



**CITY OF COLLEGE PARK ADVISORY PLANNING COMMISSION**  
**4500 KNOX ROAD COLLEGE PARK, MARYLAND 20740**  
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**ADVISORY PLANNING COMMISSION**  
**MINUTES OF MEETING**  
**June 4, 2009 – 7:30 P.M.**

**PRESENT:** Advisory Planning Commission – Robert Day, Lawrence Bleau, James McFadden, Charles Smolka, Heidi Jones-Huffman and Timothy Dennee; Planning Staff – Terry Schum, Elisa Vitale, Dorothy Friedman and Tershia Williams; Attorney – Deanna Adams

- I. Call to Order:** Robert Day called the meeting to order at 7:35 p.m.
- II. Approval of Minutes:** Lawrence Bleau moved to accept the minutes of May 7, 2009 after the correction on Page 8 in the last paragraph to read “Commissioners voted 4-0-0 to authorize the chair to send a letter from the APC to the Mayor and Council.” James McFadden seconded. The motion carried 4-0-2, with Charles Smolka and Heidi Jones-Huffman abstaining.
- III. Amendments to Agenda:** There were no Amendments to the Agenda.
- IV. Public Remarks on Non-Agenda Items:** There were no Public Remarks on Non-Agenda Items.
- V. Public Hearing – Fence Application**
- |                          |                                                                               |
|--------------------------|-------------------------------------------------------------------------------|
| <b>CEO-2009-01:</b>      | <b>Variances to permit construction of a retaining wall in the front yard</b> |
| <b><u>Applicant:</u></b> | <b>Luis Lainez</b>                                                            |
| <b><u>Location:</u></b>  | <b>9003 Acredale Court</b>                                                    |

Robert Day explained the hearing procedures and placed witnesses under oath. Dorothy Friedman summarized the staff report. The applicant is requesting a variance to construct a 32” – 60” high stone retaining wall in the front of the property. The retaining wall is already constructed, and the applicant received a violation notice from the City dated March 14, 2009. The property has an area of 6,825 square feet, a width of 65 feet and length of 105 feet. It is located off of Metzert Road, 500 feet east of the entrance to College Park Woods. The property is improved with a two-story single-family home. The surrounding neighborhood is single-family residential. A number of properties have fences or retaining walls, which is considered part of the neighborhood on Metzert Road and in College Park Woods. The property at 3506 Metzert Road has a brick retaining wall in the front yard. The owner obtained a City building permit to reconstruct the existing retaining wall, which is permitted by the City’s Fence Ordinance. The City Engineer determined that before the applicant had brought in fill dirt to level the front yard, a retaining wall was not necessary. Staff recommends denial of the variance. The City Engineer has determined that construction of the retaining wall was not necessary to retain or support the lateral pressure of earth, or water or other superimposed load.

Dorothy Friedman submitted the staff report and Exhibits 1-6 into the record. Commissioners accepted unanimously.

James McFadden asked if the applicant received a County permit?

Dorothy Friedman stated yes, but after the violation notice had been received. There is nothing to preclude the issuance of a County permit.

James McFadden asked if the County enforces the City's requirement for a variance?

Dorothy Friedman stated if it was against the Zoning Ordinance, but this is the City's ordinance.

Timothy Dennee asked if a sidewalk is shown in front of the property?

Steve Halpern, City Engineer, stated that there is a sidewalk that goes around the homes on Acredale Court beginning on the west side of Metzert Road, goes around the cul-de-sac and the applicant's home.

Timothy Dennee asked if that was the condition that existed prior to the construction of the wall?

Steve Halpern stated yes.

Timothy Dennee asked staff if the applicant's house replaces an earlier house?

Dorothy Friedman stated that she has no information that it was rebuilt. The information from the State of Maryland states that the structure was built in 1980.

Lawrence Bleau asked if staff's position is based on the applicant not meeting criterion one and two?

Dorothy Friedman stated yes.

Lawrence Bleau asked how steep was the slope prior to construction?

Steve Halpern stated that he does not know the exact dimensions.

James McFadden asked if anything was received from the adjoining neighbors or the civic association?

Dorothy Friedman stated that she had not received anything.

Charles Smolka asked what was the structural integrity of the wall?

Steve Halpern said it is a block wall, stone face, appears to look like what is required, but without inspecting the wall he could not attest to its structural integrity.

