

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. AA-1684 Malcolm Friar

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 8, 2017.

CERTIFICATE OF SERVICE

This is to certify that on April 25, 2017, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

By: (Original Signed)
Barbara J. Stone
Acting Administrator

cc: Petitioner
DPIE/Inspections Division
Office of Law
Town of Cheverly
Other Interested Parties

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

Petitioners: Malcolm Friar

Appeal No.: AA-1684

Subject Property: Lot 1177, Block 51, Cheverly Subdivision, being 5806 Carlyle Street, Cheverly,
Prince George's County, Maryland

Counsel for Prince George's County Department of Permitting, Inspections and Enforcement
("DPIE"): Amanda Applebaum, Esq. Associate County Attorney

Witnesses: Denny Brittingham, (DPIE) Construction Standards Inspector
Diane Titus, Neighbor, 5804 Carlyle Street, Cheverly
Gary Sampson, Neighbor, 5804 Carlyle Street, Cheverly
Ross Wolland, New Home Owner (subject property)

Heard and Decided: February 8, 2017

Board Members Present and Voting: Bobbie S. Mack, Chairperson
Albert C. Scott, Vice Chairman
Anastasia T. Johnson, Member

RESOLUTION

This appeal was filed with the Board of Appeals for Prince George's County, Maryland, sitting as the Board of Administrative Appeals, from the determination of the Department of Permitting, Inspections and Enforcement (DPIE), Inspections Division, to issue a Violation Notice, dated December 14, 2016, citing Petitioner with violating Subtitle 32, Division 2, Section 32-161(2) (On-Site Drainage) of the County Code as new development shall not cause water to be impounded on the adjacent property and adequate drainage facilities shall be provided to prevent ponding, and requiring Petitioner to obtain the required permit(s) for work done at the property or grade the property per approved site grading plan, on R-55 (One-Family Detached Residential) zoned property located at Lot 1177, Block 51, Cheverly Subdivision, being 5806 Carlyle Street, Cheverly, Prince George's County, Maryland.

Evidence Presented

The Following testimony and evidence were presented to the Board for its consideration:

1. The subject property contains 6,000 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling and driveway which was built in 2016.
2. Petitioner received a Stop Work Order and Violation Notice, BVN# 55344-2016-0, dated October 24, 2016 (handwritten) for "water being impounded on 5804 Carlyle Street" per Section 32-162 (2) of the Prince George's County Code. Petitioner received another notice on December 14, 2016 (typed). Both notices are the same and are referred to as "Violation Notice."
3. The Violation Notice was issued to Mr. Friar at the time he owned the property.¹
4. Amanda Applebaum, Counsel for DPIE, argued that Mr. Malcolm Friar obtained site plans and permits to build the home, but did not follow the site plans in regards to grading and, specifically, did not follow the drainage plans, which had been approved by the County engineer.

¹ Mr. Friar sold the property to Ross Wolland on December 19, 2016. Apparently, an addendum was included with the sale of the property that stated Mr. Friar will be responsible for all issues stemming from the Violation Notice. Exh. 19.

5. Ms. Applebaum stated that the subject property, prior to the construction was flat between the subject property and property at 5804 Carlyle Street. She contended that Mr. Friar, during grading, raised the land and did not install the proper drainage system which is causing water overflow.

6. Mr. Denny Brittingham, Chief of the Quality Assurance, Quality Control, for the Inspections Division of DPIE stated that he was responsible for inspecting the site for site drainage. Mr. Brittingham testified that his office received a complaint on October 24, 2016 in regards to water and sediment running onto 5804 Carlyle Street. He stated that an inspector was sent to the site and reported sediment running onto the Driveway of 5804 Carlyle Street.²

