

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-21-16 Sharon and Mark Russell

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 13, 2016.

CERTIFICATE OF SERVICE

This is to certify that on April 27, 2016, 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: Petitioners
Adjoining Property Owners
M-NCPPC, Permit Review Section
DPIE/Building Code Official, Permitting
Brock Hills Homeowners Association

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

Petitioners: Sharon and Mark Russell

Appeal No.: V-21-16

Subject Property: Lot 7, Block H, Brock Hills Subdivision, being 3305 Old Largo Road, Upper Marlboro, Prince George's County, Maryland

Witness: Mark Shaffery, Elite Pools

Heard and Decided: April 13, 2016

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, Petitioners request that the Board approve variances from Section 27-420(a) of the Zoning Ordinance, which prescribes that on lots consisting of one (1) acre or less, fences and walls in the front yard shall not be more than four (4) feet high without the approval of a variance. Petitioners propose to construct a 6-foot black vertical rod aluminum fence in the front yard (along Largo Road). Waivers of the fence location and height requirements for a fence over 4 feet in height in the front yard are requested.

Evidence Presented

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

1. The property was subdivided in 1967, contains 13,853 square feet, is zoned R-E (Residential-Estate) and is improved with a single-family dwelling and driveway. Exhibits ("Exhs.") 2, 4, 7 and 8. The existing dwelling was built in 2003. Exh. 7.
2. The property is a through lot with two [legal] front yards (Old Largo Road and Largo Road (MD Route 202)) and no rear yard. Exhs. 2 and 4. The front of the dwelling faces Old Largo Road. Exhs. 2 and 9(A).
3. The property has a downward slope from Old Largo Road to Largo Road and there is wooded area between the existing house and Largo Road. Exhs. 5(A) thru (E) and 9 (A) thru (D).
4. Petitioners would like to construct a 6-foot black vertical rod aluminum fence around the yard behind the house ("back yard"), but variances are required to obtain a building permit. Since the fence will be over 4 feet in height and located in one of the legal front yards (along Largo Road), waivers of the fence location and height requirements for a fence over 4 feet in height in the front yard were requested.
5. Petitioners' pool contractor, Mark Shaffery, testified that Petitioners are planning to construct a swimming pool in the back yard and a 6-foot fence is required to enclose the pool.¹
6. Mr. Shaffery estimated that it is approximately 90-100 feet between the rear property line to the pavement of Largo Road (MD Route 202). He stated that only about one-third of the fence along the side

¹ County Code Section 4-209(c) requires that residential swimming pools be enclosed by a fence at least 6 feet in height.

property lines will be visible. He also believes that since the fence will be black vertical rods (Exh. 3) and there is wooded area along Largo Road, the fence will be virtually invisible from Largo Road.

7. Brock Hills Homeowners Association approved the request. Exh. 17.

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 a through lot with two front yards, the property backing up to a State highway (MD Route 202), the sloping topography of the property, there being wooded area between MD Route 202 and the subject property, Petitioners constructing a swimming pool between the dwelling and the wooded area next to MD Route 202, the proposed 6-foot fence enclosing the back yard which is considered a legal front yard, County Code Section 4-209(c) requiring that residential swimming pools be enclosed by a fence at least 6 feet in height, 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 owners of the property.

BE IT THEREFORE RESOLVED, unanimously, that waivers of the fence location and height requirements for a fence over 4 feet in height in the front yard in order to construct a 6-foot black vertical rod aluminum fence in the front yard (along Largo Road) on the property located at Lot 7, Block H, Brock Hills Subdivision, being 3305 Old Largo Road, Upper Marlboro, Prince George's County, Maryland, be and are hereby APPROVED. Approval of the variances is contingent upon development in compliance with the approved site plan, Exhibit 2, and the approved elevation plan, 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.