

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER**

**FENCE WAIVER
DECISION**

Application: Waiver of Fencing for Non-conforming Salvage Yard
Applicant: Jacqueline Hudak/We-Rek, Inc. d/b/a/ Accokeek Auto Parts
Opposition: None
Hearing Dates: January 20, 2016
Hearing Examiner: Maurene Epps McNeil
Recommendation: Approval with Conditions

NATURE OF PROCEEDINGS

- (1) Applicant requests a waiver of the fencing requirements for a certified nonconforming Salvage Yard in the R-A (Residential Agricultural) Zone, located at 17305 and 17307 Manning Drive, Accokeek, Maryland.
- (2) No one appeared in opposition to the request at the hearing held by this Examiner. At the conclusion of the evidentiary hearing the record was kept open for additional information. The information was submitted on February 2, 2016, and the record was closed at that time. (Exhibits 18-21)

FINDINGS OF FACT

Subject Property

- (1) The subject property is identified on Tax Map 0161, Grid C-4 as Tax Parcels 4 and 106. It is approximately 4.60 acres in size. It is part of a larger parcel of land owned by the Applicant. It is improved with a one-story building approximately 720 square feet in size. (Exhibit 6)

Zoning History

- (2) In 1973, Mr. William Egri operated the Accokeek Auto Parts Salvage Yard at the subject property, which was then owned by James and Ruth Richards. The use was recognized at that time as a nonconforming use. (Exhibits 7 and 8) On March 2, 1993, Mr. Egri purchased the property, and much of the surrounding properties, and continued to operate the non-conforming salvage yard. Mr. Egri passed away in November 2014, leaving his wife, Jacqueline Hudak, owner of the property.

Surrounding Uses

(3) The subject property is heavily wooded and surrounded by a six-foot tall board on board fence that surrounds all of the property owned by the Applicant. (Exhibit 5(a)-(d)) The nonconforming salvage yard is some distance from the fence and is also surrounded by woodland. (The subject salvage yard is clearly identified in Exhibit 4 as the cleared area.)

Applicant's Request

(4) After the death of her husband, Applicant requested approval of a Use and Occupancy Permit (23579-2015-CE) to continue operating the nonconforming "vehicle storage yard and automobile towing station" on site. (Exhibit 7) This case was approved administratively, with the requirement that an 8-foot tall vinyl fence be installed. Applicant received estimates for such a fence and each was in excess of \$250,000. (Exhibit 18) Applicant avers that the exorbitant cost "would cause [her] company to go out of business." (Exhibit 18)

(5) Francis Silberholtz, accepted as an expert in the area of land use planning, presented photographs of the area which reveal that the existing fence and woodlands effectively shield the salvage yard from view by homeowners across Clinton Drive and the traveling public in the area. (Exhibits 16(d) – (m))

(6) The salvage yard is accessed from Manning Drive – a right-of-way that is partially private, and used by the County to access its property. (This right-of-way is highlighted in yellow on Exhibit 21.) The fence and woodland shield the salvage yard from view along Manning Drive as well. Applicant testified that the salvage yard has been in operation at least since the 1970's and the six-foot fence has successfully shielded it from view for all of those years. She is not aware of any complaints concerning the use; the fence, any unauthorized access to the site by children, or otherwise; or any workers being endangered on the site. There have not been any complaints concerning rats or other vermin infestation on the site, nor have there been stray dogs on site. In short, the use does not adversely impact residents or workers in the area.

(7) Given the success of the salvage yard at the location and the effectiveness of the instant fence in shielding the use from view and protecting the health and welfare of surrounding properties and citizens, the Applicant requests that the six-foot fence be approved for a period of fifteen years.

