

NOTICE OF FINAL DECISION

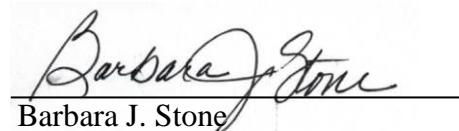
OF BOARD OF APPEALS

RE: Case No. V-77-17 EDY 3700 Ironwood Place 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: November 29, 2017.

CERTIFICATE OF SERVICE

This is to certify that on March 20, 2018, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.



Barbara J. Stone
Administrator

cc: Petitioner
Adjoining Property Owners
M-NCPPC, Permit Review Section
DPIE/Building Code Official, Permitting

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

Petitioner: EDY 3700 Ironwood Place LLC

Appeal No.: V-77-17

Subject Property: Parcel V, Hanson-Beltway Industrial Center Subdivision, being 3700-3710 Ironwood Place, Landover, Prince George's County, Maryland

Counsel for Petitioner: David Winer, Esq.

Witnesses: Michael Hayes, Property Manager, EDY 3700 Ironwood Place LLC
G. Macy Nelson, Esq., Counsel for:

Andrew Kossow, President, Kossow Management Corporation,
John Kossow, CEO, Kossow Management Corporation

Heard: July 26, 2017; Decided: November 29, 2017

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 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 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 requirements 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 [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 total side yard setback of 30 feet from adjoining land in any nonresidential zone. Petitioner proposes to construct a 7-foot chain link fence with 1-foot of barbed wire. Variances of 25 feet front yard setback and 30 feet side yard setback and a waiver of the fence location requirement are requested.

Evidence Presented

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

1. The property was subdivided in 1971, contains 140,000 square feet (3.21396 acres), is zoned I-1 (Light Industrial) and is improved with a brick and block (warehouse) building and parking lot. Exhibits (Exhs.) 2, 4, 9 and 11 (A) thru (F).
2. The property is a through-lot, with street frontage on three sides, and ingress/egress on two sides. Exh. 2 and 4.
3. Petitioner would like to construct a 7-foot chain link fence with 1-foot of barbed wire along the property line abutting Ironwood Place and the corner of Rainswood Drive, extending east to meet the

warehouse. The proposed fence would enclose the parking lot facing Ironwood Drive between the parking lot and the sidewalk. Variances of 25 feet front yard setback and 30 feet side yard setback, and a waiver of the fence location requirement are requested. Exhs. 2, 3, 6 (A) thru (B), 7 and 12.

4. Petitioner operates ABC Packaging Supplies ("ABC"). In 2002, ABC became a tenant at the subject property and in 2017, the property was purchased by EDY 3700 Ironwood Place, LLC. Exh. 9.

5. Attorney David Winer stated that the proposed fence is requested because of on-going crime on the subject property.¹ He stated that other properties along Ironwood Place have 6-feet or higher fences with barbed wire. Exh. 2, 3, 20 and 21. Mr. Winer believed that properties along West Street, a main thoroughfare on which the Kossow property is located, have less crime because of the constant traffic on Ardmore Ardwick and West Street. He stated that Petitioner's location (at Ironwood and Rainswood) is isolated and the opportunity for crime (trespass and theft) to occur is more prevalent. Exhs. 23 and 24.

6. Mr. Choe stated that attorney Winer provided an accurate summary of the circumstances related to the subject property. Mr. Choe testified that he has 6 truck drivers who arrive very early in the morning who fear bringing their cars to work and he has 25 employees to protect. He also stated that his property is located at a dead-end street and security lights have been installed. He stated that those who opposed the proposed fence have properties that are not located near the subject property. Exhs. 11 (A) thru (F).

7. Mr. Michael Hayes provided photographs of nearby properties with fences similar to the proposed one. Exhs. 22 (A) thru (J).

8. Attorney Macy Nelson submitted an overall aerial of the industrial park, which included the subject property and the Kossow property. Exh. 23 and 24. He states that the Kossow property is located on West Street which ends at a cul-de-sac and abuts the subject property. He stated that his clients have occupied their property for 35-37 years and have not had any significant problems with crime. Mr. Nelson presented industrial properties in the area with either fences or without fences. Exhs. 27 (A) thru (X) (pictures). He further argued that the neighborhood consists of similar warehouse facilities with parking lots on parcels of land with the same physical characteristics as the subject properties that do not have fences. He stated that the Kossow property does not have fences enclosing it. Exhs. 30.

9. Mr. John Kossow testified that his property has 22 bays (warehouses) that have stayed fully leased without the presence of a fence on the property. Exh. 30.

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 does not comply with the applicable standards set forth in Section 27-230, more specifically:

¹ More specifically, he states that tires, car batteries, and gas from the gas tank have been stolen. He stated that cars have also been stolen from his lot and such crime has been occurring for years. He states also, however, that "Amaryllis Co., at 3701 West Street. Just across from Petitioner, had a vehicle stolen, just weeks ago, with 8 feet fence no less." Exh. 29. (Post-Hearing Brief, top of second page)

1. Section 27-465(a) of the Zoning Ordinance requires fences and walls more than 6 feet high meet setback requirements for main buildings; and Section 27-474(b) (Table I) prescribes that structures shall be set back at least 25 feet from the street line.

2. Petitioner proposes to construct a 7-foot chain link fence with 1-foot of barbed wire located on the front and side street property line requiring variances of 25 feet front yard setback and 30 feet side yard setback.

3. 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.²

4. The gravamen of Petitioner's appeal appears to be that crime perpetrated on the subject property is a sufficient justification for the relaxation of the stringent requirements of the Zoning Ordinance.

5. The Board is not prepared to conclude that the unfortunate circumstances in which Petitioner finds itself (crime) constitutes an extraordinary situation or condition contemplated under the threshold test in Section 27-230.

6. Because the first requirement was not met, the Board does not deem it necessary to consider the remaining requirements of Section 27-230.

7. The Board notes that the evidence indicates that many properties in the same industrial park have fences, while others do not, notwithstanding the existence of the alleged crime.

BE IT THEREFORE RESOLVED, unanimously, that variances of 25 feet front yard setback and 30 feet side yard setback and a waiver of the fence location requirement to construct a 7-foot chain link fence with 1-foot of barbed wire on the property located at Parcel V, Hanson-Beltway Industrial Center Subdivision, being 3700-3710 Ironwood Place, Landover, Prince George's County, Maryland, be and are hereby DENIED.

BOARD OF ZONING APPEALS

By: (ORIGINAL SIGNED)
Bobbie S. Mack, Chairperson

NOTICE

Further, Section 27-234 of the Prince George's County Code states:

If the Board denies an appeal involving a variance, no further appeal covering the same specific subject on the same property shall be filed within the following twelve (12) month period. If the second appeal is also denied, no other subsequent appeals covering the same specific subject on the same property shall be filed within each eighteen (18) month period following the respective denial.

² Pursuant to Section 27-142 the burden to proof in any zoning case shall be the applicants.