

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-11-11 Barnabas Road Associates, LLC

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 4, 2011.

CERTIFICATE OF SERVICE

This is to certify that on May 26, 2011, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

(Original Signed) _____
Anne F. Carter
Administrator

cc: Petitioner
Adjoining Property Owners
M-NCPPC, Permit Review Section
DER/Building Code Official, Permits & Review Group
DER/Licenses & Inspections Group

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

Petitioner: Barnabas Road Associates, LLC

Appeal No.: V-11-11

Subject Property: Parcels A & 483 (Tax Map 88, Grid B-4), Parcels 17, 286 & 272 (Tax Map 97, Grid C-1),
Lots 87-92 and Part of Lots 74-80, Temple Hills Subdivision, being 4714 St.
Barnabas Road, Temple Hills, Prince George's County, Maryland

Counsel for Petitioner: Matthew Tedesco, Esq.

Witness: John Driggs, Barnabas Road Associates, LLC

Heard: April 20, 2011; Decided: May 4, 2011

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 27-465(a) of the Zoning Ordinance, which prescribes that fences and walls more than 6 feet high shall not be located in any required yard, and shall meet the setback requirements for main buildings, and Section 27-474(b)(Table I), which prescribes that structures shall be set back at least 25 feet from the street line, 20 feet from any side lot line abutting residentially-zoned land and shall have a total side yard setback of 30 feet from adjoining land in any nonresidential zone. Petitioner proposes to validate an existing 8-foot-high chain link fence and 9-foot-high block wall in order to obtain a use and occupancy permit. Variances of 25 feet street line setback from Cremen Road and Clifton Road, 20 feet side lot line setback from residentially-zoned land and 30 feet total side yard setback from non-residentially zoned land for the location of an 8-foot chain link fence and 9-foot block wall are requested.

Evidence Presented

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

1. The property contains \pm 54 acres, is zoned I-1 (Light Industrial) and is improved with two buildings, a temporary office trailer, an 8-foot chain link fence, a 9-foot concrete block wall, parking spaces and driveway area. See Exhibits ("Exhs.") 3, 7, 11(A)-(G), 12.
2. The property is irregular in shape and made up of numerous parcels and recorded lots. See Exhs. 3-4, 24. Cremen Road and Clifton Road come to a dead end at the property south of St. Barnabas Road in Temple Hills. To the north, east and south are I-1-zoned properties, with only a narrow strip to the south (owned by the State and undeveloped) between the subject property and the Capital Beltway (U.S. Rte. 495). Stamp Road abuts a northeast corner of the property. To the west is residential property in the R-80 Zone, which is developed with detached single-family dwellings and The Manor at Victoria Park apartment complex. See Exhs. 3, 13, 24.

3. Petitioner obtained title to the property in 1997. See Exh. 28, p. 2, footnote 1. Petitioner is now applying for a use and occupancy permit for a storage yard. See Exh. 32. A contractors' services use operates on the property. See Exh. 25, comment #1. The majority of the site has operated since 1998 as a landfill for Class 3 materials, pursuant to a validly-issued building permit, and was previously used for surface mining and concrete production. A fill being a temporary use, the natural life of that use (15 years) has passed and it will be terminated in a matter of months. Petitioner wants to use the property for a permitted use. Petitioner is a leading provider for aggregate material used in the construction industry throughout the metropolitan area. See Exh. 28, p. 2. Outdoor storage materials are brought to the site from virgin rock sources in the Washington D.C. metropolitan area and the products are sold to area contractors. See Exh. 25, comment #1.

4. Access to the property is off of Clifton Road and there is a curb cut on Cremen Road to allow easier access to a building on Parcel A. A 9,300-square-foot building (Building A on the site plan), built in 1958, is used as an office and for storage of various pieces of equipment associated with the use on the property, and a 60' x 100' building just outside Parcel A (Building B on the site plan) is used for storage. See Exhs. 3, 11A. There is a 12' x 30' temporary office trailer located at the entrance to the site. There is an existing 8-foot chain link fence along the northern boundary of Parcel A, along the frontage of Cremen Road, and along the western property line of Parcel 17. See Exhs. 6(A)-(D). The chain link fence has existed on the site for over 25 years and pre-dates Petitioner's ownership of the property. There is an existing concrete block wall of varying heights (not exceeding 9 feet) along the northern and western property lines of Parcel 483, which fronts on Clifton Road. The wall has existed on the site for over 5 years. See Exhs. 6(E) & (F); 28, p. 2.

