


NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-3-08 Southern Maryland Electric Cooperative Inc. ("SMECO")

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 March 14, 2008, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.



Anne F. Carter
Administrator

cc: Petitioner
Adjoining Property Owners
DER, Building Code Official, Permit & Review Div.
M-NCPPC, Permit Review Section
Other Interested Parties

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

Petitioner: Southern Maryland Electric Cooperative, Inc. ("SMECO")
Appeal No.: V-3-08
Subject Property: Parcel 32, Tax Map 170, Grid E-2, being 18400 Livingston Road, Accokeek,
Prince George's County, Maryland
Counsel for Petitioner: Edward C. Gibbs, Esq., Gibbs & Haller
Witnesses: Thomas Russell, SMECO
Hugh Voehl, SMECO
Heather Schwartz, Greenhorne & O'Mara
Heard: February 13, 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, Petitioner requests that the Board approve a variance from Section 27-442(e)(Table IV) of the Zoning Ordinance, which prescribes that each lot shall have a front yard at least 25 feet in depth. Section 27-420(a) 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. Petitioner proposes to construct a 10-foot-high chain link fence with 1 foot of barbed wire on top around an electrical transmission line substation. A variance of 15 feet front street line setback is requested.

Evidence Presented

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

1. The property was created by deed in 1967, contains 5.1 acres, and is zoned R-R (Rural Residential). The property is vacant land proposed to be improved with an electrical transmission line substation. Proposed improvements to the property consist of a 400-square-foot control house, steel structures to support the transmission lines, feeders, circuit breakers and transformers.
2. The property is an odd-shaped corner lot located in the southwest quadrant of the intersection of Livingston Road and Independence Road, just southwest of Indian Head Highway (Md. Rte. 210), in Accokeek. The area surrounding the property is residential and rural in nature. Immediately north of the property are scattered single-family detached dwellings on residentially-zoned parcels of varying size, beyond which is Indian Head Highway. To the east across Independence Road is the existing Simmons

Acres residential subdivision, to the south is undeveloped residentially-zoned property and to the west is additional unimproved residentially-zoned property. See Exhibits 3 & 4.

3. Petitioner would like to construct a 10-foot-high chain link fence, with a foot of barbed wire placed at the top of the fence, to enclose the property. Since the fence would be located 10 feet from the front street line and must meet main building setback requirements, a variance of 15 feet front street line setback was requested.

4. Counsel for Petitioner explained that due to the high voltage transmitted from the substation (230 kV), safety requires that the property be enclosed with a fence. Petitioner's policy is to enclose its substations with a 10-foot chain link fence with barbed wire at the top of the fence. Access to the site is proposed to be gained via a gravel driveway off of Livingston Road, which is a two-lane road with a proposed ultimate right-of-way width of 60 feet. Petitioner was advised by the County's Department of Public Works and Transportation ("DPW&T") that an additional right-of-way dedication would be required for the ultimate right-of-way for both Livingston and Independence Roads, which dedication would prevent Petitioner from meeting the setback requirements for a 10-foot fence. See Exhibit 3 with attached Exhibit A.

5. Counsel for Petitioner further argued the following: (a) there is a lower burden for approving an area variance than for approving a use variance; (b) the first criteria for the granting of the variance was met because of the exceptional shape of the property, an irregular frontage accentuated where Livingston Road intersects with Independence Road, and DPW&T requiring additional right-of-way dedication; (c) strict application of the Zoning Ordinance provisions would result in peculiar and unusual practical difficulties and exceptional and undue hardship to Petitioner in that due to the shape and topography of the property, the western portion of the property is the only logical area onsite where the structures associated with the transmission substation can be located; and (d) if the proposed fence were required to be set back 25 feet from the proposed ultimate right-of-way line of Livingston Road, there would be insufficient room for long trucks delivering needed replacement transformers to maneuver on site. See Exhibit 3.

6. Counsel for Petitioner explained that the intended "Public Utility" use of the property is permitted as a matter of right in the R-R Zone, and therefore approval of Petitioner's request will not substantially impair the intent, purpose or integrity of the General Plan or Master Plan. See Exhibits 19-21.

7. Simmons Acres Homeowners Association did not comment on the request.

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

