

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER**

ERR-270

DECISION

Application:	Validation of Residential Grading Walk-through Permit No. 30733-2017 Issued in Error
Applicant:	Marquis and Laura Dennis
Opposition:	None
Hearing Date:	October 30, 2017
Hearing Examiner:	Joyce B. Nichols
Recommendation:	Approval subject to Conditions

NATURE OF PROCEEDINGS

- (1) ERR-270 is a request for validation of Prince George's County Residential Grading Walk-through Permit No. 30733-2017. The Permit was issued in error for a "Pavilion Porch with Fireplace" to be added to a single family home located in the R-R (Rural Residential) Zone and identified as 502 Dennis Magruder Drive, Upper Marlboro, Maryland.
- (2) No one testified in opposition at the evidentiary hearing conducted before the Zoning Hearing Examiner. The record was closed at the conclusion of the evidentiary hearing.

FINDINGS OF FACT

- (1) The Applicants are the owners of a single family dwelling located at 502 Dennis Magruder Drive, Upper Marlboro, Maryland.
- (2) The subject property, Lot 27, was the last dwelling constructed in The Highlands subdivision and is adjacent to Mount Lubentia, listed both on the National Register of Historic Places and Historic Site #73-15 on the County's Historic Sites and Districts Plan.¹
- (3) The Landscape and TCP II Plan for The Highlands was approved by M-NCPPC on January 23, 2004 and includes the Historic Landscape Buffer and Landscape Plants required to be maintained. (Exhibit 43) The subject property is located on the Historic Landscape Buffer (South) Plan. (Exhibits 5(b) and (c) and 43(d))

¹ Mount Lubentia, 603 Largo Road, Upper Marlboro

- 1798 and earlier, 2 ½ story brick (Flemish bond) hi-roof house with fine Federal-style decorative detail and unique 18th-century octagonal dairy moved c. 1970 from related plantation (Garden, now destroyed)
- Excellent example of Federal-style plantation house, finished by Dennis Magruder of Harmony Hall; during British invasion of 1814, county records were stored here. 2010 Historic Sites and Districts Plan p. 130

- (4) Detailed Site Plan DSP-03023/02 containing the subject property was approved in 2007. (Exhibit 35(a))
- (5) Prior to 2010 the Landscape Manual required a 50 foot building setback (Building Restriction Line) from a designated historic site and a 40 foot Landscape Buffer from a historic site for a developing lot. (Bufferyard D) The 2010 Landscape Manual was amended to require a developing lot to have a 60 foot building setback from a designated historic site and a 50 foot Landscape Buffer from a historic property. (Bufferyard E) (2010 Landscape Manual p. 88 and 93)
- (6) Alternative Compliance-12023 was approved January 15, 2013 to reduce the 60 foot Building Restriction Line to 50 feet on the subject property (Exhibits 35(a) and (b)) as a 60 foot Building Restriction Line would have prohibited the construction of a home on the subject property.
- (7) Section 1.6 of the 2010 Landscape Manual requires that all required landscaping, buffering and screening shall be maintained in a healthy condition and in accordance with the approved Landscape Plan. Failure to maintain or to replace dead, diseased, or removal of material as shown on an approved Landscape Plan shall constitute a zoning violation and subject to the penalties set forth in Subtitle 28 of the County Code.
- (8) The Applicants purchased the subject property from the builder in April 2015 and have resided on the subject property since then. (Exhibit 13)
- (9) The Applicants stated that they were not aware of the significance of the Building Restriction Line or of the requirement to maintain the landscaping within the Landscape Buffer in accordance with the Landscape Plan, Exhibit 43. The Applicants admit, as is documented by the photographs, that they have not maintained the required plantings in the Landscape Bufferyard. (Exhibits 27(a)-(k) and 37)
- (10) The Applicants admitted that they received the Woodland Conservation Plan for the subject property from the builder on January 5, 2015 but were not aware of the legal requirements arising from the Plan. (Exhibit 41) They also received a copy of the approved Landscape Plan, Exhibit 25, but stated that they also failed to understand their legal responsibilities arising from the Landscape Plan.
- (11) On April 25, 2017 the Applicants entered into a contract with American Deck and Patio to construct a deck and a roofed pavilion on the rear of the subject property adjacent to the existing single family home. (Exhibits 16, 19-21, and 44(a) (Design A))
- (12) On July 6, 2011 the Applicants contracted with American Deck and Patio to extend the scope of the construction by adding a stone patio surrounded by a knee wall/bench and walkway. (Exhibits 17 and 44(b)(Design B))

(13) On June 28, 2017 the Contractor applied for Building Permit No. 30733-2017-RGW for a “Pavilion Porch with Fireplace”. The Contractor supported its Application request with a house location plat with the roofed pavilion hand drawn on the plan. The Contractor failed to provide either the required Landscape Bufferyard or the Building Restriction Line. (Exhibit 8) (The “deck” noted on the permit is for the floor under the “cabana roof”) The patio, knee wall and walkway were not submitted as part of this permit request.

(14) Permit No. 30733 for the “Pavilion Porch with Fireplace” was approved by M-NCPPC on June 29, 2017 based on the Application as submitted by the Contractor.

(15) On July 20, 2017 a Correction Order was issued once it was discovered that the proposed Pavilion was located at least 8 feet beyond the Building Restriction Line. (Exhibit 18) A Stop Work Order was issued by DPIE on July 27, 2017 for working beyond the scope of Permit No. 30733-2017. The Stop Work Order was for the patio, kneewall and walkway. (Exhibit 39)

(16) No permit was applied for to construct the patio, kneewall and walkway, parts of which are also located within the Building Restriction Line. The contract to add these items was not entered into between the Contractor and the Applicants until July 6, 2017, after the date the building permit for the “Pavilion Porch with Fireplace” was issued.