5. Petitioner would like to validate the existing 8-foot-high chain link fence and 9-foot high block wall in order to obtain a use and occupancy permit, but variances are needed. See Exh. 25, p. 2. Since the fence and wall exceed 6 feet in height and are located along boundaries of the property abutting Cremen Road and Clifton Road and side lot lines abutting both residential and non-residential land, variances of 25 feet street line setback from Cremen Road and Clifton Road, 20 feet side lot line setback from residentially-zoned land and 30 feet total side yard setback from non-residentially zoned land were requested. See Exhs. 3, 29.

6. Counsel for Petitioner stated that the industrial park in which the subject property is located, Silver Hill Industrial Center, is heavily developed with a wide range of industrial uses, with many of the adjacent uses "bleeding" out into the street. Counsel explained that fences help distinguish where one property ends and another begins. It was further explained that Cremen and Clifton Roads are very narrow, dead-end straight into the property, and security is a concern. Counsel stated that security is also a concern for the adjacent industrial properties, which all have fences at least 8 feet in height, and the fence and wall on the subject property also provide protection for the adjoining properties. See Exhs. 34-35. It was pointed out that in 2010 the Board validated an 8-foot fence with barbed wire on property immediately adjacent to the subject property (Appeal No. V-12-10). Counsel noted that there is a 6-foot fence along the rear property line, erected by the State Highway Administration, which separates the subject property from the Capital Beltway. Counsel further noted that the portions of the chain link fence which are required to screen the outdoor storage are either already or will be sight-tight.

7. It was stated that the Class 3 fill use, which takes up the majority of the property, has significantly changed the topography of the property and that there will be reforestation and planting of grass to create green space once the fill has completed and that this green space will act as a natural screen/buffer from the residential property to the west. Counsel stated that with the fill taking up the majority of the property, the usable space left to use for storage of contractor material is limited, and would be further limited if setback requirements had to be met by the fence and wall. Counsel noted that since adjacent properties also have

fences at the property lines, compliance with the setback requirements would create a 20 to 30-foot void in between the properties, which would create a maintenance problem and security issue.

8. Counsel stated that the variances will not substantially impair the intent, purpose or integrity of the General or Master Plan. It was explained that the 2000 Master Plan and Sectional Map Amendment for the Heights and Vicinity (Planning Area 76A) recommends employment land use and retention of the I-1 Zone for the subject property and the 2002 General Plan places the subject property in the developed tier, which is envisioned for sustainable, transit supporting, mixed-use pedestrian-oriented and medium-to-high density neighborhoods. It was stated that the recommendation of the Master Plan is promoted by the provision of a substantial buffer of distance, topographic separation and vegetative separation between the proposed use and nearby residential property. Vehicular traffic will be isolated from the residential areas. See Exh. 28, pp. 4-5.

9. John Driggs testified that he has owned the property since 1997 and that the previous business on the property, Silver Hill Sand and Gravel, included a concrete plant, gravel pit and gravel washing area. He stated that his company filled in where it is now green area. See Exh. 34. He explained that no construction debris is stored on the property, only earth and solids such as rock, concrete and asphalt. He further explained that an antenna shown on the site plan is no longer on the property.

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 comply with the applicable standards set forth in Section 27-230, more specifically:

Due to the large size of the property, the exceptional shape of the property, the property being made up of numerous parcels and recorded lots, the fence having existed for 25 years and predating Petitioner's purchase of the property, the majority of the property being used as a Class 3 fill, usable space left for storage of contractor material being limited, compliance with the setback requirements further limiting the usable space, the Class 3 fill use causing the unique topography of the property, planned reforestation and planting of grass after the fill has completed creating a natural screen/buffer from the residential property to the west, vehicular traffic associated with the proposed use being isolated from the residential areas, the property being located in an industrial park heavily developed with a wide range of industrial uses, many of the adjacent uses "bleeding" out into the street, there being a security concern because of the narrowness and dead-ending of Cremen and Clifton Roads, the fence and wall providing additional protection for adjoining properties, compliance with the setback requirements creating a 20 to 30-foot void or space in between properties that would magnify security and maintenance issues, 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 variances of 25 feet street line setback from Cremen Road and Clifton Road, 20 feet side lot line setback from residentially-zoned land and 30 feet total side yard setback from non-residentially zoned land for the location of an 8-foot chain link fence and 9-foot block wall in order to validate an existing 8-foot-high chain link fence and 9-foot-high block wall in order to obtain a use and occupancy permit on the property located at Parcels A & 483 (Tax Map 88, Grid B-4), Parcels 17, 286 & 272 (Tax Map 97, Grid C-1), Lots 87-92 and Part of Lots 74-80, Temple Hills Subdivision, Temple Hills Subdivision, being 4714 St. Barnabas Road, Temple Hills, 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 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.