

NOTICE OF FINAL DECISION


OF BOARD OF APPEALS

RE: Case No. V-189-07 Darnell Self

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 30, 2008.

CERTIFICATE OF SERVICE

This is to certify that on March 3, 2008, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.



Anne F. Carter
Administrator

cc: Petitioner
Adjoining Property Owners
DER, Building Code Official, Permit & Review Div.
M-NCPPC, Permit Review Section
Waterford Mill Homeowners Association

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

Petitioner: Darnell Self

Appeal No.: V-189-07

Subject Property: Lot 82, Block A, Waterford Subdivision, being 12703 Millside Lane, Bowie,
Prince George's County, Maryland

Witness: Sabir Manteen, Neighbor

Heard: December 12, 2007; Decided: January 30, 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(c)(Table II) of the Zoning Ordinance, 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 4.6% 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 87,250 square feet, is zoned R-A (Residential-Agricultural) and is proposed to be improved with a single-family dwelling and driveway. Although the property is located in Aviation Policy Area 6, the requested variance does not impact upon the APA-6 regulations.
2. The property is an odd-shaped corner lot, with the proposed house facing the corner (Exhibit 2). Petitioner would like to construct a two-story house, with basement, attached garage, and driveway on the property. Construction of the proposed house and a driveway would cause the maximum allowed amount of net lot coverage to be exceeded. A variance of 4.6% net lot coverage was requested.¹
3. The property is part of Waterford Subdivision, which contains approximately 261.19± acres and consists of 126 lots for the construction of detached single-family homes. The subdivision is located in Mitchellville - south of U.S. Route 50 (John Hanson Highway), north of Woodmore Road and

¹ In 2006, the Board approved lot coverage variances, ranging from 1% to 7%, for proposed development on 38 vacant lots in the same Waterford Subdivision (Appeal Nos. V-219-06 thru V-252-06, V-254-06, V-255-06, V-257-06 & V-259-06). The Board's decision in V-220-06 was made a part of the record (Exhibit 12).

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 and federally-designated historic site in the southwestern portion of the property. The subdivision is also surrounded by larger single-family homes within the adjacent Woodmore Subdivision. The subdivision lies within one (1) mile of Freeport Airport and is subject to over flight by aviation and general commercial uses.

4. The Detailed Site Plan for the Waterford Subdivision (DSP-04040) was approved by the Planning Board of the Maryland-National Capital Park and Planning Commission ("Planning Board" of the "M-NCPPC") (Exhibit 11) and the issue of whether the lots of the subdivision development would exceed the 10% allowed was not raised before the Planning Board or the District Council. The Planning Board found that the lots to be created using lot size averaging provisions of the subdivision regulations met the R-A Zone lot size averaging requirements of Section 27-442 of the Zoning Ordinance. See Exhibits 12 & 13.

5. Petitioner testified that the subdivision's 126 lots vary in size from 1.0 acre to 18.4 acres, with approximately 75 of the lots containing at least 2.0 acres. Petitioner stated that according to the lot size averaging provisions, the overall density of the subdivision cannot be more than one dwelling per two acres. See Exhibits 12 & 13.

6. Petitioner further stated that his proposed development is consistent with the Waterford Subdivision development of upscale homes of similar size and scale on most the lots and would be also consistent with the character and homes of the adjoining Woodmore community. He noted that many of the Waterford upscale models, with full-features options and 100-foot driveways, also exceed the 10% maximum net lot coverage. See Exhibit 13.

7. Petitioner testified that the unique physical/environmental features of the Waterford Subdivision apply by implication to his proposed development.² Petitioner stated that the eastern part of his lot (lot 82) is wide, but the westerly portion (rear) backs up to the Woodmore community country club and homeowners association property, which prohibits access to the property from the west. He stated that the Waterford subdivision, of which Lot 82 is a part, was conveyed with conservation easement and Washington Suburban Sanitary Commission right-of-way boundaries. See Exhibits 12 & 13.

