

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-12-10 Stamp Road Holdings, 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: March 24, 2010 .

CERTIFICATE OF SERVICE

This is to certify that on April 29, 2010 , 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 Div.
DER, Property Standards Div.
Other Interested Parties

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

Petitioner: Stamp Road Holdings, LLC

Appeal No.: V-12-10

Subject Property: Lot 1, Block B, Marlow Heights Industrial Center Subdivision, being 4801 Stamp Road, Temple Hills, Prince George's County, Maryland

Counsel for Petitioner: Thomas H. Haller, Esq.

Witness: James Price, Stamp Road Holdings, LLC & W.O. Grubb Steel Erection, Inc.

Heard and Decided: March 24, 2010

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 as shown on the Master Plan, Functional Master Plan of Transportation, or General Plan, Prince George's County Capital Improvement Program, or Maryland Five (5) Year Highway Plan of Transportation, whichever indicates the greatest right-of-way width [any other street shall be deemed to have a right-of-way width of at least seventy (70) feet], here deemed to be 70 feet wide, and shall have a total side yard setback of 30 feet from adjoining land in any nonresidential zone. Petitioner proposes to validate an existing chain link fence, topped with barbed/ security wire, totaling 8 feet in height in order to obtain a use and occupancy ("U&O") permit. Variances of 25 feet front street line setback from Stamp Road and 30 feet total side yard setback are requested.

Evidence Presented

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

1. The property was subdivided in 1969, contains 76,459 square feet (1.7553 acres) and is zoned I-1 (Light Industrial). See Exhibits ("Exhs.") 2, 4-5, 12. The property was improved with a 60' x 100' two-story building in 1984 and is also improved with parking area and a compacted gravel storage yard. An 8-foot-high chain link privacy fence surrounds the property and the 50-foot-wide entrance to the property from the street is gated. See Exhs. 4, 12.
2. The property is a long lot, narrowing from front to rear, and is surrounded by properties located in the I-1 Zone. See Exhs. 4-5.

3. Counsel for Petitioner explained that in 2006 Petitioner purchased the property, which had a pre-existing chain link fence topped with security/barbed wire.

4. Counsel stated that the current occupant of the subject property is a leading provider of crane rental and steel erection services in the Mid-Atlantic region, has equipment and materials stored on the property that are valuable, and the existence of the fence is critical for adequate security of the business. He stated that the property also contains a three-bay service building, with a two-story office, where equipment owned by the company is serviced and maintained. See Exh. 2. He stated that the property had been used for many years as a contractors' services facility.

5. Counsel explained that Petitioner was not aware that the preexisting fence had been installed without a building permit until Zoning Violation Notice No. Z-825-8-10 was issued on December 29, 2009 by the Property Standards Division of the Department of Environmental Resources (DER), requiring Petitioner to obtain a U&O permit for the current occupant. See Exh. 9. He further explained that when Petitioner applied for a U&O permit (Permit No. 1386-2010-00), a site plan review was conducted. DER informed Petitioner that the fence must either be reduced in height, relocated or variances obtained to allow the fence to remain where it is. See Exhs. 2, 10.

6. Petitioner would like to obtain variances to validate the existing fence, totaling 8 feet in height with the barbed/security wire. Because the fence is over 6 feet in height, it must meet main building setbacks. In addition, because the fence is located at the perimeter of the property and surrounding property is located in a non-residential zone, variances of 25 feet front street line setback from Stamp Road and 30 feet total side yard setback from land in a non-residential zone were requested. See Exh. 14.

7. Counsel explained that an 8-foot chain link privacy fence exists along the entire frontage of the subject property along Stamp Road. See Exhs. 6(A)-(E). He stated that although the fence is generally located no closer than 6 feet from the property line, where the right-of-way curves at the northwest corner of the property, the fence extends parallel to Stamp Road, crosses the property line and encroaches into the right-of-way, ending at a fence on the adjoining property. See Exhs. 4, 7, 18 (attachments). Counsel further stated that Petitioner proposes to relocate the fence out of the right-of-way to run along the property line and meet the existing fence. Counsel pointed out that since the fence will be located on the right-of-way line, no setback is being provided and a variance of 25 feet is requested from the 25-foot front street line setback requirement. See Exh. 2, pp. 3-4; 14.

