


*NOTICE OF FINAL DECISION
OF BOARD OF APPEALS*

RE: Case No. V-211-07 Thomas & Michelle Jones

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: February 27, 2008 .

CERTIFICATE OF SERVICE

This is to certify that on May 7, 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.
M-NCPPC, Permit Review Section
DER, Licenses & Inspections Div.
Fort Foote Homeowners Association, Inc.

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

Petitioners: Thomas & Michelle Jones

Appeal No.: V-211-07

Subject Property: Lot 30, Block A, Fort Foote Forest Subdivision, being 102 Autumn Lake Way, Fort Washington, Prince George's County, Maryland

Witnesses: Percy Harvey, Adjoining property co-owner

Sandra Harvey, Adjoining property co-owner

Heard: January 30, 2008; Decided: February 27, 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 a variance 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, Petitioners request 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. Petitioners propose to validate and obtain a building permit for a white vinyl fence over 6 feet in height (6-foot high panels) with fence posts 7 feet 3 inches in height. A waiver of the fence location requirements is requested.

Evidence Presented

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

1. The property was subdivided in 1996, contains 10,436 square feet, is zoned R-R (Rural Residential) and is improved with a single-family dwelling and driveway. The property is an odd-shaped lot located on a cul-de-sac.
2. Petitioners constructed a 6-foot, white, vinyl privacy fence with fence posts 7 feet 3 inches in height on the property without obtaining a building permit. Violation Notice No. BVN 40353-2007-01 was issued by the Licenses & Inspections Division of the Department of Environmental Resources, requiring that Petitioners obtain a building permit for the fence.
3. When Petitioners applied for a building permit, they were told a variance was needed. Since the fence is over 6 feet in height, is located at the left rear corner of the property, with 58 feet along the left side property line and almost 7 feet along the rear property line, and does not meet the required setbacks for a main building, a waiver of the fence location requirements was requested in order to obtain a building permit for the fence.
4. Petitioner Thomas Jones testified that the fence has 6-foot panels, but some of the fence posts are as tall as 7 feet 3 inches because the yard is sloped and the fence panels were put up in a stepped

fashion (Exhibit 5). He stated that he bought and installed the fence himself and does not know how he could install the fence so that the panels would stay even along the top without substantial digging.

5. Mr. Jones further testified that he erected the fence because his wife was very concerned about the neighbors' Rottweiler dog frightening their children. He stated that even though the neighbors installed an invisible fence, the dog has crossed beyond the invisible fence and having their own privacy fence would keep the dog from being seen by the children when it barks at them. He testified that the County's Animal Control department instructed him to either file a complaint to have his neighbors build a fence or build a fence himself.

6. Percy Harvey, owner of adjoining property next to the fence (Lot 31), opposed validation of the fence, testifying that the fence is built around only part of Petitioners' back yard, is poorly constructed (at least two panels have fallen down) and the fence devalued his property. He confirmed that he has a Rottweiler and maintains an invisible fence. He further stated that he initially signed a homeowners association document approving the subject fence only because he was led to believe the fence would be built around the entire rear yard of Petitioners.

7. Sandra Harvey, co-owner of Lot 31, does not object to a fence, but testified that the workmanship of the current fence is substandard which affects her property's value. She testified that other privacy fences in the neighborhood on slopes are built evenly along the top without the gaps between the fence and the ground.

8. The Fort Foote Forest Homeowners Association's Architectural Control Committee ("ACC") approved Petitioners' fence proposal (Exhibit 14), but because of community concerns about the aesthetic inconsistency of the fence in the neighborhood and its possible safety hazard due to falling panels, ACC indicated that it would have Petitioners' fence removed if specifications for the fence that were originally approved by ACC (specifically, eliminating the ground level gapping under the fence, securing the panels so they will not come off so easily, concealing the exposed wood on the 4 x 4 poles and maintaining a uniform height of the panels) were not met (Exhibit 16).

9. The Subdivision Section of the Maryland-National Capital Park and Planning Commission reviewed the request with regard to the description of the property contained on the record plat of subdivision for Fort Foote Forest Cluster (VJ 177 @ 96 – Lot 30, Block A). The Subdivision Section stated that the proposed development and requested variance are not in conflict with the record plat or the Plan of Development as approved under Cluster Preliminary Plan 4-94095 (Exhibit 12).

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 does not comply with the applicable standards set forth in Section 27-230, more specifically:

1. To meet the first prong of Section 27-230, probative evidence must demonstrate exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition of specific parcels of the subject property. The Board finds that Petitioners' lot is sufficiently unique in shape and sloping topography to meet this statutory requirement.

2. To satisfy the second prong, it must be shown that 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. The Board also finds that Petitioners have a valid safety concern with regard to the neighbors' dog, but they erected the subject fence without a building permit, built it apparently improperly and without providing the overall safety for which it was intended.

3. The Board further finds that the subject fence is inconsistent with the character of the neighborhood (fences) and validation of the fence would cause substantial impairment of the intent, purpose and integrity of the General Plan and Master Plan.

4. Therefore, the Board finds that Petitioners' request does not meet all of the requirements of Section 27-230.

BE IT THEREFORE RESOLVED, unanimously, that a waiver of the fence location requirements in order to validate and obtain a building permit for a white vinyl fence over 6 feet in height (6-foot high panels) with fence posts 7 feet 3 inches in height, on the property located at Lot 30, Block A, Fort Foote Forest Subdivision, being 102 Autumn Lake Way, Fort Washington, Prince George's County, Maryland, be and is hereby DENIED.

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 27-234 of the Prince George's County Code states:

If the Board denies an appeal involving a variance, no further appeal covering the same specific subject on the same property shall be filed within the following twelve (12) month period. If the second appeal is also denied, no other subsequent appeals covering the same specific subject on the same property shall be filed within each eighteen (18) month period following the respective denial.