

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-11-14 Bardon, 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: June 18, 2014.

CERTIFICATE OF SERVICE

This is to certify that on September 3, 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: Petitioner
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

Petitioner: Bardon, Inc.

Appeal No.: V-11-14

Subject Property: Part of Parcel 14, Tax Map 154, Grid A3, and Part of Parcel 41, Tax Map 154, Grid C3,
being 14801 McKendree Road, Brandywine, Prince George's County, Maryland

Counsel for Petitioner: Daniel F. Lynch, Esq., McNamee, Hosea, Jernigan, Kim, Greenan & Lynch, P.A.

Witnesses: Timothy Brevard, Aggregate Industries

Anne Stephen, neighbor

Katina Mackall, Robinswood Homeowners Association

Shakia Barnes, Robinswood Homeowners Association

Dian Zanfordino, Rose Creek Homeowners Association

Heard: March 26, 2014; Decided: June 18, 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 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 construct a conveyor bridge over McKendree Road. A variance of 7.5 feet front yard depth is requested.

Evidence Presented

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

1. The subject property contains 683.26 acres, is zoned R-A (Residential-Agricultural) and R-E (Residential-Estate) and is improved with a surface sand and gravel mining operation and a wash plant for processing the mined material (SE-4402/SE-4403/SE-4651). Exhibits ("Exhs.") 4(a) and (b), 10 and 11.

2. The property is an irregular-shaped lot located on the south side of Accokeek Road (MD 373) and the west side of McKendree Road northeast of Gardner Road in Brandywine, Maryland. Exhs. 4(a) and (b); 6. Access to the site is via a two-way driveway from Accokeek Road. Exh. 2, page 2.

3. To the north of the subject property, across Accokeek Road, are undeveloped land and the historic McKendree Church cemetery (85A-020) in the R-A Zone. To the south are undeveloped land, scattered single-family homes and an active sand and gravel mine in the R-A Zone (SE-4479). To the southeast are the Robin Dale Golf Course (SE-2004) in the R-E and R-R Zones. To the east, across McKendree Road, are detached single-family homes and farming in the R-A Zone. To the west are undeveloped land and single-family homes in the R-A Zone. Exhs. 2, page 3; 6 and 13.

4. Counsel for Petitioner explained that Petitioner would like to construct a conveyor bridge over McKendree Road in order to allow the transfer of mined material from a sand and gravel mine on the other side of McKendree Road to an existing wash plant on the subject property. The structure that will support a

faux covered bridge will be located 17.5 feet from the street line of McKendree Road. Exh. 2, page 3. Counsel stated that because the wash plant is located on property on the other side of McKendree Road from the mining operation, the conveyor system must be designed to allow for an 18-foot clearance and since the structure is greater than 6 feet in height, it would have to be located 25 feet from the street line, requiring a variance in order to obtain a building permit. Exh. 2, pages 3-4. Because a setback of 25 feet is required from the street line for structures greater than 6 feet in height, a variance of 7.5 feet front yard depth was requested. Exh. 15.

5. Counsel for Petitioner explained that the variance for the conveyor bridge location on the other side of McKendree Road was granted under Special Exception 4647 ("SE-4647").¹ It was at that time that the need for a variance on the subject property's side of the road became a reality and, since there is no pending special exception case before the Planning Board, the Board of Appeals is the only body which may grant the variance. Exh. 28. He stated that use of the proposed conveyor system will allow the mining of additional material without generating additional truck traffic on area roads. He stated that the sand and gravel operation across McKendree Road is not yet operational, but that if it becomes operational without the conveyor bridge, the operation would put a large number of additional trucks on area roads (e.g., McKendree Road and/or Accokeek Road). He further explained that the location of the mining operation directly across McKendree Road from an existing wash plant presents an extraordinary situation and that there are no other properties in the County that contain sand and gravel where this type of conveyor system can be implemented.

6. Counsel further explained that the proposed conveyor bridge was designed to look like an old, covered "horse" bridge so that it would blend in with the rural character of the area. Exh. 5. He stated that the bridge has to be a certain height so that trucks can pass under it and the supports must be positioned closer to the street to support the bridge span.