7. He further testified that he obtained a copy of the approved permit site plan (46271-2015-1) from Maryland-National Capital Park and Planning Commission (M-NCPPC) to review the approved drainage. The site plan showed that on the side abutting 5804 Carlyle Street there were several swales to be installed to divert the water to the back and front of the property (in addition to other swales required on the property). After visiting the site himself, Mr. Brittingham observed no swales on the left side of the house. Also, on the site plan it was noted that there would be a *maximum* one foot retaining wall. During the site visit it was discovered that the wall was higher than noted on the site plan at 17"-18". The retaining wall length was extended further than approved on the site plan. Inspector Brittingham further explained that the retaining wall was higher due to the subgrade on the left side of the house. The grading elevation noted on the plan was to be no more than 2-3 feet, but was well over two feet, at approximately 4 feet. Mr. Brittingham determined that a permit was not obtained to raise the elevation of the land. He concluded that because the grading was not done in accordance with the site plan, the effect of raising the land has affected the drainage. He stated that prior to the approval of the permit, it was specifically reviewed to make sure that water was not directed toward the neighbor's home due to the location of the side door.

8. Inspector Brittingham informed the Board that he instructed Mr. Friar to revise the site plan to address the drainage plan issue. He stated that in response, Mr. Friar indicated to Mr. Brittingham that he did not understand why he needed to do that. Mr. Brittingham said he therefore set up a meeting on November 8, 2016, in the field with the engineer and Mr. Friar during which it was determined that the engineer would work on a resolution. Mr. Brittingham testified that on December 14, 2016, the engineer advised him that a revised plan³ was completed, but Mr. Friar requested that the engineer hold off for now.

9. Ms. Titus explained that she has lived next to the subject property for 20 years and never had any issues like this. She testified that since the construction on the subject property began she has had to spend a lot of time cleaning the yard from mold and sediment which has run on to her property from the subject property. She stated that she is preparing to invest in a new concrete driveway and does not want sediment settling on the new driveway. Ms. Titus further explained that before the new house was built on the subject property, the area between her house and the subject property was flat.

10. Mr. Sampson testified that soot is now coming from under the retaining wall into his yard to the basement steps. He also stated that when it rains the large pools of water are created the yard.

11. Mr. Friar stated that he believed that he built the property based on the plans drawn by the Engineer. He stated that he had received a final inspection, a certificate of occupancy and obtained a legal permit.

12. Amanda Applebaum stated that the Violation Notice states that "adequate drainage facility shall be provided." Amanda Applebaum cited the relevant section related to drainage – "Drainage facilities included but not limited to sump pumps, foundation drains, trench drains and under drains shall be provided and shall be discharged into a public maintained drainage system or continuously flowing natural water course to

² Photographs were submitted by Diane Titus showing sediment running onto the driveway of 5804 Carlyle Street.

³ The Board notes that the revised plan was not submitted into the record.

safely convey surface and ground water in such a manor to prevent detrimental erosion, overflow, ponding or nuisance of any kind." ⁴

13. Mr. Brittingham testified that he spoke with the engineer who stated that "something (a site plan) was done to rectify the problem and that the swales were not put in and that Mr. Friar stopped him".

14. Amanda Applebaum recommended that an engineer draw up new plans with a resolution.

Findings of the Board

After hearing all the testimony and reviewing the evidence presented, the Board finds as follows:

1. The Violation Notice was issued to Petitioner for ponding of water on the adjacent property located at 5604 Carlyle Street, in violation of County Code Section 32-162(a)(1).
2. Evidence states that the appropriate grading and drainage plans were not followed in the development of the property.
3. Substantial evidence supports the conclusion that Petitioner took action which caused disruption to the natural flow of water across his property resulting in ponding of water on the right side of his neighbor's yard. Exh. 16, 17(A) thru (D).
4. Restoration or regrading of the natural contour of the land is required with proper drainage to convey surface and ground water to prevent ponding or nuisance of any kind that is consistent with the requirements of Section 32-162(a)(1).

BE IT THEREFORE RESOLVED, unanimously, that the determination of the Inspections Division Inspector, Department of Permitting, Inspections and Enforcement, to issue Violation Notice No BVN No. 55344-2016-0 to Petitioner be and is hereby AFFIRMED.

BOARD OF ADMINISTRATIVE 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.

⁴ Sec.32-162 of the County Code - On-Site Drainage.