

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. AA-1669 Abraham Green

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: October 22, 2014.

CERTIFICATE OF SERVICE

This is to certify that on August 17, 2015, 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
DPIE/Inspections Division (Violation Notice No. BVN 17183-14-01)
Office of Law
Other Interested Parties

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

Petitioner: Abraham Green

Appeal No.: AA-1669

Subject Property: Lot 19, Block G, Lake Arbor Subdivision, being 10203 Indian Summer Court,
Mitchellville, Prince George's County, Maryland

Counsel for Prince George's County Department of Permitting, Inspections and
Enforcement ("DPIE"): Bryon Bereano, Associate County Attorney

Witnesses: Robin Johnson, neighbor

Melvin Johnson, neighbor

Michael Karhumaa, Inspector, DPIE

Heard and Decided: October 22, 2014

Board Members Present and Voting: Bobbie S. Mack, Chairperson
Albert C. Scott, Vice Chairman
Anastasia T. Johnson, Member

RESOLUTION

This appeal is brought to the Board of Appeals for Prince George's County, sitting as the Board of Administrative Appeals in Prince George's County, Maryland (the "Board"), from the determination of the Department of Permitting, Inspections and Enforcement, Inspections Division ("DPIE"), to issue Violation Notice BVN-17183-14-01, dated June 24, 2014, citing Petitioner with violation of Prince George's County Code Section 32-162(a)(1) (Drainage shall convey surface and ground water to prevent ponding or nuisance of any kind) and requiring that Petitioner eliminate the ponding of water at the right side of house, on the property located at Lot 19, Block G, Lake Arbor Subdivision, being 10203 Indian Summer Court, Mitchellville, Prince George's County, Maryland.

Evidence Presented

The following testimony and evidence were presented to the Board for its consideration:

1. The subject property contains 6,460 square feet, is zoned R-S (Residential Suburban Development) and is improved with a detached single-family dwelling, driveway and shed. Exhibits ("Exhs.") 6, 7 and 8(B) thru (F). The existing single-family dwelling was built in 1995. Exhs. 6 and 7.
2. The subject property is located on Indian Summer Court within Arbor Park Subdivision in Mitchellville. Exh. 2. The surrounding properties are all developed with detached single-family dwellings. Exh. 8(A).
3. Following an inspection of the subject property, Petitioner was issued Building Violation Notice 17183-14-01 (the "Violation Notice"), dated June 24, 2014, by the Inspections Division of DPIE. Exh. 2. The Violation Notice cited violation of Section 32-162(a)(1), which states:

- (a) The following provisions apply to the safe conveyance and disposal of drainage to prevent erosion and property damage.

- (1) Drainage facilities, including but not limited to sump pumps, foundation drains, trench drains and under drains, shall be provided and shall be discharged into a publicly maintained drainage system or continuously flowing natural water course to safely convey surface and ground water in such a manner to prevent detrimental erosion, overflow, ponding or nuisance of any kind in accordance with applicable design criteria,

standards and procedures as contained herein and as required by approved standards and regulations of the Prince George's County Department of Permitting, Inspections, and Enforcement.

The Violation Notice also provided as corrective action, "Drainage shall convey surface and ground water to prevent ponding or nuisance of any kind. Eliminate the ponding of water at right side of house." Exh. 2.

4. In his appeal letter, Petitioner stated he called the Prince George's County, Maryland, Department of Environmental Resources, Environmental Services Division, to discuss his plans to grade his property to stop the water from flowing from his neighbor's property through his property to prevent puddles of water in his back yard. He stated that Mr. Ken Krantz, Jr., Community Planning Team, came to the subject property to discuss the plans. He stated that Mr. Krantz said that Petitioner could do whatever it took to stop the drainage from flowing through the property. As a result, Petitioner stated that he initially installed a trench from his property line and a drainage pipe so the water could flow underground through the pipe which he said worked for a while. He stated that later he regraded the property. He explained that in his neighbors' rear yard there is an enclosed deck with gutters at the end and down spouts with extensions that extend away from their property towards his property. He explained that the neighbors' property also contains a rear yard slope which enhances the flow of water from their four down spouts with extensions pointing toward his property along the slope. He stated that water travels the path of least resistance which is through his property from the downward slope in his neighbor's yard. Exh. 1.