Marcella Ruiz, applicant's daughter, testified that the project was started and they were given a notice to stop the construction. They received the County permit, but the city would not issue a permit without a variance. She stated that the County inspector would return to inspect the wall if the City approved the requested variances.

Lawrence Bleau asked how steep is the slope on the property?

Luis Lainez stated about sixty degrees. Dirt from the neighbor's yard was overflowing on his sidewalk.

Robert Day asked if the photo in Exhibit 6B represents the grade that is in front of the house?

Luis Lainez stated that the sidewalk ends at the property line.

Lawrence Bleau asked if there are other properties on the street that have a similar slope?

Marcella Ruiz stated that there is one other property, which is shown in Exhibit 6C&D

Lawrence Bleau asked what would be the hardship if they had to remove the wall.

Marcella Ruiz stated that mowing the lawn would be difficult and when it rains, mud runs down onto the sidewalk.

Lawrence Bleau asked the applicant if he had considered other methods of controlling the erosion on the property?

Marcella Ruiz stated that they don't know anything else they can do.

The applicant submitted a petition into the record signed by six property owners indicating that they did not consider the construction of the wall bothersome, harmful, or are in any type of disagreement with the completion of the retaining wall. It was entered into the record as Exhibit 7.

Commissioners reviewed the criteria that need to be met before the variance can be granted and determined that:

- 1) The extraordinary situation or condition is that there existed an appreciable slope in the applicant's front yard which caused substantial erosion and storm water runoff.
- 2) Denial of the variance will result in a peculiar and unusual practical difficulty for the applicant due to the extreme difficulty in maintaining the property's front yard and sidewalk due to the steepness of the slope, the erosion, and the storm water runoff. A denial would also effectively deny the applicant full use of the front yard.
- 3) Granting the variance will not impair the intent, purpose or integrity of the Fence Ordinance. The Fence Ordinance was enacted to maintain visibility, ensure neighborhood safety, and to protect neighborhood aesthetics, none of which are negatively impacted by the granting of the requested variance.

- 4) The variance is consistent with the design guidelines adopted for the historic district, if applicable. The property is not located in an historic district, as such, this criteria is not applicable.
- 5) The granting of the requested variance to allow for the construction of a retaining wall will not negatively affect the public health, safety, welfare or comfort. The retaining wall has likely resulted in the reduction of any hazard created from accumulation of mud on the sidewalk, providing a safer walkway for pedestrians.
- 6) The fence for which an appeal is requested incorporates openness and visibility as much as is practicable, provided however, that it shall not be constructed of chain link unless this material is consistent with the surrounding neighborhood. Retaining walls, by their very nature, cannot incorporate openness; however, the retaining wall does not impede visibility.
- 7) The proposed construction, including setbacks, is characteristic of and consistent with the surrounding neighborhood. In neighborhoods where chain link is a characteristic material, alternate materials incorporating openness and visibility, may be permitted. The retaining wall is characteristic and consistent with other retaining walls in the surrounding neighborhoods.

James McFadden moved to approve variance CEO-2009-01 because the request meets the seven criteria for granting the variance for the reasons stated above. Heidi Jones-Huffman seconded. Motion carried 4-2-0, with Lawrence Bleau and Timothy Dennee voiting nay.

#### **Public Hearing – Zoning Application**

**CPV-2009-05:                    Variances to construct a deck and screened porch and to validate the existing single-family home**

**Applicant:                    Abhijit Dasgupta**

**Location:                    4900 Iroquois Street**

Robert Day explained the hearing procedures and placed witnesses under oath. Elisa Vitale summarized the staff report. The applicant is requesting a variance of 5% or 2,305.5 feet, a variance of 3 feet from the required 20-foot rear yard setback for the deck and screened porch and a variance of 2 feet from the required 8-foot side yard setback for the screened porch and existing single-family home. The property is zoned R-55 and is located in a single-family residential neighborhood. The property has an area of 7,685 square feet and is irregular in shape. The rear property line does not intersect the side property lines at a 90-degree angle as normal properties do. The front property line measures 73.83 feet, the rear property line measures 74.43 feet, the east side property line measures 114.16 feet, and the west side property line measures 95.5 feet. The property is improved with a one and one-half story structure, detached garage and driveway. The building dates to 1932 and the subdivision dates back to 1906. There are a number of properties in the neighborhood that have decks and one property on the street that has an enclosed rear deck. The North College Park variance committee reviewed the application and voted as follows in reference to the request variance; 3 approved, 1 abstained and 1 had no response. Staff is recommending approval of the requested variances.

