

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-2-11 Kristina Shaw

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: April 20, 2010.

CERTIFICATE OF SERVICE

This is to certify that on June 1, 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
Kettering Homeowners Association

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

Petitioner: Kristina Shaw

Appeal No.: V-2-11

Subject Property: Lot 52, Block 31, Kettering Subdivision, being 22 Staton Drive, Upper Marlboro,
Prince George's County, Maryland

Witnesses: Clifton Shaw, Petitioner's husband

Linda Crudup, neighbor & president of Kettering Community Association ("KCA")

Thirl Crudup, neighbor & member of KCA architectural control committee

James Diehl, neighbor & former member of KCA board of directors

Esther Hankerson, member of KCA board of directors

Clinton Lee, neighbor, member of KCA board of directors & architectural control
committee inspector

Leon Hamilton, neighbor, past KCA president

Ralph Ashton, neighbor

Herbert Housen, neighbor

Lael Housen, neighbor

Sharon Law, neighbor

Marcella Davis, neighbor

Heard: February 2, 2011; March 23, 2011; April 6, 2011

Decided: April 20, 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 27-442(e)(Table IV) of the Zoning Ordinance, which prescribes that each lot shall have a rear yard at least 20 feet in depth/width, and Section 27-240(a), which prescribes that on corner lots consisting of one (1) acre or less, fences in the front yard or side yard shall not be more than four (4) feet high. Petitioner proposes to validate existing conditions and obtain a building permit for a new 6-foot wooden privacy fence in the front and side yards of a corner lot. Variances of 3 feet rear yard depth/width and a waiver of the height requirement for a 6-foot fence on a corner lot are requested.

Evidence Presented

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

1. The property was subdivided in 1970, contains 8,320 square feet, is zoned R-80 (One-Family Detached Residential) and is improved with a single-family dwelling, driveway, shed and a 6-foot privacy

fence. See Exhibits ("Exhs.") 2, 4, 7-8. The property was improved with a single-family dwelling in 1974. See Exh. 7.

2. The property is an odd-shaped corner lot at the intersection of Whiteholm Drive (legal front street) and Staton Drive (legal side street), with the house facing the legal side street. The house sits at an angle to both streets and all property lines. See Exh. 2.

3. Petitioner would like to validate certain pre-existing conditions of the property and obtain a building permit for a new 6-foot wooden privacy fence located along the front (Whiteholm Drive), side and rear lot lines and crossing the front and rear yards, but variances are needed to obtain the permit. Since the existing deck on the side of the dwelling is located 17 feet from the rear lot line and part of the 6-foot fence is located in areas prohibited by Section 27-240(a), a variance of 3 feet rear yard depth/width and a waiver of the height requirement for a 6-foot fence in the front and side yards were requested. See Exhs. 2, 14.

4. Petitioner Kristina Shaw testified that she and her husband erected a privacy fence on the odd-shaped corner lot because the majority of their yard space is to the side of the house rather than behind the house. See Exhs. 2, 37(A)-(F). She stated that her neighbors' lots and the majority of lots in the community have larger yards behind the houses. She explained that they had their property staked, extended the fence to a stake only to be informed later by the County that they had extended the fence too far. She testified that they needed to fence in an area larger than just the yard behind the house because of their large dog, a German shepherd. Petitioner stated that many fences in their neighborhood extend to the sidewalk.

5. Ms. Shaw testified that the fence does not impede drivers' visibility. Petitioner's husband, Clifton Shaw, testified that there is no curve in the road and Whiteholm Drive comes to a dead end just past their house. See Exhs. 37(A) & (B). Mr. Shaw stated that the fence is tall because the yard behind the house is triangular with a large shed and their dog would be able to jump a 4-foot fence.

6. The Shaws submitted photographs of fences on neighborhood properties and letters from two adjoining neighbors, at 12903 Whiteholm Drive and 10809 Sutton Drive, both of whom supported Petitioner's request. See Exhs. 16(A)-(DDD), 20-21, 40(A)-(DD), 41(A)-(L), 42(A)-(N), 43(A)-(H).

7. Linda Crudup, president of the Kettering Community Association ("KCA"), testified that Mr. Lee visited the property, saw that the fence was 8 feet high or so, instructed the Shaws to stop building the fence and provided them with a handbook with KCA guidelines, but they continued to work on the fence. The Shaws were given an Architectural Control Committee ("ACC") application, which they filled out and submitted, but it was not approved because the fence did not meet setback requirements contained in KCA bylaws. See Exh. 25, p. 28. Ms. Crudup testified that the fences shown in certain photographs submitted by the Shaws were not located within the neighborhood. See Exhs. 16(FF)-(LL), (DDD). She stated that the community is not very pleased with the appearance and location of the fence.

