

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-31-09 Brandywine Corporex Plaza II, L.P.

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: July 22, 2009.

CERTIFICATE OF SERVICE

This is to certify that on August 11, 2009, 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, Permit & Review Div.
Other Interested Parties

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

Petitioner: Brandywine Corporex Plaza II, L.P.

Appeal No.: V-31-09

Subject Property: Lots 3 & 4, Virginia Manor Park Subdivision, and Parcel 35, Tax Map 9, Grid E-2,
being 7131 Virginia Manor Court, Laurel, Prince George's County, Maryland

Counsel for Petitioner: Thomas H. Haller, Esq.

Witnesses: Mark Emond, Insurance Auto Auctions
Michael Madden, Insurance Auto Auctions
Kevin Caillouet, Ben Dyer Associates, Inc.
Morgan Walubita, Ben Dyer Associates, Inc.
Steve Collins, Neighbor
Gary Janoske, Neighbor
Howard Janoske, Neighbor
Nancy Keogh, Neighbor

Heard: June 17, 2009; July 8, 2009

Decided: July 22, 2009

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 requirement for main buildings; 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 State Five (5) Year Highway Construction Program, 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 rear yard setback of at least 20 feet from adjoining land in any residential zone (or land proposed to be used for residential purposes on an approved Basic Plan for a Comprehensive Design Zone, or any approved Conceptual or Detailed Site Plan); and Section 27-469(c)(1), which prescribes that outdoor storage shall not be visible from a street. Petitioner proposes to validate existing conditions in order to obtain a use and occupancy permit. Variances of 25 feet front street line setback and 20 feet rear yard setback for an existing fence and wall in excess of 6 feet in height, and a waiver of the outdoor storage screening requirement are requested.

Evidence Presented

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

1. The property contains 8.95 acres, is zoned I-1 (Light Industrial) and is improved with an existing one-story frame and vinyl-sided building, parking areas and vehicle display area (storage yard). See Exhibits ("Exhs.") 11 & 34.
2. The property is made up of three tracts of land, two lots which were subdivided in 1978 and a parcel created by deed prior to January 1, 1982. See Exhs. 5-9. The property is located on Virginia Manor Court, a cul-de-sac, approximately 475 feet north of the intersection of Virginia Manor Road and Virginia Manor Court. See Exhs. 3 & 4.
3. Petitioner leases the property to Insurance Auto Auctions ("IAA"), which stores and sells vehicles. The property has been used for many years as an automobile sales and storage lot by an automobile auction company, the prior tenant being ASC Auctions, Inc., which purchased the property in 1989. No new structures are proposed for the property, but IAA would like to obtain a use and occupancy permit for its current use and certain variances are required before the use and occupancy permit can be obtained. See Exh. 3.
4. Counsel for Petitioner explained that along approximately 325 feet of the frontage of the property along Virginia Manor Court, there is an existing 6-foot fence with 3 feet of electrified wire on top, and along the remaining 135 feet of frontage, there is an existing 8-foot wall with 2 feet of electric wire. See Exh. 3. Because fences and walls over 6 feet in height are required to be set back 25 feet from the street line, and the total heights of the fence and wall exceed 6 feet (the fence is 9 feet in height and the wall is 10 feet in height), a variance of 25 feet front street line setback to validate the existing locations of the fence and wall was requested.
5. Counsel for Petitioner stated that along the rear lot line there is a 6-foot chain link fence with 3 feet of electric wire on top that also needs to be validated. See Exh. 3. Since the total fence height is 9 feet and the fence must meet main building setbacks, a variance of 20 feet rear lot line setback was also requested to validate this fence.
6. Counsel for Petitioner further explained that although the outdoor storage is not visible from Virginia Manor Court, a proposed future realignment of Contee Road runs through the property just north of the cul-de-sac in an east/west direction. It was explained that although no right of way has yet been acquired for the road, the future realignment, resulting in a new interchange of Virginia Manor Road, Van Dusen Road and Contee Road, exists as a proposed right-of-way (as shown on the Adopted and Approved Master Plan for Subregion I), which is considered a "street", and the outdoor storage screening requirement applies. See Exhs. 3 (sub-Exhibit C), 30 & 34. Counsel stated that allowing continued storage within the proposed right-of-way does nothing to hinder the ability to construct the road in the future and the integrity of the Master Plan is preserved. See Exh. 3, p.12. Counsel also explained that to avoid constructing additional sight-tight fencing to screen outdoor storage from this "paper street", which would render more than an acre and a half of the property unusable, a waiver of the outdoor screening requirement was requested.
7. Counsel explained that the abutting property to the rear is zoned industrial, but is developed with a residential retirement community ("Victoria Falls"). Counsel stated that the Victoria Falls development was constructed after the subject property was developed and used for its current use and Victoria Falls built a 17-foot-high stone and stucco wall to screen and act as a noise barrier to protect the

