

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-92-14 Columbia Group Recap, LLC

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: April 29, 2015.

CERTIFICATE OF SERVICE

This is to certify that on June 1, 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
Adjoining Property Owners
M-NCPPC, Permit Review Section
DPIE/Building Code Official, Permitting

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

Petitioner: Columbia Group Recap, LLC

Appeal No.: V-92-14

Subject Property: Lot 21, Brock Hall Subdivision, being 14721 Dunbarton Drive, Upper Marlboro,
Prince George's County, Maryland

Counsel for Petitioner: John K. Gardner, Esq.

Witnesses: Mike Brewrink, Petitioner's architect

Dennis Laskin, Petitioner's architect

David Kennedy, Greenway Homes (Petitioner's contractor)

Ronald Lipford, neighbor

Heard: March 25, 2015; April 29, 2015

Decided: April 29, 2015

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(i)(Table VIII) of the Zoning Ordinance, which prescribes that accessory buildings shall not exceed 15 feet in height. Petitioner proposes to validate and obtain a building permit for a detached 3-car garage and driveway extension. A variance of 3 feet 10 inches accessory building height is requested.

Evidence Presented

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

1. The property was subdivided in 1960, contains 58,041 square feet, is zoned R-E (Residential-Estate) and is improved with a single-family dwelling, detached 3-car garage and driveway. Exhibits ("Exhs.") 3, 5, 10 and 11. The property was improved with a single-family dwelling in 1976. Exhs. 10 and 11.

2. Petitioner would like to validate an existing condition on the property and obtain a building permit for a 34' x 34' detached 3-car garage and driveway extension that already has been built, but a variance for the following condition must be approved before obtaining a building permit. Since the height of the garage exceeds the maximum allowed height of an accessory building, a variance of 3 feet 10 inches accessory building height was requested. Exh. 13.

3. Petitioner stated that the topography in the rear of the subject property is quite steep and therefore the garage needed to be built into the hillside and have the finished grade 4-6 feet high against the back and sides of the garage. Exhs. 6(H) through (K), 23(b) through (d). Petitioner has reason to

believe that the intention of the steep roof (10:12) is because there are many large older trees on the property that could potentially drop large limbs onto the garage structure and the steepness of the roof is therefore a safety precaution. Exh. 2.

4. Petitioner stated that the garage is situated on a 1.33 acre lot located in a highly wooded area that separates all neighboring houses from the subject property (Exhs. 6(B) through (E), 21(3)), 14801 Dunbarton by 350 feet, 14708 Brock Hall by 215 feet, and 14715 Dunbarton by 140 feet, respectively. Exh. 6(A).

5. Petitioner described the situation leading to the request for the variance: Anthony Frederick, with ROC Construction, purchased the house on August 9, 2013, and enlarged the driveway to extend to a 3-car garage, which he then constructed behind the existing residence. Columbia Group Insurance provided financing for Mr. Frederick. The loan defaulted and after foreclosure action took place the house went to the lender's company, Columbia Group Recap, LLC (Petitioner in the subject appeal). It is Petitioner's understanding that the homeowner submitted a construction set (#44899-2013-00) to Prince George's County to build a 3-car garage with a maximum height of 15 feet. The garage was then built with an A-frame roof with a height of 17 feet. The slope of the roof was approximately 40 degrees, which caused the midpoint to be high and thereby exceed the height limitation. Mr. Frederick prepared a revision set to submit to the County to reflect the alteration. After the foreclosure action took place, the lender acquired the revision construction set and submitted it to the County in order to get inspections completed. The planning department stated that the garage and revision set do not meet the height restrictions and are higher than the allowed height under the County Code. Exh. 2.

6. John Gardner, counsel for Petitioner, reiterated that the 3-car garage did not exist when ROC Construction acquired the property and according to the permit records the original plans for construction of the garage were submitted in December 2013. See Exh. 9. Counsel explained that the garage was 80% completed before Petitioner took back a deed in lieu of foreclosure on October 7, 2014, and inherited the partially-constructed structure. Petitioner then put siding on the structure because winter was coming and to keep it watertight, submitted revised plans to the County in November 2014 and asked for a final use and occupancy inspection (see Exh. 9), which led to the determination that a variance for the height of the garage was needed.

7. Michael Brewrink, Petitioner's architect, testified that he witnessed the state of completion and condition of the garage when the loan defaulted. Exhs. 21(4) and (5). He estimated that construction was about 80% complete at that time and waterproofing had been put on the side of the garage where future backfilling was to occur. He further testified that the garage was completed and its current condition is depicted in Exhibits 21(6) through (11). He explained the lot slopes upward from front to rear and the garage was built into the hill where there is a steep slope. He stated that Exhibits 21(12) through (15) are the plans for the garage that were inherited from ROC Construction that were never submitted to the County. He stated that only on the front side does the garage exceed the height limitation. After the accuracy of the garage plans was questioned, he met with Mr. David Kennedy at the site to get accurate measurements for all sides of the garage. He stated that after drawing up the (revised) elevation plans (Exhs. 23(a) through (d)), he hired another architect who met him at the property to check that the numbers on the plans were accurate. He testified that the total height at the front of the garage is 18 feet 10 inches,

8. David Kennedy, Petitioner's contractor, described the incline of the lot itself and estimated that it is probably at least a 60-70 foot difference in elevation between the street and the far rear of the lot, a distance of approximately 200 yards, with the house constructed about half way up the incline. He testified that if the variance were denied the entire top of the garage would have to be removed and all the trusses replaced. He explained that the trusses should not be cut because if cut the construction

will not pass inspections by the County. His estimate for the work required to bring the garage height into compliance, with work components specifically itemized, was submitted into the record. Exhs. 21(16) and (17). He further explained that an electrical inspection was done and then at final inspection it was discovered that the plans did not match the construction.

9. Petitioner stated that the County has already inspected the drain tile to ensure that it was installed properly. Exh. 2.

10. Ronald Lipford, a nearby neighbor, opposed the request. He testified that his house is located six houses from the subject property on the same side of Dunbarton Drive. He stated that he understands Petitioner's predicament, but believes that the garage is out of character with the neighborhood. He testified that the Petitioner already has a garage for two or three cars as part of his house. He stated that the subject garage is essentially two stories tall and sits up higher than the tallest peak of the existing house as you view at it from the roadway.

11. Dennis Laskin, Petitioner's architect, testified that the garage is not served by utilities and can really only be used for storage.

12. It was stated that the variance request is minor and granting the variance would not affect the master plan of the community or the neighboring residents in the neighborhood. Exh. 2.

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 size of the property, the property being located in a wooded area, the rear of the lot having steep topography, only the front of the garage exceeding the maximum height limitation, the garage being set back a long distance from the street, the wooded area separating all neighboring houses from the subject property, the garage construction having been done while under prior ownership and the garage plans having been submitted prior to the foreclosure action, a significant burden being imposed on Petitioner if the garage has to be reframed or demolished, and the overall 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 3 feet 10 inches accessory building height in order to validate and obtain a building permit for a 34' x 34' detached 3-car garage and driveway extension on the property located at Lot 21, Brock Hall Subdivision, being 14721

Dunbarton Drive, Upper Marlboro, 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, Exhibit 3, and the approved revised elevation plans, Exhibits 23(a) through (d).

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.