

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-91-13 Gecko Realty, Inc.

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: November 6, 2013.

CERTIFICATE OF SERVICE

This is to certify that on December 4, 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: Petitioner
Adjoining Property Owners
M-NCPPC, Permit Review Section
DPIE/Building Code Official, Permitting
DPIE/Inspections Division
Riverdale Heights/Riverdale Hills/Crestwood Community Association
Other Interested Parties

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

Petitioner: Gecko Realty, Inc.

Appeal No.: V-91-13

Subject Property: Lots 4, 5 & 6, Block 23, Riverdale Heights Subdivision, being 6411 61st Place, Riverdale,
Prince George's County, Maryland

Counsel for Petitioner: Rebecca D. Walker, Esq., Miles & Stockbridge, P.C.

Casey L. Cirner, Esq., Miles & Stockbridge, P.C.

Witnesses: Thomas Kennedy, Gecko Realty, Inc.

Walter Zawislak, Axiom Engineering Design

Heard and Decided: November 6, 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 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 front yard at least 25 feet in depth. Petitioner proposes to validate existing conditions and obtain a building permit to complete construction of a one-story addition. A variance of 11 feet front yard depth is requested.

Evidence Presented

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

1. The subject property was subdivided in 1919, contains 5,986 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling, driveway and detached deck. Exhibits ("Exhs.") 6, 19, 20 and 27. The existing single-family dwelling was built in 1937. Exhs. 19 and 20.

2. The property is located within Aviation Policy Area 6. Exh. 20.

3. The building lot consists of three zoning lots, each approximately 20 feet wide and 100 feet deep. Exhs. 6 and 27.

4. Petitioner acquired title to the subject property at a foreclosure sale by a deed dated May 15, 2012, to Eastern Savings Bank (Exh. 11), which subsequently transferred title to Petitioner, its wholly-owned operating subsidiary. Exh. 3.

5. Building Violation Notice 31307-09-03 (Exh. 12), dated September 14, 2012, was issued to Eastern Savings Bank by the Department of Environmental Resources, Licenses and Inspection Division, for failure to secure a building permit for renovations to the subject property, including the enclosure of a previously open porch. Exh. 3.

6. Petitioner would like to validate the existing conditions of the property and obtain a building permit to complete construction of a 7'2" x 26'1" one-story addition (previously covered porch area) located

behind an existing covered front stoop, but a variance is needed as a prerequisite to obtaining the building permit. Since the covered front stoop is only 17 feet from the front street line and the steps are only 14 feet from the front street line, the allowed 9-foot extension for steps is not applicable and a variance of 11 feet front yard depth was requested. Exhs. 1, 3, 9, 10 and 27.

7. The existing 10' x 31.8' detached deck extends over the rear lot line and is 0.8 foot from the side lot line at its closest point. Exh. 27.

8. Petitioner stated that the variance requested will allow the existing single story front porch and stairs, which was previously open and is now enclosed, to project the same 10.9 feet beyond the 25-foot building restriction line as the original footprint of the home on the subject property. Exh. 3. Counsel for Petitioner stated that if the deck remains the encroachments would be removed so that the deck would meet location requirements. Counsel explained that a prior owner did the work and the property was left vacant while it was in foreclosure. It was stated that the neighborhood is eclectic, setbacks of other homes are similar to those on the subject property, and the street dead ends at parkland owned by the Maryland-National Capital Park and Planning Commission.

9. Thomas Kennedy testified that renovation of the house has been going on for years and the finished façade of the addition will have vinyl siding.

10. Walter Zawislak, testifying as an expert witness in civil engineering, stated that the total size of the three lots making up the subject property meet the current requirements for lot size.¹ He explained that no additional foundation was built or is proposed. He stated that because the front porch had been enclosed, grandfathering is not possible for the proposed rehabilitation. He stated that an exceptional condition exists because the size of the structure on the subject property predates the zoning code and "hardship" would occur if the variance were denied and the size of the dwelling itself has to be decreased.

11. The property is located within the General Plan's Developed Tier ("General Plan") and the variance request is consistent with the General Plan's goals of strengthening existing neighborhoods and encouraging appropriate infill (new remodeling and structures that are vast improvements will help enhance and strengthen local property values and perhaps stimulate other housing reinvestment and infill). Exh. 13, p. 31. The variance request is also consistent with the Developed Tier Policy 1, which encourages flexible development standards and building requirements when reusing or rehabilitating older buildings, encourages revisions to the zoning code to accommodate development patterns in older communities and remove obstacles to quality infill/redevelopment, and encourages infill/redevelopment that contributes to the character and quality of the community. Exh. 13, p. 32.

12. The Bladensburg, New Carrollton & Vicinity Master Plan ("Master Plan"), adopted in May 1994, makes recommendations for Planning Area No. 69, which includes the subject property. The Master Plan, under its stated policy number 7 says the County should give "priority to protection, rehabilitation, and improvement of existing neighborhoods and communities...." Exh. 14, p. 4. The Master Plan further states as an Objective that the County should "encourage removal of incompatible, illegal and nonconforming uses within living areas." Exh. 14, p. 37. The Master Plan goes on to encourage "the demolishing of vacant, dilapidated houses which cannot or will not be upgraded in order to eliminate their blighting influence." Exh. 14, p. 37. Finally, the Master Plan indicates that one should "increase homeownership opportunities, particularly of single family homes", Exh. 14, p. 38, which is precisely what Petitioner is attempting to do.

13. Petitioner testified that the request for a variance seeks to maintain the same footprint that has existed on the property since 1937.

¹ The subject property, which is zoned R-55, would currently require 5,000 square feet of net lot area in order to be developed with a single-family dwelling.

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 property being subdivided in 1919, the existing house being built in 1937, a previous owner having begun the renovation of the property without obtaining a building permit, the property having been vacant while in foreclosure, validation of the existing development being necessary to complete renovations on the property, the structure predating the zoning code, no additional foundation being built or proposed, grandfathering not being possible due to enclosure of the open porch area, the size of the dwelling itself needing to be decreased if the variance is denied, granting of the variance making the property conform to the General Plan 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 variance of 11 feet front yard depth in order to validate existing conditions and obtain a building permit to complete construction of a 7'2" x 26'1" one-story addition on the property located at Lots 4, 5 & 6, Block 23, Riverdale Heights Subdivision, being 6411 61st Place, Riverdale, Prince George's County, Maryland, be and is hereby APPROVED. Approval of the variance is contingent upon development in compliance with the approved revised site plan, Exhibit 27, and the approved elevation plan, Exhibit 5.

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.