

*NOTICE OF FINAL DECISION*

*OF BOARD OF APPEALS*

RE: Case No. V-83-11 Candie Schwartz

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: September 21, 2011 .

**CERTIFICATE OF SERVICE**

This is to certify that on November 7, 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/Building Code Official, Permits & Review Group  
Greater Accokeek Civic Association  
Accokeek Development Review District Commission  
Moyaone Association

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

Petitioner: Candie Schwartz  
Appeal No.: V-83-11  
Subject Property: Tax Map 151, Grid B2, Parcel 94, being 1206 Bryan Point Road, Accokeek,  
Prince George's County, Maryland  
Counsel for Petitioner: Thomas E. Dernoga, Esq.  
Heard and Decided: September 21, 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 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(i)(Table VIII) of the Zoning Ordinance, which prescribes that accessory buildings shall generally be located only in the rear yard. Petitioner proposes to construct a shed in the front yard. A waiver of the rear yard location requirement for an accessory building is requested.

**Evidence Presented**

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

1. The subject property contains 5.0576 acres, is zoned O-S (Open Space) and is improved with a single-family dwelling, driveway and shed. Exhibits ("Exhs.") 12-13, 23. The property was improved with a single-family dwelling in 1982. Exh. 13.
2. The property was created by deed in 1956. Exh. 6. The property is part of the lands comprising the Moyaone Reserve and is subject to a Federal scenic easement. Exhs. 2, 10.
3. The property is located in a rural area and is surrounded by other large O-S zoned parcels. Exh. 14. The property is shaped like a meat cleaver, with the existing house being built at an angle to the street line close to the junction of the cleaver's blade and handle. Exhs. 9(E), 14, 23.
4. Petitioner would like to construct a 20' x 16' shed, but a variance is needed to obtain a building permit because the proposed shed would be located in the front and side yards. A waiver of the rear yard location requirement for an accessory building was requested. Exh. 16.
5. Petitioner testified that finding a suitable location for the proposed shed is limited by steep slopes in most of the rear yard except in the area of the septic field, the substantial amount of Marlboro Clay soil, severe flooding issues, and a restriction on cutting trees on the property which is almost entirely wooded. Exhs. 2, 9(A)-(E).
6. Petitioner further testified that the proposed shed would be used, as the old shed was, for storage of maintenance equipment. She explained that flooding had rotted the floor timbers, doors and parts of the walls of the old shed, making it unusable. Exhs. 8(H) & (I). Because of the drainage problems related to the old shed's location, she began erecting the replacement shed at its present location. The old shed will be removed from the property. Exh. 23.

7. Petitioner testified that in 2009 she attempted to ameliorate the drainage problem by reestablishing drainage, but to no avail. She placed interception ditches behind the shed, but water still funnels toward the door of the shed. She stated that she would dig a 4-foot interception trench in front of the door to the shed, but that would prevent her from moving her lawn mower in the shed. She testified that an engineer recommended that she find a flatter location for the proposed shed. She therefore searched for a large enough space where the topography was acceptable for building and trees would not need to be cut down.

8. Petitioner argued that the variance would not substantially impair the intent, purpose or integrity of the General Plan or Master Plan because ninety-five percent of the shed will be located in the side yard, it will not be visible from Bryan Point Road, no trees will have to be cut down in the rear yard and green construction materials are being used for the construction. In addition, she explained that although the new shed is tucked in a couple of feet off the driveway and it is 22 feet or more from the property line, a green privacy fence made of native species to reduce any visual impact of the shed is proposed. Also see Exh. 2, p. 3.

9. Petitioner testified that the front of the shed with double doors will face the gravel driveway and that materials used for the exterior of the shed will be a cedar stain to match her existing house.

10. Petitioner testified that a representative of the Secretary of the Interior determined that the proposed location of the shed would not impact any (conservation) concerns related to current tree canopy. Also see Exh. 2, p. 2.

11. Alex Naar, a neighbor at 1200 Bryan Point Road (Parcel 95), opposed the variance. He stated that the structure would be fully visible from his property, drastically alter the natural setting and diminish the value of his property. He opined that the best location for the new shed is where the old shed is located.

12. No comments were received from the Moyaone Association or the Greater Accokeek Civic Association.

#### 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:

Due to the unusual shape of the property, the dimensions of the property, the steep slopes in the rear yard except in the area of the septic field, the property being almost entirely wooded, the property being subject to a Federal conservation easement strictly limiting the cutting of trees, there being substantial Marlboro Clay in the rear yard, drainage problems adversely impacting the existing shed, the new location of the shed being more suitable and not impacting the current tree canopy, the unique location and angle of the house on the property, only a very small portion of the shed extending forward of the front building line of the house, the need for storage space for equipment to maintain the property, the location of the existing gravel driveway, the proposed shed being at least 22 feet from the side property line, any Building Code requirements being addressed once a building permit is obtained, the current shed being removed from 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 a waiver of the rear yard location requirement for an accessory building in order to construct a 20' x 16' shed in the front yard on the property located at Tax Map 151, Grid B2, Parcel 94, being 1206 Bryan Point Road, Accokeek, Prince George's County, Maryland, be and is hereby APPROVED. Approval of the variance is contingent upon development in compliance with the approved revised site plan, Exhibit 23, and the approved elevation plan, Exhibit 4.

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.