

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-76-10 N. J. Investments, 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: January 5, 2011 .

CERTIFICATE OF SERVICE

This is to certify that on January 7, 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

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

Petitioner: N. J. Investments, LLC

Appeal No.: V-76-10

Subject Property: Tax Map 19, Grid B-1, Parcel 153, and Lot 17, Block 45, Beltsville Subdivision, being
11238 and 11240 Old Baltimore Pike, Beltsville, Prince George's County, Maryland

Counsel for Petitioner: Ted J. Harries, Esq.

Witness: Steve Rodriguez, N.J. Investments, Inc. business owner

Heard: October 20, 2010; Decided: November 3, 2010

Reconsidered: January 5, 2011

Board Members Present and Voting: Bobbie S. Mack, Chairperson
Albert C. Scott, Vice Chairman
Anastasia T. Johnson, Member

RESOLUTION
ON RECONSIDERATION

This appeal was 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 a variance 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 requested that the Board approve a variance from 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. Petitioner proposes to construct a storage building. A variance of 15 feet setback from the street line of Maryland Avenue was requested.

On November 3, 2010, the Board approved the request for a variance of 15 feet setback from the street line of Maryland Avenue (side street) and a written decision was issued on December 2, 2010. On January 5, 2011, to correct approval language and site plan errors (legal description of property and abandoned side street incorporated into adjoining parcel), the Board unanimously approved (1) a motion to reconsider, vacating the Board's previous decision (issued 12/2/10) and voiding the previously-approved site plan, and (2) a motion to enter into the record certain documents regarding the need to make certain corrections and to actually correct the record. Appropriate corrections have been incorporated into the evidence presented below.

Evidence Presented

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

1. The property contains 13,023 square feet (.2989± acre), is zoned I-2 (Heavy Industrial) and is currently improved with paved driveway area and parking spaces. See Exhibits ("Exhs.") 10-13, 32. The proposed use of the property is a contractor storage yard. See Exh. 32.
2. The property narrows toward the rear of the lot. See Exh. 32.

3. The subject property is located in an industrial area and is surrounded by I-2 properties with outside storage and scrap metal recycling uses. See Exhs. 14(A), 32. The site plan originally submitted by Petitioner erroneously indicated Maryland Avenue as a side street. See Exhs. 2, 30. Talbot Avenue, a paper street that abutted the subject property along the northeast side lot line, was abandoned and incorporated into adjoining Parcel A. See Exhs. 30-31. A concrete storm water channel runs along the northeast side of the subject property. See Exhs. 14(B)-(C), 32.

4. Petitioner would like to construct a 40' x 55'¹/₈' x 20' (2,560 square feet) one-story storage building on the property (see Exhs. 3, 32), but a variance is needed to obtain a building permit. See Exh. 32. Since the proposed building will be located 10 feet from one side property line and 5 feet from the other side property line, a variance of 15 feet total side yard setback is needed. See Exh. 8.

5. Counsel for Petitioner stated that the property is currently used for outdoor storage. Counsel explained that Petitioner is a concrete, stone and masonry business which utilizes 40-foot loading trucks which have a very wide turning radius.

6. Steve Rodriguez, Petitioner business' owner, testified that he has owned the property for three years. He stated that loading trucks are about 50 feet long counting the cabs and if he had to meet the setback requirements for the proposed building, the trucks would not fit properly. See Exh. 26. He further explained that the proposed storage building would allow him to securely store his equipment and materials out of the weather and would be large enough to store his dump trucks, trailers and bobcat.

7. Staff of the Permit Review Section of the Maryland-National Capital Park and Planning Commission opined that a variance of 15 feet setback from the abandoned side street line is equivalent to a variance of 15 feet total side yard setback to fulfill the 30 feet total side yard setback requirement. See Exhs. 8, 27, 29, 31.

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

Due to the property being located in an industrial area, the property being surrounded by I-2 zoned properties with industrial uses, the size of the property, the property narrowing at the rear, access to the property being at the front of the property, the company's trucks being 50 feet in length and needing a very wide turning area, the need for an enclosed structure large enough to securely store equipment and materials out of the weather, the most suitable location of the proposed storage building being at the rear of the property in order to accommodate the long trucks, the character of the neighborhood, the abutting side street having been abandoned and incorporated into adjoining Parcel A, and Petitioner's previous request being found to be equivalent to a request for a variance of 15 feet total side yard setback, 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 a variance of 15 feet total side yard setback in order to construct a 40' x 55'18" x 20' (2,560 square feet) one-story storage building on the property located at Tax Map 19, Grid B-1, Parcel 153, and Lot 17, Block 45, Beltsville Subdivision, being 11238 and 11240 Old Baltimore Pike, Beltsville, Prince George's County, Maryland, be and is hereby APPROVED. Approval of the variance is contingent upon development in conformance with the approved revised site plan, Exhibit 32, 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.

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

Date: February 7, 2011

Petitioner: N. J. Investments, LLC

Appeal No.: V-76-10

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Albert C. Scott, Vice Chairman
Anastasia T. Johnson, Member

**CORRECTION TO
RESOLUTION ON RECONSIDERATION**

A notice of final decision was sent on January 7, 2011. An error was made on page 1 of the Board's decision. The third paragraph on page 1 of the decision should be amended to read as follows:

"On November 3, 2010, the Board approved the request . . . on December 2, 2010. On January 5, **2011**, to correct approval language and site plan errors. . . ."

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