Elisa Vitale submitted the staff report and Exhibits 1-6 into the record. Commissioners accepted unanimously.

Lawrence Bleau asked if the house was sited differently, would that change the lot coverage?

Elisa Vitale stated no it would not change the lot coverage.

Lawrence Bleau asked how far does the stoop protrude into the front yard?

Elisa Vitale stated that steps and porches can encroach into the front yard up to 9 feet, so that would not be an issue.

Abhijit Dasgupta, the applicant, testified that his house is setback further than his neighbors house and it is cut at an angle. He testified that his home is small and he would like to have additional outdoor space for family gatherings.

Lawrence Bleau asked what would the hardship be if he could not build the deck?

Abhijit Dasgupta stated that they have a large family that visit with kids in the summertime and the house is too small so he entertains outdoors. The size of deck he is proposing would accommodate his family.

James McFadden asked if decks or patios count against lot coverage?

Elisa Vitale stated that decks do, but patios don't.

Commissioners reviewed the criteria that need to be met before the variance can be granted and determined that:

- 1) The property has an extraordinary situation in that the property is irregular in shape. If the rear property line intersected the side property lines at a 90-degree angle, thereby increasing the rear yard depth, the applicant could construct the deck and porch without the need for a variance from the rear yard setback requirement. The siting of the existing single-family home at the rear of the property when it was constructed in 1932 further increases the shallowness of the property.
- 2) The strict application of the County Zoning Ordinance will result in practical difficulties for the applicant because the existing single-family home, which predates zoning, is sited to the north (rear) and east (right side) of the property. The placement of the existing single-family home on the site exceeds the required front yard setback by 11 feet and encroaches 2 feet into the required sideyard setback, which limits the applicant's ability to construct an addition to the rear of the house without the need for a variance. In addition, the existing improvements on the property currently exceed the maximum allowable lot coverage, thus requiring a variance for any addition that would increase the lot coverage.

- 3) Granting the requested variances to allow the construction of a deck and screened porch and to validate the existing single-family home will not impair the intent, purpose or integrity of any applicable County General Plan or County Master Plan because it will not change the character of the neighborhood or cause adverse impacts. Decks and screened porches are characteristic of the neighborhood and the house is an existing condition on the property, which predates zoning.

James McFadden moved to approve variance CPV-2009-05 because the request meets the three criteria for granting the variances for the reasons stated above. Heidi Jones-Huffman seconded. Motion carried 4-2-0, with Lawrence Bleau and Timothy Dennee voiting nay.

**Public Hearing – Zoning Application**

**CPD-2009-01:           Departure to erect a freestanding sign**  
**Applicant:           Hamid Fallahi**  
**Location:            9330 Baltimore Avenue**

Robert Day explained the hearing procedures and placed witnesses under oath. Elisa Vitale summarized the staff report. The applicant is requesting a departure of fourteen feet (14') from the required forty foot (40') setback from the front street line for the main building and a departure of nine feet (9') from the required ten foot (10') setback in order to allow a property owner to install a free-standing sign. The subject property has two existing pole signs. The applicant is proposing to remove the existing Volkswagen sign and is proposing to install a 6'9" x 12' high freestanding sign. The sign will be located closer to the southern property line and closer to Baltimore Avenue than the existing pole sign. This property is located on Route 1, zoned M-U-I and is in the Sector Plan area. The applicant has completed a fairly significant interior and façade improvements to the property, but not significant enough to require the applicant to submit a detailed site plan. The applicants applied to the county for a building permit, which was issued in January 2008. Unfortunately, the permit was issued in error because the departures were required. The Sector Plan discourages the use of free-standing signs; it encourages the use of building mounting signs. It also limits the area of free-standing signs. Properties are allowed to have one square foot of free-standing signage for every four feet (4') of linear frontage. For this property they could have 63.4 square feet of signage based on the linear frontage along US 1. The subject property has 253.57 linear feet of frontage. The sign that is being proposed by the applicant is 81 square feet, which exceeds the allowable square footage by 17.6 square feet. The property is improved with four existing structures, an 18,104 square foot sales and repairs service building, a 1,954 square foot Volkswagen sales building, a 7,020 square foot Volkswagen service and parts building and a 1,884 square foot Volkswagen building. These descriptions were taken from the site plan, but I went out to the property and currently on the property, there is the existing Darcars Volkswagen and Nissan pole sign that the applicant is proposing to remove. In addition to that, as part of the façade improvements the applicant has installed a number of buildings mounted signs. Exhibit 6F shows the banner signs, Exhibit 6G shows the Darcars signs with the Volkswagen emblem, Exhibit 6H shows the building mounted Nissan emblem. The property directly north of the subject property is also a Honda auto dealership, which have a monument sign but did not require a departure. The North College Park Citizens Association subcommittee