8. The owner of the adjoining property to the west, Barnabas Road Associates, LLC, has no opposition to the request so long as the part of the existing fence depicted on the submitted site plan, Exh. 4, as being located in the right-of-way for Stamp Road is removed and relocated out of the right-of-way. See Exh. 18.

9. Counsel for Petitioner explained that Stamp Road is not well lighted and surmised that security is probably the most important issue for property owners. He stated that Stamp Road is narrow, relatively isolated and buried in an industrial area, where many of the buildings were built many years ago close to the street. It was stated that the adjoining property business uses are a concrete recycling facility and an oxygen supply company, which are generally utilized to their property lines. See Exh. 13. He pointed out that the existing building on the subject property extends to the western side property line, the side yards are 582 and 472 feet in length, and moving the fence in 30 feet from the other side property line would create an area between the two adjoining properties which would be difficult to maintain and create a security concern for both properties. See Exh. 2, pp. 6-7.

10. Counsel argued that for both the front yard and side yard variances, compliance with the strict letter of the setback requirement would unreasonably prevent the owner from using the property for a

permitted use and would render conformance with the restriction unnecessarily burdensome. Counsel opined that since the fence already exists, is not obtrusive and does not block any traffic visibility, requiring relocation of the fence would result in peculiar and unusual practical difficulty upon the owner and the tenant. Counsel stated that relocation of the fence or removal of the security wire would either reduce the usable area of the property substantially or expose the owner to increased security risk. See Exh. 2, pp. 9-10.

11. Counsel stated that granting the variances would not substantially impair the intent, purpose or integrity of the general plan or Master Plan because the development of the property is consistent with the underlying I-1 zoning of the property, the property is located in the Developed Tier in the general plan and designated in the Master Plan as an appropriate area for industrial development. He stated that the property is surrounded by existing industrial zoning/development and allowing the owner to provide adequate security on an isolated roadway with limited lighting will preserve a viable industrial area, consistent with the goals of the Master Plan. See Exh. 2, p. 10.

12. James Price, who works for the current occupant of the property, testified that most of the fences on area properties have barbed or security wire. He stated that with the fencing at the perimeter of the subject property, there is space for seven or eight flatbed trailers, but if required to move the fence to meet the required setback, there would only be room for four.

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

Due to the property being zoned I-1 and being surrounded by other properties zoned I-1, the unusual shape and narrowness of the property, an 8-foot privacy fence with barbed/security wire having been erected by a previous owner at the perimeter of the property, adjoining properties having security fences, fences over 6 feet in height needing to meet main structure setbacks, Stamp Road not being well lighted, the fence being needed to provide adequate security for valuable equipment and materials kept on the property, the current occupant of the property needing to obtain an U&O permit, reasonable use of the property only being possible if the fence is located at the perimeter of the property, the existing building being located at one side property line, the fence being located at both side property lines, strict compliance with the regulations creating an unmanageable 30-foot open space on one side of the property, Petitioner intending to remove and relocate that portion of the fence extending into the right-of-way of Stamp Road, 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 front street line setback from Stamp Road and 30 feet total side yard setback from land in a non-residential zone to validate an existing chain link fence with barbed/security wire, totaling 8 feet in height, in order to obtain a use and occupancy permit on the property located at Lot 1, Block B, Marlow Heights Industrial Center Subdivision, being 4801 Stamp Road, Temple Hills, Prince George's County, Maryland, be and are hereby APPROVED. Approval of the variance is contingent upon development in compliance with the approved site plan, Exhibit 4.

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.