



THE PRINCE GEORGE'S COUNTY GOVERNMENT

BOARD OF ZONING APPEALS

BOARD OF ADMINISTRATIVE APPEALS

COUNTY ADMINISTRATION BUILDING, UPPER MARLBORO, MARYLAND 20772
TELEPHONE (301) 952-3220

NOTICE OF FINAL DECISION

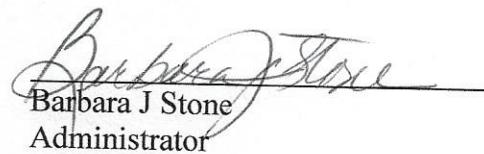
OF BOARD OF APPEALS

RE: Case No. V-42-20 Leo Bruso, Trustee for Land and Commercial, Inc.

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: December 9, 2020

CERTIFICATE OF SERVICE

This is to certify that on May 20, 2021, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.



Barbara J. Stone
Barbara J. Stone
Administrator

cc: Petitioner
Adjoining Property Owners
M-NCPPC, Permit Review Section
DPIE/Building Code Official, Permitting

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

Petitioner: Leo Bruso, Trustee for Land and Commercial, Inc. Profit Sharing Plan
Appeal No.: V-42-20

Subject Property: Lot 3, Block A, Missouri Acres Subdivision, being 13604 Missouri Avenue, Brandywine,
Prince George's County, Maryland,

Counsel for Petitioner: Thomas Hall, Esq., Gibbs and Haller

Heard and Decided: December 9, 2020

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. Petitioner proposes to construct a single-family detached dwelling. A variance of 5 feet front yard depth is requested.

Evidence Presented

1. The property was subdivided in 2007, contains 24,015 square feet, is zoned R-R (Rural Residential) and is vacant. Exhibits (Exhs.) 3, 4, 8 (A) thru (G), 9 and 10.
2. Petitioner would like to construct a single-family detached dwelling. Because the front yard depth does not meet the required 25-foot front yard depth, a variance of 5 feet is required. Exhs. 2 and 3.
3. Counsel Thomas Haller stated that there are two lots in question that are a part of the Missouri Acres Subdivision.¹ He explained that the subdivision has 46 undeveloped lots with most of the subdivision fronting on Mangrove Drive, which comes off of Missouri Avenue. Construction is intended for all single-family-detached homes in the subdivision. There are 4 lots, including Lots 3 and 4, which were platted to front on Missouri Avenue. Exhs. 2.
4. He stated that at the time of subdivision, regulated environmental features (floodplain and wetlands) pursuant to Section 24-1390(b)(5) were required to be preserved in the subdivision. In addition, a buffer was required from the environmental features. He stated that the Maryland-National Capital Park and Planning Commission (M-NCPPC) also imposed a building setback requirement (condition 14e of the Preliminary Plan).² Exh. 2.

¹ Attorney Haller submitted that the two lots share the same setback before the Board in V-42-20 and V 43-20, addressing Lots 3 and 4, respectively. He requested that the Board jointly hear and discuss both lots together and incorporate the record of V-42-20 into V-43-20. The Board agreed.

² "Revised the lot layout and woodland conservation areas to provide a minimum clear area of 20 feet from the sides and a minimum clear area of 40 feet from the rear of the conceptual house pads and for side loaded garages, provide 20 feet from the edge of the driveway."

5. Record evidence indicated that a stream which runs behind the lots (which front on Missouri Avenue) is associated with an area of flood plain. As such, two conditions were imposed at the time of subdivision approval. The first was that the flood plain and a 25-foot buffer from the flood plain were placed into a conservation easement. That conservation easement is shown on the record plat (PM 224 @ 37). The second condition required a setback establishing a conservation easement of 40 feet from the rear yard of the building envelope and 20 feet from the side yard. The building envelope is exceptionally shaped, narrow and shallow. The subdivision plat demonstrated those conditions, including the building envelope. Exhs. 2, 3, 5, 6, 7 and 8 (A) thru (G).

6. The conservation easement requires a 25-foot buffer. The lots, which are very deep, require the lot size within the R-R Zone to be 20,000 square feet. Lots 3 and 4 are larger than the lots required in the R-R Zone regulation. However, the issue is that the protections that were created by M-NCPPC to avoid any encroachments into the conservation easement area and the buffer constrains the builder from building a comparable sized house on Lots 3 and 4 in the subdivision. Exhs. 2, 3, 5, 6, 7 and 8 (A) thru (G).

7. Counsel contends that if the dwellings were moved back on the property to meet the front yard setback, then conversely a variance for the rear yard would be necessary which in turn would encroach the environmental restrictions and conditions. He stated that the variance is needed, therefore, in the front yard to accommodate specifically the proposed garage which will extend closer to the street. Without the variance, the proposed home (and garage) will not blend in with the other lots with garages along Missouri Avenue.³ He noted that by approving of the variance in the front, the regulated environmental features in the rear will be preserved. Exh. 2.

8. Counsel explained that there are 5 models being built within the subdivision, with square footage ranging from 2700 to 3400 square feet. All of the homes are intended to be comparable in size and quality. For the builder to build a smaller house, it would have to introduce a new model that will not be compatible in size with the rest of the homes in the subdivision.⁴ He stated that Petitioner does not want to build a home that is not compatible with the rest of the neighborhood. Exhs. 2, 3, 5, 6, 7 and 8 (A) thru (G).

9. Counsel added that all of the five houses (Lots 1-5) earmarked for the small cluster along Missouri Avenue will have slightly different front setbacks due to the nature of the lot and restrictions for each. Specifically, Lots 3 and 4 will be slightly closer to the street (requiring the requested setback variance for the garages for each). He opined that their house placements, however, will look natural and not out of character with an established pattern.

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:

³ Counsel indicated that the property does not currently have an active HOA.

⁴ Counsel noted that across the street from the subject property is one of the premier recreation facilities in the County – Southern Area Aquatics and Recreation Complex.

Due to record plat environmental constraints to protect the conservation area and flood plain area, the resulting conservation easement and buffer, the desire to build comparable size new homes in the subdivision, if the proposed dwelling was moved back on the property to comply with the front yard setback, a variance for the rear yard would be required 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 variance of 5 feet front yard depth in order to obtain a building permit for proposed single family detached home on the property located at 13604 Missouri Avenue, Brandywine, Prince George's County, Maryland, be and is hereby APPROVED. Approval of the variance is contingent upon development in compliance with the approved site plan, Exh. 3.

BOARD OF ZONING APPEALS

By:

Bobbie S Mack 1988
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.

