

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

RE: Case No. V-16-11 Campfire Hills Homeowners Association, 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: Campfire Hills Homeowners Association, Inc.

Appeal No.: V-16-11

Subject Property: Parcel B, Block C, Campfire Hills Subdivision, being located on 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 a variance 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 a side yard at least 8 feet in width. Petitioner proposes to validate an existing retaining wall and construct a railing on top, totaling up to 7 feet in height. A variance of 8 feet 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 82,949 square feet, is zoned R-80 (One-Family Detached Residential), and is improved with a retaining wall up to 3 feet in height. See Exhibits ("Exhs.") 5, 7-8, 12-13.
2. The property is located on the north side of Starshine Drive and east of Campfire Court in District Heights. The property is an odd-shaped through lot, with frontage on both Starshine Drive and Campfire Court, where it fronts on the bulb of a cul-de-sac. The property abuts parkland owned by the Maryland-National Capital Park and Planning Commission ("M-NCPPC") at its northern boundary and three lots owned by Foster Communities of Maryland, Inc. ("Foster") proposed to be developed with single-family dwellings (Lots 3, 7 and 8) at its western boundary. See Exhs. 5, 7.
3. The subject property consists of a large area of open space within the subdivision which has been conveyed to Petitioner homeowners association ("HOA"). The HOA is still under the control of Foster and will remain so until the required number of lots are sold. See Exhs. 4 (p. 1), 5, 7. Counsel for Petitioner

explained that the subject property is a wooded environmental area with a stream running through it and that the homes backing up to the subject property will have a beautiful view down into a heavily-wooded ravine.

4. Foster is developing the subdivision in which the subject property is located and is currently grading the land and paving the streets. There is a substantial change in topography on Lot 8 between the elevation of Campfire Court and the subject property. 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, 9.

5. The preliminary plat for the subdivision, which was filed in 2003, was approved subject to 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, retaining walls were constructed to limit grading. A 4-foot safety railing will be required to be added to the top of the retaining walls. 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. While some of the grade difference between Lot 8 and a 20-foot drop-off at the rear could be made up during grading, a retaining wall was needed in order to construct a dwelling on Lot 8. In order to tie the grades, a retaining wall was constructed on Lot 8 and the subject property. The retaining wall is 122 feet in length and a portion of the wall extends onto the subject property along the western side property line. The point where a section of the wall will exceed 6 feet in height with the proposed railing occurs at the side property line from which the required side yard setback would be measured. See Exhs. 4 (pp. 3-4), 5.

9. During review of the building permits for new dwellings on adjoining lots, it was discovered that the existing retaining wall on Lot 8 extends over into the side yard of the subject property. Since the wall will have a maximum height of 7 feet with the proposed 4-foot railing, a variance of 8 feet side yard width and a waiver of the fence-wall location requirement for a retaining wall and railing were requested.

10. Counsel for Petitioner put forth that the subject property exhibits exceptional topographic conditions which necessitate the need for the variance. From the finished street grade of Campfire Court to the subject property, adjoining Lot 8 falls over 20 feet. He stated that 92 percent of the wall has been located to comply with the setback requirement and only 7 of the 84 feet of the wall located on the property will exceed 6 feet in height with the railing. See Exh. 4, pp. 3, 5.

11. 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, Lot 8 could not be graded to provide a safe living environment. With the substantial slope, the only way to grade Lot 8 without a retaining wall would be to encroach into 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, pp. 5-6. Rick Rudy of Foster added that since much of the subject property is floodplain, the retaining wall also minimizes impact on an environmentally sensitive area. See Exh. 7.



**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.