

*NOTICE OF FINAL DECISION
OF BOARD OF APPEALS*

RE: Case No. V-103-13 Jason & Karen Hendrix

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: December 4, 2013 .

CERTIFICATE OF SERVICE

This is to certify that on January 17, 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
Marlboro Ridge Community Association, Inc.
Other Interested Parties

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

Petitioners: Jason & Karen Hendrix

Appeal No.: V-103-13

Subject Property: Lot 47, Block R, Marlboro Ridge Subdivision, being 3906 Bridle Ridge Road, Upper Marlboro, Prince George's County, Maryland

Counsel for Petitioners: Dennis J. Whitley, III, Esq., Shipley & Horne, P.A.
Robert J. Antonetti, Jr., Esq., Shipley & Horne, P.A.

Witnesses: Michael Boyce, ESE Consultants, Inc.
Michael Niederhausen, Toll Brothers

Heard: November 20, 2013; Decided: December 4, 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, Petitioners request 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 rear yard at least 20 feet in depth/width. Petitioners propose to construct a deck and steps. A variance of 12.7 feet rear yard depth/width is requested.

Evidence Presented

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

1. The property was subdivided in 2007, contains 11,011 square feet, is zoned R-R (Rural Residential) and is improved with a single-family dwelling and driveway. Exhibits ("Exhs.") 3, 5, 13 and 14. The existing single-family dwelling was built in 2013. Exhs. 13 and 14.
2. The property is odd-shaped, narrows from front to rear, and has an irregular rear property line. Exh. 3.
3. The property is located within an approved Recreational Community Development ("RCD"). The Board is prohibited under Section 27-229(b)(25) from granting a variance in an RCD unless for the sole purpose of making a home improvement. Construction of a deck on an existing house meets the definition of a "home improvement" under Section 27-107.01(a)). Exhs. 16 and 17.
4. Petitioners would like to construct a 15' x 18.7'/5' x 8.3' deck, 5' x 5' landing and steps on the rear of the existing dwelling (Exh. 3), but a variance is needed to obtain a building permit. Since the landing and steps would be located only 7.3 feet from the rear lot line at the closest point, a variance of 12.7 feet rear yard depth/width was requested. Exh. 18.
5. There is an existing door a level above grade, unusable without a deck or steps, which will access the proposed deck. Exhs. 6(D) and (E).
6. Michael Boyce, a land surveyor of ESE Consultants, Inc., which prepared Petitioner's site plan (Exh. 3), testified that the subject property is located within the Marlboro Ridge community being developed

by Toll Brothers, and that he and his firm regularly perform engineering and survey work for Toll Brothers in Marlboro Ridge. He stated that Marlboro Ridge is an approved Recreational Community Development where the Zoning Ordinance allows development with single-family homes on lots with less than 10,000 square feet of land and allows a 5-foot rear yard setback. He testified that the subject property contains 11,011 square feet and is subject to a 20-foot rear yard setback requirement because it contains more than 10,000 square feet. He explained that in the section of the subdivision where the subject property is located, the lots typically contain less than 10,000 square feet. He stated that Petitioners would like to build a deck (approximately 330 square feet) and a variance of just under 13 feet is needed to accommodate the proposed size of deck.

7. Mr. Boyce testified that the property has an extraordinary shape, with the width varying from approximately 81.67 feet at its narrowest point to approximately 119.71 feet at its widest point, and is non-symmetrical with angle breaks in the property line, whereas the other lots are generally symmetrical. He explained that unlike other lots, a storm drain easement crosses two sides of the subject lot and significantly burdens the lot, creating a practical difficulty. He calculated that because of the storm drain easement, the usable land contained in the property is reduced to 7,294 square feet.

8. He stated that Petitioners' house is similar in size to the other houses in the community, some of which have decks similar in size to the proposed deck, and concludes that the proposed deck would not affect the character of the neighborhood.

9. He explained that the adjoining parcel to the rear of the subject property contains forest conservation area and is not a buildable area. Exhs. 6(C) and 7. He estimated that there are 4-5% slopes on the subject property and a swale exists between the Petitioner's house and an adjoining lot that has a house.

