

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-33-17 Roman Smith

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 May 3, 2017.

CERTIFICATE OF SERVICE

This is to certify that on May 9, 2017, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

(Original Signed)

Barbara J. Stone
Acting Administrator

cc: Petitioner
Adjoining Property Owners
M-NCPPC, Permit Review Section
DPIE/Building Code Official, Permitting
DPIE/Inspections Division
Windbrook Area Citizens Association, Inc.

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

Petitioner: Roman Smith

Appeal No.: V-33-17

Subject Property: Lot 19, Block C, Windbrook Subdivision, being 3602 Chado Road, Clinton,
Prince George's County, Maryland

Heard and Decided: May 3, 2017

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, Petitioner requests that the Board approve variances from Section 27-420(a) of the Zoning Ordinance, which prescribes that on corner lots consisting of one (1) acre or less, fences and walls in the front yard or side yard shall not be more than four (4) feet in height without the approval of a variance. Petitioner proposes to construct a 6-foot white vinyl privacy fence. Waivers of the fence location and height requirements for a fence over 4 feet in height in the side yard (abutting Windbrook Drive) are requested.

Evidence Presented

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

1. The property was subdivided in 1967, contains 15,709 square feet, is zoned R-R (Rural Residential) and is improved with a single-family dwelling, driveway, shed¹ and swimming pool. The property is a corner lot with the house facing the legal front street. Exhibits (Exhs.) 2, 3, 4 and 8.
2. Petitioner would like to construct a 6-foot white vinyl privacy fence around the back yard. As a portion of the fence will be in the yard between the house and Windbrook Drive, waivers of the fence location and height requirements for a fence over 4 feet in height in the side yard (abutting Windbrook Drive) are requested. Exhs. 2, 3, 5 (A) thru (D) and 12.
3. On March 16, 2017, the Department of Permitting, Inspections and Enforcement, Inspections Division posted a stop work order on the subject property to Petitioner for working without a building, electrical or mechanical permit. Exh 6.
4. Petitioner testified that he proposed to replace an existing 6 foot wooden fence that was in disrepair with the proposed fence in the exact location as the original. Exhs. 2 and 5 (A) thru (D).
5. Petitioner further testified that because of the swimming pool regulations², a 6 foot fence is required to be installed around the property. With children in the area, Mr. Smith stated that he is very concerned about their safety and deems the absence of the fence as a definite hazard. He stated that currently there is only a cover over the pool (that can be walked on).
6. Mr. Smith explained that the contractor took down the existing fence prior to having the new fence on site to install. He stated that a complaint was lodged for not having a fence around the pool. Exhs. 5 (A) thru (D) and 6.

¹ Petitioner stated that the existing shed will be removed. Exhs. 2 and 10 (A) thru (G).

² Subtitle 27, Part 5- Residential Zones, Division One-General, Sec. 27-424-Swimming Pools.

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 County's mandatory requirement for a 6 foot fence around swimming pools, the potential danger to the community 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 waivers of the fence location and height requirements for a fence over 4 feet in height in the side yard (abutting Windbrook Drive) are requested in order to construct a 6-foot white vinyl privacy fence on the property located at Lot 19, Block C, Windbrook Subdivision, being 3602 Chado Road, Clinton, 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 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.