


*NOTICE OF FINAL DECISION*  
*OF BOARD OF APPEALS*

RE: Case No. V-156-07 Hugo Procopio Properties

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: January 16, 2008 .

**CERTIFICATE OF SERVICE**

This is to certify that on January 29, 2008 , the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

  
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Anne F. Carter  
Administrator

cc: Petitioner  
Adjoining Property Owners  
DER, Building Code Official, Permit & Review Div.  
M-NCPPC, Permit Review Section  
Other Interested Parties

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

Petitioner: Hugo Procopio Enterprises

Appeal No.: V-156-07

Subject Property: Lot 11, Block 21, Beltsville Subdivision, being 4907 Harford Avenue, Beltsville,  
Prince George's County, Maryland

Counsel for Petitioner: Michael S. Nagy, Esq., Rifkin, Livingston, Levitan & Silver, LLC

Witnesses: Anna Roland, Hugo Procopio Enterprises  
Marcos Morales, Adjoining property owner

Heard: October 17, 2007; Decided: January 16, 2008

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 one side yard at least 9 feet in width. Petitioner proposes to validate a new single-family dwelling and driveway. A variance of .7 foot side yard width is requested.

Evidence Presented

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

1. The property was subdivided prior to 1907, was recorded in 1930, contains 10,884 square feet, and is zoned R-R (Rural Residential). The property is improved with a new single-family dwelling and driveway.

2. The property is rectangular, 72.56 feet wide, and 150 feet long (Exhibits 2 & 4).

3. Petitioner would like to validate the new one-story house (44.25' x 27.69'), with basement, attached garage (11.95' x 25.6') and driveway, already constructed on the property. Since the structure is located 8 feet from the right side lot line and 8.3 feet from the left side lot line, a variance of .7 foot side yard width was requested.

4. Counsel for Petitioner explained that at the time when most of the houses in the immediate neighborhood were built, the side yard setback requirement was less than the current 8 and 9 feet required, and the proximity of the homes on adjoining lots was illustrated in an aerial photograph submitted into the record (Exhibit 10).

5. Counsel for Petitioner stated that an extraordinary situation exists in that when the foundation of the house was set, it was set wider than the plan given to the engineer, and was later found to be between 6 and 7 inches closer to the side lot line than the required 9 feet. He explained there is a

retaining wall along a portion of the side lot line, between the house built by Petitioner and the house on the adjoining lot (Lot 12). See Exhibit 3. He further explained that the house and garage erected by Petitioner was pre-engineered, with prefabricated panels assembled on site, and the setback violation was not discovered until the time of the final wall check inspection.

6. Counsel for Petitioner stated that an exceptional hardship exists in that the house is already constructed on the property and until a variance is obtained, no bank would approve a mortgage for a potential purchaser.

7. Counsel for Petitioner pointed out that although 25% of the net lot area may be covered with structures and driveway area, only about 17% of the net lot area has been covered on the subject property.

8. Marcos Morales, owner of the adjoining property to the left side of Petitioner's property (Lot 12), expressed concern that the new house will create future drainage problems. Mr. Morales testified that he has lived in his house for two years.

9. Counsel for Petitioner described the topography of the subject property as shown on Exhibit 3 and stated that a swale exists between the new house and Mr. Morales' house to handle water runoff.

10. Joyce Engineering Corporation, Petitioner's engineer, certified in writing as to all site development work, grading, drainage and erosion control facilities as defined in Sections 4-190(18) and Section 4-190(27), with regard to compliance with Division 3 of Subtitle 4 of the Prince George's County Code and the approved plans issued under Permit No. 19610-2006-SGU. See Exhibit 13.

#### 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 property being recorded in 1930, other surrounding lots of the same size being developed with single-family dwellings, the narrowness of the lot in relation to its length, the house and garage being pre-engineered and assembled on site with prefabricated panels, the setback violation not being discovered until the time of the final wall check inspection, 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.

BE IT THEREFORE RESOLVED, unanimously, that a variance of .7 foot side yard width in order to validate a new single-family dwelling and driveway on the property located at Lot 11, Block 21, Beltsville Subdivision, being 4907 Harford Avenue, Beltsville, Prince George's County, Maryland,

