


NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-122-07 Kendie & Kevin Reich

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: November 28, 2007 .

CERTIFICATE OF SERVICE

This is to certify that on April 9, 2008 , the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.



Anne F. Carter
Administrator

cc: Petitioners
Adjoining Property Owners
DER, Building Code Official, Permit & Review Div.
DER, Environmental Operations
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

Petitioners: Kendie & Kevin Reich

Appeal No: V-122-07

Subject Property: Parcel 12, Tax Map 2, Grid B-2, being 16026 Burtons Lane, Laurel,
Prince George's County, Maryland

Counsel for Petitioners: Robert J. Antonetti, Jr. and Shipley & Horne, P.A.

Witnesses: Charles T. Grimsley, P.E., Landmark Engineering

Reggie Baxter, Independent Land Use Consultant

Mike Dugan, Neighbor

Tom Sidor, Adjoining Property Owner

Temima Kimes, Adjoining Property Owner

G. Macy Nelson, Attorney for Temima Kimes

Mary A. Lehman, President, West Laurel Civic Association

William J. Ferguson

Heard: September 19, 2007; October 4, 2007

Decided: November 28, 2007

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") for land being within the Maryland-Washington Regional District and the Board having jurisdiction.

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(i) (Table VIII) of the Zoning Ordinance, which prescribes that accessory buildings shall be set back 15 feet from any side lot line in the R-A (Residential-Agricultural) Zone. Petitioners propose to validate and obtain a building permit for a new detached garage/shed. A variance of 5 feet side lot line setback is requested.

Evidence Presented

The following testimony and evidence were presented to the Board for its consideration:

1. The subject property is an odd-shaped lot (Parcel 12) containing 1.11 acres located in the R-A Zone (Exhibit 3).¹ The lot has only 122.75 feet of frontage.² It is improved with a single-family

¹ The R-A Zone requires a minimum lot area of two (2) acres. Counsel for Petitioners submitted argument, which was not rebutted, that the subject property was grandfathered into the R-A Zone upon its annexation into the Prince George's County Regional District (from Montgomery County and its R-A zoning classification) on June 5, 1975 (see Exhibit 42).

² A minimum of 150 feet of frontage is required for lots in the R-A Zone.

dwelling, the subject accessory building, a slab basketball court in the rear yard and a gravel driveway leading to the accessory building. The lot slopes in the rear (Exhibits 2(#4), 34-37).

2. The subject property is located at 16026 Burtons Lane with frontage along the west side of the street and is north of Brooklyn Bridge Road.

3. Petitioners, through counsel, indicate that adjacent properties to the north, east and south of Parcel 12 are developed with single-family dwellings in the R-A Zone (Exhibit 2, #s 4 and 5). Property to the west is wooded, contains steep to severe topography, and is owned by the Washington Suburban Sanitary Commission as part of the Rocky Gorge Reservoir. The majority of lots along Burtons Lane are larger than the subject property. See also maps and photographs (Exhibit 18 (A-U)) illustrating the subject and neighboring properties.

4. On or about August 18, 2006, Petitioners received a building permit (see Exhibit 2 (#s 3, 3A, 3B & 3C)) from the Department of Environmental Resources (“DER”) to construct a 30' x 40' metal accessory building based on an incomplete site plan that DER nevertheless approved. Petitioners began construction. DER issued a Stop Work Order and on April 5, 2007, rescinded Petitioners' building permit upon discovery that because the shed was located only 10 feet from the side yard lot line, the 15-foot side yard setback requirement for an accessory building had not been met (see Exhibits 7 and 44).³ As a result, Petitioners filed a new site plan, complete with all improvements, and requested a side yard setback variance.

5. Charles Grimsley, Petitioners' expert witness (see Exhibits 8 and 21), testified that the property has a cleaver-like shape, is approximately 122 feet wide at its narrowest and 242 feet wide at its widest, and has steep and contained severe slopes of between 15 to 25 percent in the rear of the property.