8. Ms. Shaw explained that they began erecting an 8-foot fence in early December, 2010, but reduced the height to 6 feet after Mr. Lee, the ACC inspector, visited them. She stated that because of the existence of other similar fences in the neighborhood, they felt certain their application to the ACC would be approved. She explained that when Mr. Lee informed them that they must obtain a County building permit, she immediately applied for the permit, learned that a variance was necessary and then applied for the variance.

9. Clinton Lee, a resident of the neighborhood who serves on the KCA board and as an ACC inspector, testified that no 6-foot fence has been built in the community that extends all the way to the front of the house. Mr. Lee stated that the fence was incorrectly shown on the Shaws' original site plan. Compare Exh. 26 with Exhs. 2 & 27.

10. James Diehl, a neighbor, testified that he has lived in the neighborhood for 38 years and previously served on KCA's board of directors. He agreed that the Shaws' property has very little back yard and that most of the usable space is on the side. He stated that the fence is well constructed, the quality of work is good and he finds nothing offensive about the color of the fence. He opined that the combination of

the fence's height and violation of the setback restriction puts it out of character with the neighborhood. He stated that he would be willing to accept a compromise with regard to the fence.

11. Ralph Ashton, a neighbor, stated that he agrees with Mr. Diehl and if the fence were pushed back, it would be less of an eyesore.

12. Herbert and Lael Housen, owners of adjoining property at 12821 Whiteholm Drive, supported the variance for the fence because of where the school bus stops and children running through yards. Mrs. Housen testified that the Shaws' fence does not block the corner.

13. Leon Hamilton, a neighbor and past president of KCA, testified that fences are sometimes allowed to extend farther because of the location of a door or window or on corner lots but that the Shaws' fence is out of order. See Exh. 37(A)-(F).

14. Sharon Law, a neighbor, testified that she lives on a corner lot and has lived in the community for 25 years. She opined that the corner lots set up the appearance of the rest of the block and that the Shaws' fence is obstructive and detracts from the other three corners of the intersection. She agrees that the fence does not obstruct traffic.

15. Marcella Davis, a neighbor, testified that she has lived in the community for 25 years, and stated that the fence is an unattractive color and sticks out too far. She feels that you should not be able to see a fence as soon as you turn off of Central Avenue.

16. Thirl Crudup, a neighbor and member of the ACC, testified that the fence did not meet the specifications of the ACC guidelines, that height of a fence is limited to six feet and that nowhere do they allow a fence to come all the way to the front of the house. He agreed that when you turn off Central Avenue onto Staton Drive, the fence is one of the first things you see and it is an eyesore.

17. An agreement was entered into between KCA and Petitioner regarding the fence. KCA will allow the 6-foot fence to remain on the subject property at the corner of the front of the house because of the odd shape of the lot; however, the fence must be parallel with the front line of the house. To accomplish this 19 feet of the fence will be removed in the legal front yard (along Whiteholm Drive). Petitioner agreed to remove 19 feet of the fence to put it in line with the corner of the house, bringing it more in line with KCA's architectural designs. See Exhs. 49-50.

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 property being a corner lot, the unusual shape of the lot, the house facing the legal side street, the angle of the existing house on the lot, an existing deck on the side of the house being located in the legal rear yard, the deck not meeting the required rear yard setback, the uniquely small yard behind the rear line of the house relative to other houses in the neighborhood, the need for sufficient fenced-in area to accommodate a large dog, the majority of the useable yard space being located in the legal front (along

Whiteholm Drive) and side yards, Whiteholm Drive coming to a dead end one house up from the subject property, Petitioner and KCA coming to an agreement whereby the fence will not extend forward of the front line of the house, 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 3 feet rear yard depth/width and a waiver of the fence height requirement in order to validate existing conditions and obtain a building permit for a new six-foot wooden privacy fence in the front and side yards of a corner lot on the property located at Lot 52, Block 31, Kettering Subdivision, being 22 Staton Drive, Upper Marlboro, Prince George's County, Maryland, be and are hereby APPROVED. Approval of the variances is contingent upon development in compliance with the approved revised (#3) site plan, Exhibit 50, and the approved elevation 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.