

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-14-11 Foster Communities of Maryland, Inc.

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: April 6, 2011.

CERTIFICATE OF SERVICE

This is to certify that on May 5, 2011, 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
DER/Code Official, Permits & Review Group
Campfire Hills Homeowners Association

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

Petitioner: Foster Communities of Maryland, Inc.

Appeal No.: V-14-11

Subject Property: Lot 8, Block C, Campfire Hills Subdivision, being 7604 Campfire Court, District Heights, Prince George's County, Maryland

Counsel for Petitioner: Thomas H. Haller, Esq.

Witness: Rich Rudy, Foster Communities of Maryland, Inc.

Heard and Decided: April 6, 2011

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 variances 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 variances from Section 27-420(a) of the Zoning Ordinance, which prescribes that fences and walls more than 6 feet high shall not be located in any required yard, and shall meet the setback requirement for main buildings, and Section 27-442(e)(Table IV), which prescribes that each lot shall have two side yards totaling 17 feet in width with the minimum width of either side yard being 8 feet. Petitioner proposes to validate an existing retaining wall and construct a railing on top, totaling up to 14.7 feet in height, in order to construct a new single-family dwelling and a driveway. A variance of 12 feet total side yard width for a retaining wall and railing and a waiver of the fence/wall location requirement are requested.

Evidence Presented

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

1. The property was subdivided in 2006, contains 10,435 square feet, is zoned R-80 (One-Family Detached Residential), is improved with a retaining wall up to 11.7 feet in height and is proposed to be improved with a single-family dwelling and driveway. See Exhibits ("Exhs.") 5, 7-8, 12-13.
2. The property is an odd-shaped lot located on the bulb of a cul-de-sac (Campfire Court). The property is shaped like home plate on a baseball diamond and actually has four side yards and one rear yard. See Exhs. 4 (p. 5), 5, 7, 23. The property abuts parkland owned by the Maryland-National Capital Park and Planning Commission ("M-NCPPC") at its northern boundary, a lot owned by Petitioner proposed to be developed with a single-family dwelling (Lot 9) at its western boundary and land which has been conveyed to the homeowners association ("HOA") (Parcel B) along its eastern boundary. From the finished street grade to the M-NCPPC and HOA properties, the property falls over 20 feet. See Exhs. 4 (p. 3), 5, 7.
3. An existing retaining wall, approximately 122 feet in length, runs along the entire northern and eastern boundary lines. The wall was located so as to satisfy the building restriction line as measured from

the M-NCPPC property and most of the HOA property. Close to where the wall starts at the western property line abutting Lot 9, in the side yard of the subject property, the wall will exceed 6 feet in height when topped with a 4-foot railing. On the eastern side of the lot, where the retaining wall extends across the entire side yard and into the adjacent HOA property, the wall will also exceed the 6-foot height limitation when the railing is added. See Exhs. 4 (pp. 3-4), 5.

4. Petitioner is developing the subdivision in which the subject lot is located and is currently grading the land and paving the streets. There is a substantial change in topography between the elevation of Campfire Court and the adjoining M-NCPPC and HOA properties. Steep slopes exceeding 20% exist right at the bulb of the cul-de-sac for Campfire Court. Since the public road is required to meet certain minimum slope requirements, the grade differences must be made up in the lots. See Exhs. 4-5, 9.

5. The preliminary plat for the subdivision, filed in 2003, was approved subject to a condition which required approval of a staff level limited detailed site plan (DSP-04007). The purpose of the limited detailed site plan review was to evaluate appropriate grading to create the most desirable relationships between the lots and the dwellings on those lots, the use of retaining walls, the views of the retaining walls from proposed dwellings within the subdivision and the views from existing dwellings on adjoining lots. In accordance with DSP-04007, which was approved in 2006, a retaining wall was constructed to limit the grading on the subject property. A 4-foot safety railing will be required to be added to the top of the retaining wall. See Exhs. 4, 7.

6. Counsel for Petitioner explained that the proposed 4-foot safety railing will consist of a pressure-treated, two-board fence. See Exh. 6. Rich Rudy testified that chicken wire could be attached along the back of the railing.

7. Counsel for Petitioner explained that the subdivision being developed has a total of 40 lots, was originally platted as Campfire [Hills], but is being marketed as Berry Manor. Counsel stated that concern about the land within the subdivision having very rough topography led to the requirement of the condition of a limited detailed site plan on final plat approval. See Exh. 9. He explained that the required review of the subdivision regarding appropriate grading, which ultimately led to the loss of two lots, was necessary for both construction of the main road in the subdivision, Starshine Drive, and the creation of level areas for construction of the new homes.

8. Petitioner plans to develop the property with a single-family dwelling and driveway. During review of the building permit, it was discovered that the existing retaining wall on the subject property is located in the required side yards. Since the portions of the retaining wall which will exceed the 6-foot height maximum with the proposed 4-foot railing are located 5 feet from left side lot line and extend over the right side lot line, variances are required for the wall and railing before a building permit can be obtained to construct a new home on the property. A variance of 12 feet total side yard width and a waiver of the fence/wall location requirement for a retaining wall and railing were requested.

9. Counsel for Petitioner put forth that the subject property exhibits exceptional topographic conditions and shape which necessitate the need for the variance. He stated that 93 percent of the wall has been located to comply with the setback requirement and only 12 of the 155 feet of the wall located on the property violate the setback requirement for the side yards. See Exh. 4, pp. 5-6.

10. Counsel argued that strict application of the Zoning Ordinance will result in peculiar and unusual practical difficulties for Petitioner because if the Zoning Ordinance is strictly applied, the subject property could not be graded to provide a safe living environment. With the substantial slope, the only way to grade the property without a retaining wall would be to encroach in the adjoining properties, which are wooded. The retaining wall allows the trees to be retained, creating a desirable living condition of a lot at the end of a cul-de-sac nestled into wooded open space, rather than leaving an unbuildable lot. See Exh. 4, p. 6.

11. Counsel further argued that the granting of the variance would not substantially impair the intent, purpose or integrity of the general plan or Master Plan because the Master Plan for the area designates the subject area as suitable for residential use and the subdivision was approved consistent with this recommendation. In addition, the subject property is located in the Developed Tier, where in-fill development is encouraged. See Exh. 4, pp. 6-7.

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 variances comply with the applicable standards set forth in Section 27-230, more specifically:

Due to the property being located on the bulb of a cul-de-sac, the exceptional topographic conditions of the property, the exceptional shape of the property, steep slopes exceeding 20% existing right at the bulb of the cul-de-sac, certain minimum slope requirements being required for the public road, differences in grade needed to be made up in the lots, grading of the property without a retaining wall only being possible by encroaching into adjoining wooded properties, the retaining wall allowing trees to be retained, retention of trees creating a desirable living condition on a lot at the end of a cul-de-sac next to wooded open space, the Master Plan for the area designating the subject area as suitable for residential use, the subdivision being approved consistent with that Master Plan recommendation, the property being located in the Developed Tier, in-fill development being encouraged in the Developed Tier, 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 12 feet total side yard width and a waiver of the fence/wall location requirement to validate an existing retaining wall and construct a 4-foot railing on top (maximum total height of 14.7 feet) in order to construct a new single-family dwelling and a driveway on the property located at Lot 8, Block C, Campfire Hills Subdivision, being 7604 Campfire Court, District Heights, Prince George's County, Maryland, be and are hereby APPROVED. Approval of the variances is contingent upon development in compliance with the approved site plan, Exhibit 5, and the approved elevation plan, Exhibit 6.

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.