residential community from the industrial activities. Counsel explained that because of the wall, which extends along the entire length of the rear property line of the subject property, Petitioner's fence along the same property line cannot be viewed from outside the property. See Exhs. 3 (sub-Exhibits A, B & D), 19 & 31.

8. Michael Madden testified that IAA has 150 locations within the United States. He stated that IAA business operates Monday through Fridays from 8:30 a.m. until 5:00 p.m. and that an automobile auction is held once a week, on Thursdays from 1:00 until 3:00 p.m. Mr. Madden further testified that he believes Petitioner first leased the property to IAA in 1995.

9. Howard and Gary Janoske, co-owners of I-3 zoned land (Parcel 36) that abuts the subject property at its northeastern corner, did not oppose Petitioner's request for variances but expressed concerns regarding noise and water run-off. Howard Janoske testified that their property is developed with residential duplex dwellings and the City of Laurel has approached them about acquiring their property for needed open space. He stated that the fence is definitely needed, but that water run-off carries oil, sediment, sand and gravel across the back of the property. Gary Janoske testified tenants living on their property can reportedly hear the noise of bulldozers and forklifts on Petitioner's property at all different times during the week. He stated that Petitioner's electrified fence next to their property has existed since 1995, a 20-foot setback would provide a more satisfactory buffer, a sight-tight barrier would be appropriate, and some storm water management is needed to keep sediment from coming onto their property and contaminants from affecting nearby wetlands and the Chesapeake Bay. See Exh. 28.

10. Nancy Keogh, owner of property adjoining the Janoskes' parcel (Parcel 37), testified that she is also affected by run-off from Petitioner's property.

11. Steve Collins, owner of non-adjoining property on the other side of Virginia Manor Court (Part of Lot 5, Allens Place Subdivision), opposed the request.

12. Counsel for Petitioner explained that there is no required setback from the side property line and if the fence were moved back to meet the required 20-foot setback at the rear property line, it would be very difficult to maintain the 30-foot-wide green strip being added next to the Victoria Falls property. See Exh. 4.

13. Petitioner presented options to the most affected neighbors, the Janoskes, to mitigate their concerns and agreement was reached by those parties to revise the site plan to reflect that the green strip along the side yard abutting the Janoskes' property would be widened to 60 feet with a double row of Leyland Cypress trees (26 total) along that portion of the property line, slats would be added to the fencing along the Janoskes' property to render it sight-tight, and regrading would be done within the green strip to address the storm water management issues. See Exhs. 24, 26, 32 & 33 and compare Exhs. 4, 25 & 34 (the revised site plan).

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 zoned I-1; the property being located at the end of a cul-de-sac; the use operating on the property being permitted in the I-1 Zone; the subject fence and wall currently existing on the property along certain portions of property lines; the need for fence and wall height over 6 feet to provide adequate security for the use on the property; the neighbor's 17-foot-high wall extending the entire length of the rear property line and backing up to Petitioner's fence; maintenance of green area adjacent to the wall becoming difficult if the fence were moved back to meet the required 20-foot setback along the rear property line; Petitioner's development plan including buffering green areas, some sight-tight fencing and re-grading to mitigate storm water management issues; screening from an undeveloped paper street crossing the property technically being required; screening of the paper street rendering more than an acre and a half of the property unusable; continued storage within the proposed right-of-way not hindering the ability to construct a road in the future; 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 and 20 feet rear yard setback for an existing fence and wall in excess of 6 feet in height and a waiver of the outdoor storage screening requirement, to validate existing conditions in order to obtain a use and occupancy permit, on the property located at Lots 3 & 4, Virginia Manor Park Subdivision, and Parcel 35, Tax Map 9, Grid E-2, being 7131 Virginia Manor Court, Laurel, Prince George's County, Maryland, be and are hereby APPROVED. Approval of the variances is contingent upon development in compliance with the approved revised site plan (#2), Exhibit 34.

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.