6. The subject property is served by a septic tank situated approximately 18 feet away from the subject accessory building (see Exhibits 2(#s 2, 9B & 10C), 3, 28). Petitioners contend that if they were required to move the structure 4 feet 10 inches farther away from the side property line to meet the 15 foot side yard setback requirement for the R-A Zone, the subject accessory building would then encroach upon the 15-foot setback requirement from septic tanks required pursuant to the County's Health Department regulations. See Exhibit 22 (p. 10). Petitioners also contend that if the subject accessory building is relocated farther into the property to satisfy the 15-foot side yard setback requirement, an additional driveway extension needed to then reach the subject accessory building would push the site over the 10 percent lot coverage maximum allowed for the lot.⁴

7. Charles Grimsley further testified that if the proposed accessory building was placed farther back onto the site, significant grading would be necessary due to the extraordinarily deep slopes ranging from 15 to 25 percent directly behind the subject accessory building and old-growth trees would have to be removed.

8. Reggie Baxter, an expert land use planner,⁵ testified that the 1990 Subregion I Master Plan (see Exhibit 29) calls for low-density residential development for the R-A Zone which exists now on Burtons Lane and the general vicinity north of Brooklyn Bridge Road. Counsel for Petitioners argued that photographs in the record show the rural character of the general neighborhood where storage sheds and accessory buildings were commonly built (see also Exhibit 18). He argued that development on the subject property and the subject accessory building are compatible with the existing rural character of the West Laurel neighborhood along Burtons Lane where at least 9 of 11 existing lots have detached accessory buildings of various sizes and shapes.

³ DER stated that upon conducting an investigation relating to lot coverage it discovered the present side yard lot issue.

⁴ Petitioners contend that current lot coverage for the subject property is 9.9 percent.

⁵ See Exhibit 23.

9. Counsel for Petitioners argued that it would be difficult to relocate the subject accessory building on the opposite side of the property because of the existence of an above-ground propane tank and a basketball court. He further contends that the site plan submitted by Petitioners shows that the current gravel driveway is located on the same side of the property where the accessory building is situated (north side), that it would be practically difficult for the Petitioners to build a new accessory building on the opposite side of the property. Practical difficulty would result since removal of the above-ground propane tank and the basketball court would be necessary, while at the same time removal and relocation of the existing driveway to the other side of the property would likewise be needed.⁶

10. Counsel for Petitioners argued that all of the requirements of Section 27-230 of the Zoning Ordinance have been met and approval of Petitioners' variance request is justified. (Exhibit 42).

11. G. Macy Nelson, attorney for the owner of the adjoining property to the north (16030 Burtons Lane), argued that Petitioners' hardship was self-imposed because of their submission of a defective site plan, upon which DER relied and erroneously issued the initial building permit (see Exhibit 41).

12. Opposing witnesses contended that the shed is used for business purposes⁷ and is too large.

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 comparably small size, odd shape and narrowness of the lot, the extraordinary topography exemplified by steep and severe slopes, the existence and location of other structural improvements on the property, the proximity of the septic tank to the accessory building, the interplay of competing side yard and septic tank setback requirements, the probability of increasing lot coverage above the 10 percent maximum if the driveway is extended, and these said practical difficulties⁸ not resulting from any action of the Petitioners, but rather resulting from the application of the Zoning Ordinance setback requirements upon the unique shape, size, and topography of the subject property as well as certain existing conditions, 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 5 feet side lot line setback in order to validate and obtain a building permit for a new detached garage/shed on the property located at

⁶ We also note that the site plan indicates the prior existence of a well on the opposite side of the lot from the accessory building (see Exhibit 28).

⁷ However, see Exhibit 44 on the issue of the commercial use of the subject shed.

⁸ See Anderson v. Board of Appeals, 22 Md. App. 28, 322 A 2d. 220 (1974), for the application of the doctrine of practical difficulties for area variances.

Parcel 12, Tax Map 2, Grid B-2, being 16026 Burtons Lane, Laurel, 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.

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.