LAW APPLICABLE

(1) Section 27-247 of the Zoning Ordinance, governs the instant request. That section provides, in pertinent part, as follows:

- (a) In order for a certified nonconforming junk yard or automobile salvage yard to continue, the requirements of this Section shall be met, in addition to any other applicable requirements of this Division.
- (b) The purposes of this Section are:
 - (1) To protect passersby from the dangers inherent in the dismantling, movement, or storage of wrecked and junked motor vehicles and other scrap materials;
 - (2) To protect children, who are naturally attracted to these sites;
 - (3) To prevent stray dogs from frequenting the site;
 - (4) To prevent rats, mice, and other vermin from infesting the site;
 - (5) To protect the health and safety of workers and residents in the general area;
 - (6) To prevent or control detrimental effects upon neighboring properties, and existing and proposed land uses in the general area; and
 - (7) Any similar purposes.
- (c) All certified nonconforming junk yards and automobile salvage yards shall meet the following requirements:
 - (1) The junk or automobile salvage yard shall be enclosed by a solid, light-tight, slightly wall or fence at least eight (8) feet high;
 - (2) The wall or fence shall screen the enclosed area from public view;
 - (3) The fence shall be maintained in a constant state of good repair; and
 - (4) No sign shall be placed on the fence (except as permitted by Part 12 of this Subtitle).
- (d) The requirements of Subsection (c), above, shall apply to all nonconforming junk yards and vehicle salvage yards, regardless of any prior nonconforming use status.
- (e) The fence (wall) requirements may be waived or modified by the District Council in accordance with the following procedures:
 - (1) Application.
 - (A) The owner or operator of the junk yard shall make a written request to the District Council to waive or modify the requirements. The application shall be filed with the Clerk of the Council.
 - (B) Along with the application, the owner or operator shall submit the following:
 - (i) A statement listing the names, and the business and residential addresses, of all individuals having at least a five percent (5%) financial interest in the subject property;
 - (ii) If any owner is a corporation, a statement listing the officers of the corporation, their business and residential addresses, and the date on which they assumed their respective offices. The statement shall also list the current Board of Directors, their business and residential addresses, and the dates of each Director's term. An owner that is a corporation listed on a national stock exchange shall be exempt from the requirement to provide residential addresses of its officers and directors;
 - (iii) If the owner is a corporation (except one listed on a national stock exchange), a statement containing the names and residential addresses of those individuals owning at least five percent (5%) of the shares of any class of corporate security (including stocks and serial maturity bonds);
 - (C) For the purposes of (i), (ii), and (iii), above, the term "owner" shall include not only the owner of record, but also any contract purchaser.

* * * * *

(6) Criteria for approval.

- (A) The application may only be approved:
 - (i) For a fixed temporary period of time, which may be renewed; and
 - (ii) If the purposes of this Section are fulfilled.
- (B) In place of the fence, the Council may permit any of the following:
 - (i) Screening by natural objects;
 - (ii) Plantings on sides not facing traveled roads;
 - (iii) A wire fence on sides where the adjacent properties are predominantly undeveloped;
or
 - (iv) A reduction in the fence requirements when the property is, or abuts, properties zoned I-1 or I-2.

CONCLUSIONS OF LAW

(1) The proposed use is generally in conformance with the applicable requirements of Section 27-247 of the Zoning Ordinance. The Applicant testified that there have been no violations issued of any kind for the site, that no children or stray animals have wandered onto the site, that there have been no infestations, and generally no harm to neighboring properties, workers or residents in the area. Applicant has requested that the six foot fence be allowed to remain in place for a fixed period of 15 years, given the success of the use at that location for over 40 years.

(2) Accordingly, the District Council has sufficient evidence to support a finding that the instant request satisfies the purposes of Section 27-247(b) and (e).

RECOMMENDATION

The reduction in height for the required fence is recommended for Approval, subject to the following Conditions:

The certified nonconforming use site plan (Exhibit 6) shall be revised as follows:

1. Revise the reference to the 8-foot fence to note that the six-foot board on board fence is permitted in lieu of the required 8 foot fence, for a period of 15 years.
2. Add a note(s) to indicate that the fence shall screen the salvage yard from public view; shall be maintained in a constant state of good repair; and that no sign shall be placed on the fence, except as permitted by Part 12 of the Zoning Ordinance.