10. Petitioner Jason Hendrix testified that the rear yard slopes down (Exh. 6(C)) and he would like to construct a deck in the area for the enjoyment of family and friends.

11. Counsel for Petitioners stated: The subject property is located within Planning Area 78 and the boundaries of the approved 2007 Westphalia Sector Plan ("2007 Sector Plan") and Sectional Map Amendment. The property is subject to Detailed Site Plan 09018 for Marlboro Ridge and the lot was approved in Detailed Site Plan 05075 (DSP-05075) with an approximate size of 9,978 square feet and building setbacks of 5 feet from any lot line allowed pursuant to Section 27-444(b)(10)(D) of the Zoning Ordinance. When the lot was subsequently platted by the developer, its lot size was increased out of engineering necessity to accommodate the placement of an essential storm drain, which was designed to handle all anticipated storm water runoff from the lot (as well as surrounding properties) to avoid issues relating to flooding and/or standing water. Counsel argued that the increase in lot size above 10,000 square feet triggered the applicability of the 20-foot rear yard setback requirement for the R-R Zone. Exh. 2.

9. Counsel for Petitioners also presented arguments regarding the statutory criteria for approval of a variance:

(A) The subject property has an exceptional shape as its width varies from approximately 81.67 feet at its narrowest point to approximately 119.71 feet at its widest point – representing a non-symmetrical lot configuration. Extraordinary conditions exist as Petitioners' property initially was approved with a 5 foot rear yard setback in DSP-05075 but since the area of the subject lot was increased from 9,978 square feet (in the DSP) to 11,011 on the record plat of subdivision to accommodate the placement of a needed storm drain, the 20 foot rear setback requirements of the R-R Zone became applicable. All adjacent lots have been approved to accommodate single-family homes of similar size to the Petitioners' dwelling with only a 5 foot rear yard setback restriction. If it were not for the need of the developer to construct the storm drain, the lot would have remained under 10,000 square feet and Petitioners would not have needed to request the instant variance (as their proposed deck would not have impacted the 5 foot rear yard setback initially approved in DSP-05075. Exh. 2.

(B) Not allowing the variance would create a practical difficulty. The increase in the area of the subject lot was not caused by any action of Petitioners and was necessitated by the need of the developer to construct a place for a storm drain (as described above). Exh. 2.

(C) Granting the instant variance would not impair the intent of either the 2002 General Plan or 2007 Sector Plan. The 2002 General Plan designates the Westphalia area as a regional center. Regional centers are locations for regionally-marketed developments with the potential for residential development of various sizes and densities (such as Marlboro Ridge) as an option. The instant variance request also conforms with the land use policies in the 2007 Sector Plan, which calls for the maintenance of low to moderate density land uses outside of the Westphalia town center core. The subject property is located within the Marlboro Ridge community located in the eastern part of an area recommended by the Sector Plan for development of low density residential communities of various housing types. The granting of the instant variance request to allow construction of a modest rear yard deck will in no way impair any aspect of the 2002 General Plan or 2007 Sector Plan. Exh. 2.

10. Marlboro Ridge Community Association, Inc. approved Petitioners' proposed improvement. Exh. 26.

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 exceptional shape of the property, the sloping topography in the rear of the property, the rear setback requirements of the R-R Zone being applicable with the increase in the subject lot area, adjacent lots having been approved to accommodate single-family homes of similar size (to Petitioner's house) with only a 5-foot rear yard setback restriction, the increase in the area of the lot not being caused by any action of Petitioners, the increase in the size of the lot being necessitated by the need of the developer to construct and place a storm drain at the rear of the subject property to handle all anticipated storm water runoff from the subject lot (as well as surrounding properties) to avoid issues relating to flooding and/or standing water, adjacent lots enjoying rear yard setbacks which accommodate improvements similar to the deck sought by Petitioners without the need for a variance, the deck creating an additional safety exit from the house, the variance not impairing the intent of either the 2002 General Plan or 2007 Westphalia Sector Plan, 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 12.7 feet rear yard depth/width in order to construct a deck and steps on the property located at Lot 47, Block R, Marlboro Ridge Subdivision, being 3906 Bridle Ridge Road, 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 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.