

NOTICE OF FINAL DECISION


OF BOARD OF APPEALS

RE: Case No. V-49-08 Washington Coca Cola Bottling Co., Inc.

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: June 18, 2008.

CERTIFICATE OF SERVICE

This is to certify that on June 26, 2008, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.



Anne F. Carter
Administrator

cc: Petitioner
Adjoining Property Owners
DER, Building Code Official, Permit & Review Div.
M-NCPPC, Permit Review Section
Other Interested Parties

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

Petitioner: Washington Coca Cola Bottling Co., Inc.
Appeal No.: V-49-08
Subject Property: Lot 1, Block C, Hampton Park Subdivision, being 500 Dunmore Place, Capitol Heights, Prince George's County, Maryland
Counsel for Petitioner: Lawrence N. Taub, Esq., O'Malley, Miles, Nylen & Gilmore, P.A.
Witnesses: Curtis Etherly, Vice President for Public Affairs, Mid-Atlantic Coca Cola Bottling
Tim Newman, Operations Manager, Mid-Atlantic Coca Cola Bottling
Heard and Decided: June 18, 2008
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, 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, 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 existing conditions and obtain a building permit for an 8-foot-high wrought iron fence. Variances of 25 feet street line setback from Dunmore Place for an existing 8-foot-high wrought iron fence, and 16 feet street line setback from Ashwood Drive and 30 feet side yard setback for an existing 8-foot-high chain link fence topped with 3 strands of barbed wire are requested.

Evidence Presented

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

1. The property was subdivided in 1970, contains 700,000 square feet (16.0698 acres) and is zoned I-1 (Light Industrial). The property is improved with a 71,200-square-foot warehouse, with office space, and paved area. The property is located in an older, developed industrial area in Capitol Heights.
2. Petitioner would like to validate a new 8-foot wrought iron fence and obtain a building permit. The wrought iron fence is located along 330 feet of Dunmore Place and 250 feet of the rear property line.

There is an existing 8-foot-high chain link fence, with 2 feet of barbed wire, about 9 feet from the street line along Ashford Drive and along the entire side property line. Variances of 16 feet street line setback from Ashwood Drive, 25 feet street line setback from Dunmore Place and 30 feet side lot line setback were requested to validate all the fencing over 6 feet in height.

3. Counsel for Petitioner stated that it was determined that the property needed enhanced security. Counsel explained that the chain link fencing has existed for at least 20 years, surrounds all parts of the property except the parking lot in the southwest corner of the property, and encloses a storm water management pond in the southeast corner of the property. Counsel further explained that because all available land area on the property is needed for maneuvering the commercial vehicles and for use as parking area, it would be a hardship if the fencing, otherwise required to meet the main building setbacks, was not validated. Counsel stated that Petitioner's fencing is in character with fences on other industrial properties in the area. See Exhibit 5.

4. Tim Newman testified that the new wrought iron fence was erected approximately one year ago to protect cars and employees. He explained that with the new fence in place, there is only one way to leave the property from the parking lot.

5. Curtis Etherly testified that large commercial vehicles enter the property through the guarded gate on Ashwood Drive, but employees and visitors enter the parking lot through the new fence via a curb cut on Dunmore Place. He stated that the wrought iron fence was chosen to balance the need for security with the desire to make the area of the property used by employees and visitors as attractive as possible.

6. Pleasants Development, Inc., of 8622 Ashwood Drive, had no objection to the request (Exhibit 13).

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 subdivided in 1970, the property being developed in 1971, the property being located in an older developed industrial area, the existing chain link fencing having existed for more than 20 years, the chain link fencing securing all of the property except the parking lot used for employees and visitors, protection of vehicles and employees being warranted in the parking lot area, the new wrought iron fencing providing security for the parking lot since there is now only one location used as an exit from the parking lot, all available land area on the property being needed for maneuvering commercial vehicles and for use as parking area, 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 Dunmore Place for an existing 8-foot-high wrought iron fence, and 16 feet street line setback from Ashwood Drive and 30 feet side yard setback for an existing 8-foot-high chain link fence topped with 3 strands of barbed wire in order to validate existing conditions and obtain a building permit for an 8-foot-high wrought iron fence on the property located at Lot 1, Block C, Hampton Park Subdivision, being 500 Dunmore Place, Capitol Heights, 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 2.

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.