7. Counsel stated that if trucks had to move the mined material from the other site to the subject property, the trucks would exit the site onto Accokeek Road and turn onto McKendree Road. Counsel estimated that 300 truck trips a day would be generated without the conveyor bridge, whereas with the bridge there would only be only 4-5 trucks with employees going to the site each, a water truck coming in or an occasional person coming in to repair equipment. Counsel stated that truck traffic delivering product out of the subject property would continue, but that the conveyor bridge would cut truck traffic in half because no trucks would have to bring in the material from the site across McKendree Road to the wash plant.

8. Counsel addressed the statutory requirements for approval of a variance: There is the extraordinary situation of the location of the mining operation directly across the street from an existing wash plant. The proposed conveyor system allows the transfer of mined material to the existing wash plant without the generation of additional truck traffic on area roads, but that since the conveyor bridge needs to allow an 18-foot clearance to allow vehicles to travel under the span, a 25-foot setback is required from the street line for structures over 6 feet in height. Strict application of the Zoning Ordinance would result in practical difficulties, as it would be impossible to transfer the mined material to the wash plant without creating additional truck trips on the road network which would impact County residents. The 2009 Approved Master Plan & Sectional Map Amendment for Subregion 5 addresses sand and gravel operations. Not only will granting of the variance not significantly impair the intent, purpose or integrity of the Master Plan, but it is in conformance with the Master Plan since one of the strategies set forth in the Plan is ensuring that sand and gravel applications address the impacts on surrounding communities, including mitigation of on and off site transportation impacts.

9. Timothy Brevard testified that the conveyor bridge would minimize impact on the area and would supply the operation reserve material to continue to feed the wash plant and in turn provide the products to

¹ A final decision in SE-4647 was issued on May 21, 2014. Zoning Ordinance No. 4-2014, enacted on May 12, 2014, by the County Council of Prince George's County, Maryland, sitting as the District Council.

concrete and asphalt companies. He testified that the hours of operation approved with the special exception for the subject property are 6:00 A.M. until 10:00 P.M., but generally operations run from about 7:00 A.M. until 5:00 P.M., and the designated trucking hours are 6:00 A.M. until 5:00 P.M. He explained that the conveyor would be electrically powered and encased for 100 feet where it crosses the road. He further explained that the subject site is mined out and if it were not they would not have sought to operate the mining operation on the other site. He stated that when the new site is mined out, estimated to take about 10 years, it will be reclaimed according to the special exception reclamation plan.

10. Katina Mackall and Shakia Barnes opposed the request, expressing concerns regarding noise resulting from Petitioner's current project, pollution from the trucks and mining, and the (adverse) effects on the environment and safety. Exh. 24. Ms. Barnes voiced concern that McKendree Road could not support a bridge, has no shoulder area and washes out in storms, and speculated that any structure across it will cause the road to deteriorate faster than it does already.²

11. Anne Stephen complained that she lives close to the wash plant, has heard what sounds like a pump at the plant running at all hours and suggested that the wash plant be moved to the area where the new operation is located.

12. Dian Zanfordino opposed the request, agreeing with the testimony of the other residents who testified.

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 location of the mining operation directly across the street from an existing wash plant, the proposed conveyor system allowing the transfer of mined material to the existing wash plant without the generation of additional truck traffic on area roads, the conveyor bridge needing to be designed to allow an 18-foot clearance to allow vehicles to travel under the span, a 25-foot setback being required from the street line for structures over 6 feet in height, denial of the variance resulting in additional truck trips on the road network which would impact County residents, a strategy of the Master Plan being that sand and gravel applications address the impacts on surrounding communities, including mitigation of on and off site transportation impacts, the prior granting of a variance for the conveyor bridge location on the other side of McKendree Road pursuant to SE-4647, 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.

² The Board notes that SE-4647 addresses noise mitigation, "mitigation of particular matter emissions", and "paving on the haul road", among other safeguards and operational concerns of the enterprise as it relates to the adjoining property. Exh. 28.

BE IT THEREFORE RESOLVED, unanimously, that a variance of 7.5 feet front yard depth in order to construct a conveyor bridge over McKendree Road on the property located at Part of Parcel 14, Tax Map 154, Grid A3, and Part of Parcel 41, Tax Map 154, Grid C3, being 14801 McKendree Road, Brandywine, Prince George's County, Maryland, be and is hereby APPROVED. Approval of the variance is contingent upon development in compliance with the approved site plan(s), Exhibits 4(a) and (b), 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.