(17) The Applicants admit that parts of the patio are constructed above grade and not on the surface of the ground due to a change in topography. This admission is supported by the photographs submitted by the Applicant. (Exhibits 27(a)-(f), (j) and (k))

LAW APPLICABLE

(1) The instant permit may be validated as issued in error in accordance with §27-258² of the Zoning Ordinance which provides, in pertinent part, as follows:

(a) **Authorization.**

(1) A building, use and occupancy, or absent a use and occupancy permit, a valid apartment license, or sign permit issued in error may be validated by the District Council in accordance with this Section.

* * * * *

2 The County Council adopted CB-49-2017, effective November 14, 2017, which amended §27-258(g) of the Zoning Ordinance as follows: (A) No fraud or misrepresentation had been practiced in obtaining the permit;(B) If, at the time of the permit’s issuance, no appeal or controversy regarding its issuance was pending before any body; (C) The Applicant has acted in good faith, expending funds or incurring obligations in reliance on the permit; and (D) The application meets the criteria of Section 27-244 of this Subtitle; and (E) The validation will not be against public interest. This amendment was added after the record in the instant Application was closed, therefore the applicable law is the law which was in effect when the evidentiary hearing was held. This reference to the amended Section 27-258(g) is for information purposes only.

(g) **Criteria for approval.**

- (1) The District Council shall only approve the application if:
- (A) No fraud or misrepresentation had been practiced in obtaining the permit;
 - (B) If, at the time of the permit's issuance, no appeal or controversy regarding its issuance was pending before anybody;
 - (C) The Applicant has acted in good faith, expending funds or incurring obligations in reliance on the permit; and
 - (D) The validation will not be against the public interest.

(h) **Status as a nonconforming use.**

(1) Any building, structure, or use for which a permit issued in error has been validated by the Council shall be deemed a nonconforming building or structure, or a certified nonconforming use, unless otherwise specified by the Council when it validates the permit. The nonconforming building or structure, or certified nonconforming use, shall be subject to all of the provisions of Division 6 of this Part.

(2) §27-107.01(a) (35) of the Zoning Ordinance defines a "Building Line" as a "line beyond which no part of a "Main Building" (including a covered porch, vestibule, or other similar projection) or "Structure" (not including ground level paved surfaces, unless specifically noted) shall extend. The "Building Line" determines an area within which "Main Buildings" and other "Structures" may be placed. A "Building Line" is the same as a required "Setback." The area between the "Building Line" and the "Street Line" or "Lot Line" is the required "Yard." (Also called a "Building Restriction Line." See "Setback," "Yard," and Figure 5.)

(3) §27-107.01(a) (22) of the Zoning Ordinance defines a "Structure" as anything constructed or built.

CONCLUSIONS OF LAW

(1) The Contractor did not provide the information required by the Permit application. The Contractor did not disclose the Building Restriction Line and did not disclose the Landscape Bufferyard. It is unclear whether this failure arose from the Contractor's dishonesty or from the Contractor's complete disregard of the law. In either event, this fraud or misrepresentation on behalf of the Contractor should not be imputed to the Applicants as the Contractor was responsible for obtaining the Permit. §27-258(g)(1)(A)

(2) At the date the Permit was issued (June 29, 2017) there was no appeal or controversy regarding its issuance. §27-258(g)(1)(B)

(3) The Applicants were unaware of the legal requirements of their Building Restriction Line and the approved Landscape Plan on the subject property. The Applicants paid the Contractor approximately \$69,000.00, a portion of which may be payment for the patio, kneewall and walkway which were constructed without a permit, to construct the "Pavilion Porch with Fireplace". §27-258(g)(1)(C) (Exhibit 21)

(4) The validation of Permit No. 30733 will not be against public interest however DPIE and M-NCPPC should be careful not to approve other violations of the Building Restriction Line and

Landscape Bufferyard for the remainder of the subdivision which is adjacent to Mount Lubentia.
§27-258(g)(1)(D)

(5) The patio, kneewall and walkway have begun construction without a permit. Portions of these structures are also being constructed in violation of the Building Restriction Line and Landscape Bufferyard. As portions of the patio, kneewall and walkway are above grade, they are prohibited.

RECOMMENDATION

It is recommended that the District Council validate Permit No. 30733-2017 for the “Pavilion Porch with Fireplace” subject to the following Conditions:

1. Remove all portions of the patio, kneewall and walkway which are located within the Building Restriction Line and the Landscape Bufferyard.
2. Obtain a building permit for the patio, kneewall and walkway. If a permit is not timely approved, the Applicants must remove the patio, kneewall and walkway and restore the topography and landscaping to this area.
3. The Applicants shall obtain approval of a revised Landscape Plan which includes the “Pavilion Porch with Fireplace” and any additional landscaping as deemed necessary.
4. The Applicants shall plant, restore and maintain all of the required landscaping in the Landscape Bufferyard.
5. The Applicant shall obtain approval of a revised Detailed Site Plan, DSP-03023/02.
6. The Applicant shall obtain approval of revised Woodland Conservation Plan if required.
7. The “Pavilion Porch with Fireplace” shall be declared to be in Certified Non-Conforming Use after the Office of the Zoning Hearing Examiner determines compliance with the preceding Conditions.