

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

RE: Case No. V-15-11 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-15-11

Subject Property: Lot 12, Block C, Campfire Hills Subdivision, being 7508 Starshine Drive, 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; Section 27-442(e)(Table IV), which prescribes that each corner lot shall have a minimum side yard along the side street at least 25 feet in depth and a rear yard at least 20 feet in depth/width; and Section 27-420(a), which also prescribes that fences and walls in the side yard shall not be more than four (4) feet high without the approval of a variance. Petitioner proposes to validate an existing retaining wall and construct a railing on top, totaling up to 7 feet in height, in order to construct a new single-family dwelling and a driveway. Variances of 15 feet side street yard depth and 20 feet rear year depth/width, and waivers of the fence/wall location and height requirements for a retaining wall and railing are requested.

Evidence Presented

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

1. The property was subdivided in 2006, contains 9,575 square feet, is zoned R-80 (One-Family Detached Residential), is improved with a retaining wall up to 3 feet in height and is proposed to be developed with a single-family dwelling and driveway. See Exhibits ("Exhs.") 5, 7-8, 12-13.
2. The property is a corner lot, with the proposed dwelling to face the legal side street. See Exhs. 5, 7. At its eastern boundary and rear lot line, the property adjoins parkland owned by the Maryland-National Capital Park and Planning Commission ("M-NCPPC") and another lot proposed to be developed with a single-family dwelling (Lot 11). An existing retaining wall which is mostly located on adjoining Lot 11 extends over the rear property line onto the subject property close to the side street, Starshine Drive. See Exh. 5.

3. 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 street yard and rear yard. Since violating portions of the retaining wall with the proposed railing are located 10 feet from the side street line, extend over the rear lot line and exceed the permitted fence/wall height for the side yard on a corner lot, variances are required before a building permit can be obtained. Variances of 15 feet side street yard depth, 20 feet rear yard depth/width and waivers of the fence/wall location and height requirements for the retaining wall and railing were requested.

4. Petitioner is developing the subdivision in which the subject lot is located and is currently grading the land and paving the streets. The original property that was subdivided was unusually shaped, has very steep topography, and essentially consisted of two developable areas connected by a narrow (86-foot-wide) strip of land. See Exh. 22. Through the narrow strip of land runs a 50-foot public right-of-way with a 10-foot public utility easement on each side, leaving little room to construct a road. Steep slopes exceeding 25% exist right at the narrow point where the public road connects the two sides of the subdivision. 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, 9.

5. The preliminary plat for the subdivision, which was filed in 2003, was approved subject to approval of a 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 122-foot-long retaining wall was constructed on Lots 11 and 12 (the subject property) outside of the public utility easement. A 4-foot safety railing is required to be added to the top of the retaining wall. Only 12 feet of the retaining wall are located on the subject property and only 3 feet of the wall, with the 4-foot railing, will exceed 6 feet in height. 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. Rich Rudy testified that chicken wire could be attached along the back of the railing.

7. Counsel explained that the subdivision being developed has a total of 40 lots. Counsel stated that concern about the subdivision having very rough topography led to the requirement of the condition of 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. Counsel for Petitioner put forth that the subject property exhibits exceptional topographic conditions which necessitate the need for the variance. He stated that the land adjacent to the road right-of-way is substantially higher, being located next to a steep hill which is mostly located on adjacent M-NCPPC property. He explained that Petitioner cut into the hill and constructed the retaining wall to hold back the hill. See Exh. 4, p. 5.

9. Counsel argued that strict application of the Zoning Ordinance will result in peculiar and unusual practical difficulties for Petitioner because Petitioner could not construct the public road serving the subdivision without obtaining a grading easement and destroying a substantial area of trees on the adjoining M-NCPPC property. See Exh. 4, p. 6. 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 a corner lot, the exceptional topographic conditions of the property, the land adjacent to the road right-of-way being substantially higher and located next to a steep hill mostly located on adjacent parkland, a retaining wall being necessary to hold back the hill, denial of the request resulting in Petitioner being unable to construct the public road serving the subdivision without obtaining a grading easement and destroying a substantial area of trees on the adjoining parkland, 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 variances of 15 feet side street yard depth, 20 feet rear yard depth/width and waivers of the fence/wall location and height requirements to validate an existing retaining wall and construct a 4-foot railing on top (maximum total height of 7 feet) in order to construct a new single-family dwelling and a driveway on the property located at Lot 12, Block C, Campfire Hills Subdivision, being 7508 Starshine Drive, 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.