

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-39-14 Constance Christian & William Hamilton

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 20, 2014.

CERTIFICATE OF SERVICE

This is to certify that on October 1, 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: Petitioners
Adjoining Property Owners
M-NCPPC, Permit Review Section
DPIE/Building Code Official, Permitting
Other Interested Parties

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

Petitioners: Constance Christian and William Hamilton

Appeal No.: V-39-14

Subject Property: Lot 4, Knott Subdivision, being 23330 Neck Road, Aquasco,
Prince George's County, Maryland

Counsel for Edwin Barbee: Matthew Dyer, Esq., Law Offices of McGill & Woolery

Witnesses: John Hilley, Advanced Surveys, Inc.

Edwin Barbee, owner of neighboring property

Vincent Antonioli, neighbor

Arnold Esposito, neighbor

Heard: June 18, 2014; Decided: August 20, 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, Petitioners request that the Board approve variances from Section 27-442(c)(Table II), which prescribes that not more than 5% 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. Petitioners propose to construct a new single-family dwelling and driveway. A variance of .62% 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 in 2002, contains 218,744 square feet (5.0217 acres), is zoned O-S (Open Space) and is proposed to be improved with a two-story single-family dwelling, attached garage and driveway. Exhibits ("Exhs.") 3, 4(a) and (b), 5, 10 and 11.
2. The property is an odd-shaped lot containing almost 3 acres of woodland conservation area. Exh. 3.
3. In order to meet the requirement that the property be at least 300 feet wide at front building line, the proposed dwelling must be set back more than 560 feet from the street (Neck Road). Exh. 3.
3. Petitioners would like to construct a 50" x 75' two-story house, with attached garage, and a driveway, which would include a circular driveway in front of the house, but variances are required to obtain a building permit. Since construction of the dwelling and driveway would cause the allowed amount of net lot coverage to be exceeded, a variance of .62% net lot coverage was requested. Exhs. 13 and 14.

4. In addition, since the circular part of the driveway not leading to the proposed attached garage would be located in an area of the front yard prohibited by Section 27-120.01(c), a waiver of the parking area location requirement was also requested. Exh. 14.

5. Petitioners' variance application included the following reasons for supporting the variance:

- The house is located as close as possible to the front building restriction line which has a 300' lot width requirement.
- The driveway has been located with the minimum length possible for access to the proposed house, circulation, and maneuverability into the proposed garage.
- Driveway location from Neck Road (to the proposed house) is limited by the shape of the property boundaries. Woodland conservation area exists on each side of the proposed driveway that further restricts the location of the proposed house.
- Due to the length of the driveway, the owners would not be able to build their proposed house without variance relief from the lot coverage.
- This would create a severe hardship for the applicant when the zoning restriction in question is applied to this particular property.
- The unique circumstances of this lot may interfere with the basic right of ownership for the property owners.
- The circular drive provides minimal impact to the environment by providing efficient access to the front door and into the garage.
- Care has been taken to reduce environmental impacts and minimize the amount of disturbed and impervious area.
- Approval of this variance will not substantially impair the intent, purpose, or integrity of the General Plan.

Exh. 2.

6. John Hilley, Petitioners' engineer, testified that the proposed house will be a long distance from Neck Road because of the shape of the lot and that without the variance for lot coverage the owners would be unable to build a house and driveway because of the driveway length necessary to get back to the house. He further testified that there is woodland conservation area on both sides of the road which would serve as the driveway. He explained that there is a front building restriction line where the lot is 300 feet wide behind which the proposed dwelling must be located. Exh. 20.

7. Mr. Hilley further testified that the proposed attached garage on the house is a "distance away" from the front door and the proposed driveway turn-around in front of the house will provide a way to pull up to the front porch and turn around.

8. Edwin Barbee, the owner of adjoining undeveloped neighboring property (Parcel 80) to the rear (north) of Petitioners' property believes that a right-of-way existed on Petitioners' property that would impact the proposed development of Petitioners. His counsel explained that Mr. Barbee now has no means of ingress/egress to his property and a prescriptive easement may exist.

9. Aerial photographs (with 1965 notations), Mr. Barbee's title insurance policy, and property reports/state assessment records/title search documents for Petitioners' and Mr. Barbee's properties were submitted into the record. Exhs. 27, 28, 31 through 37. None of the evidence indicated an easement existed on the subject property.

10. Ms. Christian testified that a title attorney researched the matter of an easement on their property and concluded that Petitioners have no legal obligation to allow access by Mr. Barbee which was communicated to counsel for Mr. Barbee last year without any response. Exh. 26. She further stated that they would not be able to grant Mr. Barbee access through their property because of the existence of woodland conservation area.

11. Mr. Barbee testified that he bought his property from his grandparents in 1968 and the access road had been on the subject property for many years and was used when his grandfather used to farm tobacco. He stated that his deed mentions a right-of-way and he never realized that he could lose it. He explained that he has not had a need to go to the property and was just holding onto it. He submitted a map on which he marked the approximate location of the alleged right-of-way. Exh. 25.

12. Vincent Antonioli, a neighbor, supported Petitioners' request. He testified that that he owns a lot east of the subject property. He stated that he has lived there since 1976 and is unaware of any road or the use of any road that leads to Mr. Barbee's property.

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 unusual shape of the property, the narrowness of the front portion of the property, the proposed dwelling being required to be set back such a long distance from the public road in order to meet the required lot width of 300 feet, the driveway leading to the dwelling being required to be at least 10 feet wide, the property being totally wooded and containing a large amount of woodland conservation area that limited development, the circular driveway providing efficient access to the front door of the dwelling, no probative evidence being found that there is a recorded right-of-way across the subject property to provide access to adjoining Parcel 80, 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 a variance of .62% net lot coverage and a waiver of the parking area location requirement in order to construct a 50' x 75' two-story house and driveway, including a circular driveway on the property located at Lot 4, Knott Subdivision, being 23330 Neck Road, Aquasco, Prince George's County, Maryland, be and are hereby APPROVED. Approval of the variances is contingent upon development in compliance with the approved revised site plan, Exhibit 20, and the approved elevation plans, Exhibits 4(a) and (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.