table IV), which prescribes that each lot shall have a front yard at least 25 feet in depth; and 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. Petitioners propose to validate existing conditions and obtain a building permit for an existing driveway. Variances of 2,500 square feet net lot area, 25 feet front building line width, 6 feet front yard depth¹ and 11.1% net lot coverage are requested.

Evidence Presented

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

1. The property contains 4,000 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling and driveway. Exhibits ("Exhs.") 2, 3, 13 and 14. The existing single-family dwelling was built in 1935. Exhs. 13 and 14.

2. The property is made up of part of two lots subdivided in 1918, but a deed recorded in 1980 created the property as it exists today. Exhs. 3 and 16.

3. Petitioners were cited with Building Violation Notice No. 9941-2013-1, issued by the Department of Environmental Resources, dated April 4, 2013, requiring that a building permit be obtained for construction of a driveway on the property or the driveway be removed. Exh. 9.

4. Petitioners would like to obtain a permit for a 10' x 58' driveway, but variances are needed. Since construction of the driveway caused the allowed amount of net lot coverage to be exceeded a variance of 11.1% net lot coverage was requested. In addition, variances are needed to validate other existing conditions on the property. Since the property does not meet the current minimum lot size and lot width requirements

¹ "Front yard street" was inadvertently advertised in the notice but no harm or prejudice from this technical irregularity has been suggested or offered into evidence by anyone. It does not amount to a jurisdictional defect to impair the proceeding or affect the validity of the decision herein. See, Beall V. Montgomery County Council, 240 Md. 77, 212 A .2d. 751 (1965).

and the dwelling is only set back 19 feet from the front street line, variances of 2,500 square feet net lot area, 25 feet front building line width and 6 feet front yard depth are also needed. Exhs. 1 and 18.

5. Petitioner Edy Najeras testified that there are insufficient on-street parking spaces to park their vehicle and a need to protect his company truck. He stated that he simply put in new concrete over a preexisting driveway of the same size. Exhs. 7(A), 7(B) and 15(F).

6. He asserts that the Town of Colmar Manor informed him that a permit was not necessary to "redo" the existing driveway.

7. The Town of Colmar Manor took no position on the request. Exh. 22.

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 small size of the property, a driveway preexisting on the property, the replacement driveway being the same size as the original driveway, a building permit being required for replacement of the driveway, variances being needed to validate existing conditions on the property, 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 2,500 square feet net lot area, 25 feet front building line width, 6 feet front yard depth and 11.1% net lot coverage in order to validate existing conditions and obtain a building permit for an existing 10' x 58' driveway on the property located at Part of Lots 27 & 28, Block 10, Colmar Manor Subdivision, being 3404 40th Avenue, Brentwood, 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.

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.