5. Petitioner testified that he received the Violation Notice for drainage that was actually coming from another neighbor's property and stopped on his property. He explained that he is appealing the Violation because his neighbor is causing the water problem. He stated that he has lived at the subject property since 1995 and there has always been water there, but since the neighbor placed a covered porch on his deck, and added downspouts with long extensions, water has come down from that neighbor's property which now flows onto his property. He explained that about five years ago he put a PVC pipe on the ground from his downspout so water would flow away from his house towards his shed and covered it with dirt. He further testified that Ken Krantz, from the County's Department of Environmental Resources, who came to his house, informed him he could do whatever he needed to do and provided a booklet on drainage. Exh. 4. He testified that he brought in dirt a couple of years ago to grade in the rear of his property for mowing purposes, not for the water problem.

6. The County Inspector, Michael Karhumaa, testified that a complaint was received in May (Exh. 5) after the regrading of the subject property was completed and ponding occurring on the (Johnson) property next door. He stated that the ponding water sits on the Johnson property.

7. Counsel for the County stated that Petitioner's property is located towards the bottom of a hill and the water runs downhill. Counsel argued that Petitioner is prohibited from building up the ground around his property to divert water that was naturally flowing down past his house because of the natural contour of the land. Counsel stated that Petitioner changed the natural water flow causing the water to stop and pool in the Johnsons' yard. He stated that Petitioner admitted to the regrading work in his appeal letter to the Board. Exh. 1. Counsel stated that Petitioner may have had a water problem because of the hill through his yard and pursuant to County Code Section 32-162(a)(1) he is allowed to make modifications in drainage facilities to alleviate it, but the water has to be "discharged into a publicly maintained drainage system or continuously flowing natural water course to safely convey surface and ground water in such a manner to prevent detrimental erosion, overflow [and] ponding...." Counsel submits that Petitioner should make changes by continuing the natural flow away from his yard either into a public area or into the street where there are gutters.

8. The County submitted photographs of the ponding at issue. Exhs. 12(A) through (I).

9. Marvin and Robin Johnson, the neighbors at 907 Falls Lake Drive, submitted photographs to show the ponding of water on their property. Exhs. 13(A) through (G).

10. Marvin Johnson testified that during heavy rain, even before he constructed his deck there existed a problem with water flowing through Petitioner's property past his (Petitioner's) deck and shed to the fence. He explained that a hill goes from the curb in front of his (Mr. Johnson's) house downward through his property and behind his house to Petitioner's property which is at the base of the hill. Exhs. 13(E) and (G). He stated that Petitioner has always had ponding on his property, but the ponding on the Johnson property commenced only after Petitioner's property was regraded and the construction of a barrier which left nowhere for water to flow.

11. Robin Johnson testified that Petitioner's ponding and the problem with ponding on their property did not start until Petitioner regraded his property, disrupting the natural flow of water. She noted that water also flows from another neighbor's property located higher than Petitioner's property.

Findings of the Board

After hearing all the testimony and reviewing the evidence presented, the Board finds as follows:

1. The Violation Notice was issued to Petitioner for ponding of water on the right side of the property, in violation of County Code Section 32-162(a)(1).
2. Petitioner admitted in his appeal letter to the Board as well as in testimony that he regraded the rear yard of his property.
3. There is sufficient credible testimony and substantial evidence in the record to support the conclusion that Petitioner took action which has caused disruption to the natural flow of water across his property resulting in ponding of water on the right side of his property and in his neighbor's yard.
4. Restoration of the natural contour of the land is required with proper drainage to convey surface and ground water to prevent ponding or nuisance of any kind and eliminate the ponding of water at the right side of the house as is consistent with the requirements of Section 32-162(a)(1).

BE IT THEREFORE RESOLVED, unanimously, that the determination of the Inspections Division Inspector, Department of Permitting, Inspections and Enforcement, to issue Violation Notice BVN-17183-14-01, dated June 24, 2014, be and hereby is AFFIRMED.

BOARD OF ADMINISTRATIVE 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.