reviewed the application and voted as follows: 3-opposed and 1-abstained. The property owner directly south of the property, a Shell Gas station, was concerned about visibility of his canopy mounted sign. Staff recommends denial of the requested departures and also recommends that the applicant remove the used car sign as it is not shown on the site plan and does not appear to be legally existing.

Elisa Vitale submitted the staff report and Exhibits 1-6 into the record. Commissioners accepted unanimously.

Lawrence Bleau asked if the 14' from 40' required setback is for the position of the existing building?

Elisa Vitale stated yes.

Lawrence Bleau asked if the size of the proposed free-standing monument sign should be part of the departure requested?

Terry Schum stated that it is a sign design issue, but it should be included in the departure request.

Robert Day asked if the sign will be in line with other signs closer to the road?

Elisa Vitale stated yes, closer.

Lawrence Bleau asked if the ultimate right-of-way indicates the edge of the road or does it include sidewalks?

Elisa Vitale stated that the sidewalk would be located in the right-of-way.

Timothy Dennee asked what is the distinction between a monument sign and a pole mounted sign?

Elisa Vitale stated that monument signs are signs mounted on a solid base

Heidi Jones-Hoffman asked if the Sector Plan permits monument signs?

Elisa Vitale stated that there are certain areas in the Sector Plan where free-standing signs are discouraged and building signs should be used.

Ken Padgett, applicant's agent, testified that they are proposing a sign that is required by the Nissan Corporation per their franchise agreement. The existing sign on the property that is proposed with this application to be removed if the departure is granted to install the new sign, is 30' in height. If the application is denied, they will have to put the Nissan logo where the Volkswagon logo is and add the Darcars and Nissan logos below that and paint the sign. He stated that he thinks the proposed sign will fit along the Rt. 1 corridor much nicer than the existing sign.

Timothy Dennee asked if the franchise agreement specifies distance from the street?

Ken Padgett stated, no, that's the smallest sign available in the sign program.

Chuck Smolka asked what would happen if you can't install the proposed sign?

Hamid Fallahi, Darcars Nissan, stated that they would keep the old sign and paint and resurface.

Timothy Dennee asked if the applicant's had a copy of the franchise agreement?

Hamid Fallahi stated no.

Timothy Dennee asked if Nissan specifies where to locate the sign?

Hamid Fallahi stated that they have several dealerships and each manufacturer have their own criteria and specifications as to what the sign should look like and where it should be located.

Timothy Dennee asked if there was anything in the franchise agreement that they must comply with local government regulations?

Hamid Fallahi stated, yes they have to comply.

Lawrence Bleau asked how would zoning ordinance be better served by your proposal?

Hamid Fallahi the existing sign is a highway sign it sits up too high and it is hard to see. A sign that is 12' tall is eye level, and it can be seen and it is very safe.

Terry Schum asked what is Volkswagon going to do about their signage when the free-standing sign is removed?

Hamid Fallahi stated that they will have to come back and request another free-standing sign for Volkswagon or attach the Volkswagon logo to the bottom of the proposed sign.

James McFadden asked who owns the Volkswagon franchise?

Hamid Fallahi stated that Darcars own the franchise.

Terry Schum asked if the applicant can speak on what type of building sign is being fabricated and where it will be installed.

Ken Padgett stated that he has an application with Prince George's County for a Nissan building mounted sign and he can't speak for Volkswagon.

Lawrence Bleau moved to continue the hearing indefinitely, to allow the applicant to obtain additional information from the property owner regarding proposed and existing signage on the site. Heidi Jones-Huffman seconded. Motion carried 4-0-0.

- VI. Update on Development Activity:** There was no update on development activity.
- VII. Other Business:** There was no other business.
- VIII. Adjourn:** There being no further business, the meeting was adjourned at 11:00 p.m.

Minutes prepared by Tershia Williams