8. Petitioner believes that the first of the three criteria for granting a variance - exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition - applied to the subdivision as a whole as well as the subject lot itself for the following reasons: The subdivision is bounded by U.S. Route 50 to the north; Woodmore Road to the south; Woodmore Subdivision and country club and Prince George's Country Club to the west; and PEPCO lines, Freestate Airport and scattered homes to the east. Despite the size of the property, the shape of the property, steep slopes, unstable soils and wetlands lend themselves to only one narrow access point for the property from Woodmore Road. The property is subject to an environmental management plan imposed by the Planning Board and part of the property consists of Pleasant Prospect plantation, which has been restored to its original condition and is on the National Register of Historic Homes. In addition, the property borders on Woodmore Subdivision, probably one of the most prestigious and expensive neighborhoods in the County, and the prestige of that

² The northern portion of the subdivision property is very wide, but backs up to Route 50, a major freeway, which virtually blocks any access to the property from the north. The narrowest portion of the subdivision property where access is available is a very narrow strip fronting on Woodmore Road on the south. There exists a large floodplain area in the southern portion of the property and a 100-foot buffer from wetlands has been imposed by the State of Maryland. Steep slopes and erodible soils on the property are associated with the stream next to the PEPCO property to the east and elevations on the property vary between 126 feet at Woodmore Road to 172 feet in the northeastern third of the property. The subdivision property was part of a farm and wooded area in the southern part of the property must be brought up to woodland conservation standards. M-NCPPC stated in its Preliminary Plan that the parcel as a whole is exceptional and unique, and is oddly shaped with steep slopes with highly erodible soils.

community should be maintained for homeowners in Woodmore as well as for the homeowners in the new subdivision and for the County as a whole. See Exhibits 12 & 13.

9. Petitioner argued that strict application of the Zoning Ordinance would result in peculiar and unusual "practical difficulty" or exceptional or undue hardship to Petitioner similar to those presented in the 2006 variances. Petitioner argues that the requested variance is necessary to balance Petitioner's right to reasonable use of his property and the interests of the County. See Exhibits 12 & 13.

10. Petitioner further argued that denial of the variance could result in greater density than is proposed and be inconsistent with the Planning Board approval of low-density development for the Waterford Subdivision and; the subject property is located in Planning Area 74A/Community VII and the Developing Tier (2002 General Plan), which recommends maintaining a pattern of low-to-moderate density suburban residential communities and would not impair the intent, purpose or integrity of the Bowie-Collington-Mitchellville & Vicinity Master Plan (1991), which recommends low-density residential land use. See Exhibits 12 & 13.

11. The Waterford Mill Homeowners Association approved the request (Exhibit 14).

12. P-M Woodmore Estates, LLC, owner of adjoining property to the west also supported Petitioner's proposed development (Exhibit 10).

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 unusual shape of the property, the property being a corner lot, the proposed development including a side-load garage, the property having been conveyed with conservation easement and Washington Suburban Sanitary Commission right-of-way boundaries, the property being created under lot size averaging provisions which have since been repealed, the exceptional topographic conditions and environmental features of the property, the property containing 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, these extraordinary conditions on the parcel causing the Zoning Ordinance to disproportionately impact the property as compared to surrounding properties, adjoining Woodmore Subdivision containing many large lots with larger homes, neither architectural elevations nor house footprints being required at the time of detailed site plan review, the issue of the need for a net lot coverage variance never being considered by the Planning Board or the District Council, the increase in lot coverage being necessary to effectively mitigate the unique issues concerning the property, the master plan allowing the property to be developed in accordance with regulations for the R-R Zone, denial of the variance creating the possibility of an increase in density of development on the property, 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 4.6% net lot coverage in order to construct a new single-family dwelling and driveway on the property located at Lot 82, Block A, Waterford Subdivision, being 12703 Millside Lane, Bowie, Prince George's County, Maryland, be and is hereby APPROVED. Approval of the variances is contingent upon development in compliance with the approved site plan, Exhibit 2, and the approved elevation plan, Exhibit 3.

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.