

*NOTICE OF FINAL DECISION
OF BOARD OF APPEALS*

RE: Case No. V-64-13 SM Waterford Estates, 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: September 11, 2013.

CERTIFICATE OF SERVICE

This is to certify that on October 8, 2013, 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
Waterford Mill Homeowners Association, Inc.

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

Petitioner: SM Waterford, LLC

Appeal No.: V-64-13

Subject Property: Lot 69, Block A, Waterford Subdivision, being 12804 Isaac Duckett Road, Bowie,
Prince George's County, Maryland

Counsel for Petitioner: Dennis Whitley III, Esq., Shipley & Horne, P.A.

Witnesses: Alyson Murray, Dewberry & Davis LLC
Carly Schrader, Stanley Martin Homes

Heard and Decided: September 11, 2013

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(c)(Table II), which prescribes that not more than 10% of the net lot area shall be covered by buildings and off-street parking. Petitioner proposes to construct a new single-family dwelling and driveway. A variance of .8% net lot coverage is requested.

Evidence Presented

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

1. The property was subdivided in 2006, contains 51,384 square feet, is zoned R-A (Residential-Agricultural) and is undeveloped land proposed to be improved with a single-family dwelling and driveway. Exhibits ("Exhs.") 3, 6, 9, 11 and 12. The property (Lot 69) is located within Aviation Policy Area 6. Exh. 12.
2. The subdivision within which the subject lot is located was created in 2006 using varying lot sizes as permitted by the Zoning Ordinance at that time. Exhs. 6 and 10, p. 2, para. 3.
3. A variance is needed to obtain a building permit to construct the proposed dwelling and driveway on the property. Since 10.8% of the net lot area would be covered by the proposed construction, a variance of .8% net lot coverage was requested. Exhs. 8 and 15.
4. The property is part of Waterford Subdivision, an oddly-shaped subdivision which contains approximately 261.19± acres and consists of 126 lots for the construction of detached single-family homes. The subdivision is generally located on the south side of U.S. Route 50 (John Hanson Highway) and the north side of Woodmore Road, approximately 2,000 feet east of its intersection with Pleasant Prospect Road. The subdivision contains a Natural Reserve Primary Management Area in the southeastern portion of the property and a County-designated historic site in the southwestern portion of the property. The subdivision is surrounded by large single-family homes within the adjacent Woodmore Subdivision. Exh. 2.

5. The Preliminary Plan of Subdivision (4-0311) and the Type I Tree Conservation Plan (TCPI/72/03) for the property was approved by the Prince George's County Planning Board ("Planning Board") on March 25, 2004. The Preliminary Plan of Subdivision approved the approximate number, dimensions and locations of the lots in the subdivision. Specifically, the Planning Board approved 126 lots which varied in size beginning from just over one acre. On March 3, 2005, the Planning Board approved Detailed Site Plan DSP-04040 for the subdivision. Exhs. 2 and 10, p. 2, para. 3.

6. Carly Schrader, who is employed by Petitioner, testified that the biggest house model was chosen for calculating the lot coverage so that a potential buyer would be able to build the biggest house offered or a smaller house and add on the optional sunroom, etc. She stated that the driveway shown on the submitted plan would not be altered.

7. Alyson Murray, a civil engineering designer employed by Petitioner's engineering firm, testified that all of the unique features affecting the subdivision – Primary Management Area, wetlands area, floodplain area, historic site – had to be considered when the lots were laid out under lot size averaging provisions. She stated that except for these features the lots could have been larger.

8. Counsel for Petitioner argued that the first of the three criteria for granting a variance – exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition – applies to the subject lot which is located within a subdivision created under lot size averaging provisions of the subdivision regulations, which have since been repealed.

9. Counsel further argued that strict application of the Zoning Ordinance would result in peculiar and unusual practical difficulties to or exceptional or undue hardship upon Petitioner. He argued that the existence of the adjoining Woodmore Subdivision and the varying lot sizes can only be effectively mitigated by increasing the current 10% maximum lot coverage for the subject property and that the requested variance is necessary for Petitioner's right to reasonable use of the property. Exh. 2, pp. 7-8.

10. Counsel stated that the proposed variance will not substantially impair the intent, purpose or integrity of the General Plan or Master Plan. The property is in Planning Area 74A/Community VII and is located in the Developing Tier (2002 General Plan), which recommends maintaining a pattern of low-to-moderate density suburban residential communities. He states that the requested variance is not increasing the recommended low-to-moderate density, only slightly increases the maximum lot coverage, will permit the construction of a larger, more compatible house and will have no adverse impact on the surrounding properties. He believes approval of the variance would not impair the intent, purpose or integrity of the Bowie-Collington-Mitchellville & Vicinity Master Plan (1991), which recommends low-density residential land use up to 1.5 dwelling units per acre and could allow 388 lots on the property rather than the 126 lots (which includes the subject lot) that were approved. Exh. 2, p. 9.

11. The Board approved a 3% net lot coverage variance in 2006 (V-230-06) for construction of a new single-family dwelling and driveway on the subject lot. Exh. 10. The proposed construction did not occur as planned. Counsel explained that Petitioner was not the builder at the time the previous variance was granted and Petitioner is now proposing a house which requires a smaller variance (.8%) than previously granted but which he believes is large enough to satisfy the buyers in the market at this time.

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 lot being created under lot size averaging provisions which have since been repealed, adjoining Woodmore Subdivision containing many nearby large lots with larger homes, the sites for houses (including the house on the subject lot) in the subdivision being determined at the time of detailed site plan review, strict compliance with the Zoning Ordinance creating the possibility of an increase in density of development on the property, a larger net lot coverage variance having been granted by the Board in 2006 for the subject lot, the previous variance approval having expired, 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 owner of the property.

In reaching a determination, the Board also places emphasis on the following proof necessary for establishing peculiar and unusual practical difficulties for an area variance:

- (1) Whether strict compliance with requirement would unreasonably prevent use of the property for a permitted purpose or render conformance unnecessarily burdensome.
- (2) Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief.
- (3) Whether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured. *See, Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. 28, 322 A.2nd 220 (1974). *See also, Montgomery County v. Rotwein*, 169 Md. App. 716, 906 A.2nd 959 (2006).

BE IT THEREFORE RESOLVED, unanimously, that a variance of .8% net lot coverage in order to construct a new single-family dwelling and driveway on the property located at Lot 69, Block A, Waterford Subdivision, being 12804 Isaac Duckett Road, Bowie, 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 elevation plan, Exhibit 4.

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.