

*NOTICE OF FINAL DECISION*


*OF BOARD OF APPEALS*

RE: Case No. V-164-07 Maryland Homes CF LLC

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 16, 2008 .

**CERTIFICATE OF SERVICE**

This is to certify that on February 14, 2008 , the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

  
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Anne F. Carter  
Administrator

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

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

Petitioner: Maryland Homes CF, LLC

Appeal No.: V-164-07

Subject Property: Lot 52, Block M, Tantallon on the Potomac Subdivision, being 502 Bricker Drive, Fort Washington, Prince George's County, Maryland

Counsel for Petitioner: Andre Gingles, Esq.

Witness: Scott Glass, Caruso Homes

Heard: December 12, 2007; Decided: January 16, 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 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) of the Zoning Ordinance, 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, and a rear yard at least 20 feet in depth/width. Petitioner proposes to validate an existing wall up to 7.3 feet in height topped with a 4-foot fence and construct a new single-family dwelling and driveway. Variances of 17 feet total side lot line setback and 20 feet rear lot line setback are requested.

Evidence Presented

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

1. The property was subdivided in 2005, contains 9,530 square feet, is zoned R-80 (One-Family Detached Residential) and is proposed to be improved with a single-family dwelling and driveway.
2. Petitioner has requested variances in order to validate a wall/fence constructed along the rear lot line. Since the wall, topped with the fence, on the subject lot (Lot 52) varies in height up to 11.3 feet and the wall/fence must meet main building setback requirements, variances of 17 feet total side lot line setback and 20 feet rear lot line setback were requested.
3. The subject property is one of 14 vacant residential lots contained in a parcel originally subdivided in 1977 (Tantallon on the Potomac). The property is located in Fort Washington, north of Old Fort Road, approximately 2,000 feet west of its intersection with Old Indian Head Highway (MD 210). Variances have been requested to validate the multiple tier retaining walls topped with fence varying in height up to 12.7 feet constructed along the rear property lines of the 14 vacant lots. The Board recently granted variances for wall/fence height on other lots within the same subdivision (Appeal Nos. V-79-07 thru V-87-07).
4. Petitioner stated that the subdivision in which the subject property is located was part of the overall Master Plan for the area at the time it was recorded and is located in one of the last sections of the subdivision remaining undeveloped. The development plan for the section of the subdivision in which the

subject property is located was engineered and designed in the 1970s, in accordance with Department of Public Works and Transportation ("DPW&T") standards in effect at that time, standards which have since been revised. Construction of the road configuration as approved with 1970 standards created unusual practical difficulties, e.g. unacceptable grades by current DPW&T standards. To avoid construction of the previously designed road that is now below current design standards, Petitioner agreed to work with DPW&T to vacate the right-of-way for Hallwood Place and construct retaining walls and re-design road grades that conform to current County standards. Building permits were issued for four retaining walls and their construction was coordinated with that of the site roads and infrastructure. The roads and walls have been built, are permanent, and the lots affected by the wall/fence are ready to be developed. If the variance were denied, the wall and roads would have to be removed which would cause exceptional and undue hardship upon Petitioner, who took the additional step to have the construction comply with current standards. In addition, the proposed homes, whose architecture has been accepted by the County, could not be built. See Exhibit 15.

5. Petitioner further stated that the property has exceptional topographic conditions evidenced by an elevation change on the site that was approximately 100 feet. The subject lots are located within the area of the site where an extremely steep slope caused abrupt change in elevation. Certain right-of-way lines have been redrawn to minimize slopes, infrastructure has been constructed and the roads built. The retaining walls that are the subject of the variance request were erected as part of the overall site development infrastructure so that acceptable road grades could be constructed and erosion could be minimized. The subject retaining walls extend along all or most of the length of the rear property lines of 14 building lots. The wall measured from grade to the top of the wall varies in height from 0 feet to 8.7 feet and reaches a maximum height of 12.7 feet when topped with a 4-foot fence, required by DPW&T for safety. Since the wall/fence is over 6 feet in height on the affected 14 lots and does not meet main building setbacks, it must be validated before building permits can be obtained to construct single-family dwellings on those lots. See Exhibit 15.

6. Petitioner contended that granting of Petitioner's request does not substantially impair the Master Plan. The residential development, inclusive of the lot sizes and number of dwellings, conforms to the previous and current Master Plan. Although the wall in the decisions made by the Board for previous lots within the subdivision was a single tier wall, the facts remain the same.

#### 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 subdivided in 1977, the subdivision in which the subject property is located being part of the overall master plan for the area at the time it was recorded, the sloping topography of the property, current road slope standards not being required for road construction permits obtained in the 1970s, Petitioner redesigning the site and streets to meet current standards, infrastructure and streets already being built, the retaining wall causing the need for the requested variances being necessary to minimize the slope of the roads, the wall already being built, DPW&T requiring a 4-foot safety fence on top of the wall, the fence/wall extending along the rear property line of the lot, the wall/fence needing validation in order to obtain a building permit to construct a single-family dwelling 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 variances of 17 feet total side lot line setback and 20 feet rear lot line setback in order to validate an existing wall up to 7.3 feet in height topped with a 4-foot fence (11.3 feet total maximum height of fence/wall) and construct a new single-family dwelling and driveway on the property located at Lot 52, Block M, Tantallon on the Potomac Subdivision, being 502 Bricker Drive, Fort Washington, Prince George's County, Maryland, be and are hereby APPROVED. Approval of the variances is contingent upon wall/fence development on the property as shown on the approved site plan, Exhibit 2, and approved elevation plans, 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.