

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

Petitioners: Arnie and Karen Ray

Appeal No.: V-143-18

Subject Property: Lot 1, Kimberly Woods Subdivision, being 11701 Fort Washington Road, Fort Washington, Prince George's County, Maryland

Witnesses: Juan Swann, Inspector, Department of Permitting, Inspections and Enforcement ("DPIE")

Walter Carr, Neighbor

Holly Carr, Neighbor

Jay Carroll Holzer, Esq., Attorney for Walter and Holly Carr

Wendy Falconi Rodriguez, Neighbor

Pedro Rodriguez, Neighbor

Kennedy Mundy, Neighbor

Valarie Mundy, Neighbor

Heard: April 3, 2019; Decided: May 8, 2019

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 27-442(c)(Table II), which prescribes that not more than 25% of the net lot area shall be covered by buildings and Section 27-120.01(c), which prescribes that no parking space, parking area, or parking structure other than a driveway no wider than its associated garage, carport, or other parking structure may be built in the front yard of a dwelling in the area between the front street line and the sides of the dwelling. Petitioners propose to validate existing conditions (driveway, development), obtain a building permit for existing driveway extension in the front/side/rear yards, construct a shed and install a 6-foot metal fence. A variance of 8.3% net lot coverage and a waiver of the parking area location requirement are requested.

Evidence Presented

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

1. The property was subdivided in 2001, contains 20,000 square feet, is zoned R-R (Rural Residential) and is improved with a single-family dwelling (built in 2003), a second circular driveway, a third driveway and shed slab. Exhibits (Exhs.) 2, 4, 7 8 and 9 (A) thru (F).
2. Petitioners would like to obtain a building permit for a lengthy driveway that expands in the front yard of the dwelling (and extends to the right-side yard and ending in the rear yard). As Section 27-

120.01(c) states that construction of driveways not leading to a carport or garage is not permitted in the area of the front yard between the front street line and the sides of the dwelling, a waiver of the parking area location requirement was requested. Exhs. 2, 3 and 5 (A) thru (J).

3. Petitioners would also like to construct a 24' x 24' shed over an existing concrete slab in the rear yard (at the end of the extended driveway) and a 6-foot metal fence around the back yard. Because the existing development, including the driveway extension, exceeds the amount of lot coverage allowed, and construction of the proposed shed would be further overage, a variance of 8.3% net lot coverage was requested. Exhs. 2, 3, and 5 (A) thru (J).

4. Petitioner Karen Ray explained that on November 3, 2017, a permit was approved for the shed and the extended driveway and in February 2018 a permit was obtained for the proposed fence as well as the shed and driveway. In the spring of 2018, the concrete shed slab was poured for the proposed shed and the final inspection for the slab was approved. Next, she stated that instead of putting the frames on the house, they would do the driveway, since the concrete person was already on site. The driveway was framed. She stated that when she called the permit office (DPIE) she was informed that the engineer had not obtained the permit for the driveway extension. She stated that on May 10, 2018, Petitioner Arnie Ray obtained a permit for the driveway, which was approved. She explained that the driveway extension was originally permitted to stop in line with the rear of the house, the asphalt driveway extension was poured an additional 25 feet to connect to the shed slab. Petitioner stated that because of the extended driveway, they were over the maximum allowable lot coverage and in addition they covered a bio-retention pond.¹ Exhs. 2, 3, 5 (A) thru (J) and 6.

5. On or around July 25, 2019, Inspector Juan Swann issued a stop work order.

6. Inspector Juan Swann testified that he has confusion concerning the location of the driveway. His understanding was that a driveway was proposed to be installed on the left side of the house, but instead was installed on the right side and behind the dwelling. He opined that the "concrete" portion of the driveway was approved, but the "asphalt" portion of the (extended) driveway was not approved. Exh 2.

7. Mr. Carr, who lives at 11704 Fort Washington Road, testified that the Ray's property was originally part of a 4-acre tract that was subdivided into 4 lots. He stated that he filed a complaint against the Rays regarding rainwater run off coming across the street into his property as a result of development on the subject property. He further stated that a County investigator found that permits had been pulled and the case was statistically closed. He stated that he then photographed the water running from Petitioners' property across the street into his property, submitted the photographs to County investigators, George Holmes and Kevin Green, DPIE Inspections Division, and the investigation was reopened. He also stated that violations were revealed, and a stop work order was issued.² He continued, that as a result, the Rays applied for the variances. Mr. Carr is requesting that the variances be denied and believed that any hardship was self-created.

8. Mr. Carr further explained that the water runoff runs to the north-east corner, crosses under a culvert onto the Carr property and down across 6 adjacent properties. He stated that the water issue is part of a larger problem that has been brought to the attention of the Storm Water Management Section, Department of Public Works and Transportation and several other agencies. He contended that granting the variance will further adversely impact the environment and the construction by the Rays has exacerbated the water problem. Exhs. 2, 3, 15, 17, 18 and 31.

9. Mr. Ray stated that Mr. Carr's water runoff concern is actually attributed to the neighborhood of Kimberly Woods, which is around the corner and the amount of water coming from the subject lot is "hardly

¹ She stated that the construction also covered a bio-retention pond.

² He opined that the violations were exceeding the 25% net lot coverage (Section 27-442(c)(Table II), parking in front of the house (Section 27-120.01(c)) and removing trees within a Tree Conservation Area.

anything." He stated that water is stemming from his neighbor's property (Mundy) to his property and then to Mr. Carr's yard. Exhs. 2, 3, and 5 (A) thru (J). He stated that the water runs from his neighbors' yards downward to his property. He further stated because the water is originating from Kimberly Woods area, the County must address the (overall) water issue. (Exhs.) 2, 4, 7, 8 and 9 (A) thru (F).

10. Ms. Wendy Rodriguez, who lives at 11621 Fort Washington Road, adjoining on the left of the subject property, stated that she does not have an issue with the work that the Rays have done. She continued to state the water issue is caused by the Kimberly Woods subdivision, not Petitioners. She explained that the water issue is causing her driveway to cave in and soon she will not be able to use her driveway. She further explained that the water comes to the back and the side of her house. She feels that the work performed by the Rays has actually been an improvement to the subject property. Ms. Rodriguez stated that the water issue is very dangerous because Fort Washington Road is very busy, and the water can become very deep. She also believed that the water problem is a County issue.

11. Mr. Pedro Rodriguez, who lives at 11621 Fort Washington Road, believes that the majority of the water (runoff) flows from the Kimberly Hill side.

12. Mr. Kennedy Mundy, who lives at 1705 Fort Washington Road, testified that Mr. Rodriguez does not see much water because when the construction was done on the Ray's property, the elevation was raised for the asphalt (driveway) leading to the shed and raised for the shed so that the water now is retained in his (Mr. Mundy's) yard. He stated that Petitioners' concrete constitutes a blockade causing a water path behind the houses. He further stated that before the house was built water ran through the subject property and under the street. He believes that the extension of the driveway and the shed slab is part of the water problem now. Prior to the Rays' house being built, there was a 6-inch pipe that led the water but is no longer working. He was told that the 6-inch drain line is gone. The black top is running where the pipe was; the subject property elevation has been raised and that is why the water is running slow, because of the incline. He stated that the water no longer circles around but stops on his property. He stated that once the Ray's house was built there was nowhere for the water to flow as it normally did before. He contended that is why the Rays say it's not wet anymore, because the water now stops in his (Mundy's) property. Exhs. 2, 9 (A) thru (F), 33, 35, 36 and 37 (A) thru (K).

13. Mr. Mundy added that for years they were told that the 4th lot, which is located behind the front 3 lots, was platted to address the water issue, but that has not happened. He opined that with the large amount of water at issue, a retention area would not solve the problem. Mr. Mundy submitted photographs of the affected areas to support his elevation and water problem arguments. Exhs. 2, 4, 9 (A) thru (F), 33, 35, 36 and 37 (A) thru (K).

14. Petitioner Karen Ray responded that the asphalt for the driveway was laid about a year ago. She stated that Meekins Engineering addressed the storm water management issue; bio-retention ponds will be put in the subject property; and each homeowner is responsible for the care one of their own property. Ms. Ray stated that the water issue pertains to the whole community and Petitioners are being penalized because of a county issue. Exh. 11.

15. Petitioner Arnie Ray stated that safety is an issue when driving in and out of the driveway to the Fort Washington Road where the traffic is heavy. He emphasized that no parking is allowed on Fort Washington Road. Exhs. 2, 3 and 5 (A) thru (J).

16. Petitioner Karen Ray testified that water running from their yard traveling to the Carr's yard pre-existed and Petitioners' current improvements did not change anything. She stated they would like to be afforded the "same" option as others to turn around their vehicles (in the front yard) when pulling out of their driveway. Exhs. 2, 3, and 5 (A) thru (J).

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 does not comply with the applicable standards set forth in Section 27-230, more specifically:

1. The Board is unclear as to why the extended driveway was necessary for Petitioners. Based the site plan and the testimony of Inspector Swann, the asphalt portion of the driveway was built without a permit. The “original” concrete driveway apparently had a permit but there is some doubt as to on which side of the property it was initially intended. Inspector Swann’s confusion on this issue gives pause to the Board of the initial intent of the original driveway and is subsequent extension affecting net lot coverage.
2. A permit was not obtained for the asphalt portion of the driveway.
3. The Board finds it noteworthy that the elongated driveway extended to a shed instead of a garage and insufficient evidence was provided of any hardship associated with the need to expand the driveway all the way to the shed, other than it was convenient to do so because construction workers were already working on the premises.
4. The Board finds that the extended driveway contributed to the overage of net lot coverage and was therefore self-imposed by the current construction.
5. The Board finally finds that the evidence suggests that the integrity of the General Plan or Master plan may have been impaired by Petitioners’ construction, particularly as it pertains to the overall topography (and flow of water) in the neighborhood.

BE IT THEREFORE RESOLVED, unanimously, that variances of 8.3% net lot coverage and a waiver of the parking area location requirement in order to validate existing conditions (driveway, development), obtain a building permit for existing 2,731 square foot driveway extension in the front/side/rear yards, construct a 24' x 24' shed and install a 6-foot metal fence on the property located at Lot 1, Kimberly Woods Subdivision, being 11701 Fort Washington Road, Fort Washington, Prince George's County, Maryland, be and are hereby DENIED.

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 27-234 of the Prince George's County Code states:

If the Board denies an appeal involving a variance, no further appeal covering the same specific subject on the same property shall be filed within the following twelve (12) month period. If the second appeal is also denied, no other subsequent appeals covering the same specific subject on the same property shall be filed within each eighteen (18) month period following the respective denial.