



THE PRINCE GEORGE'S COUNTY GOVERNMENT

BOARD OF ZONING APPEALS

BOARD OF ADMINISTRATIVE APPEALS

WAYNE K. CURRY COUNTY ADMINISTRATION BUILDING, LARGO, MARYLAND 20774
TELEPHONE (301) 952-3220

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-84-22 Ebenezer Akinpetide and Ololade Aroyiwo

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 25, 2023

CERTIFICATE OF SERVICE

This is to certify that on February 22, 2023 , the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

A handwritten signature in black ink, appearing to read "Barbara J. Stone".

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

Petitioners: Ebenezer Akinpetide and Aroyiwo Ololade

Appeal No.: V-84-22

Subject Property: Lot 96, Block B, Heritage Glen-Plat Five being 1615 Southern Springs Lane, Upper Marlboro, Prince George's County, Maryland

Heard and Decided: January 11, 2023; and January 25, 2023

Board Members Present and Voting: Bobbie Mack, Chair - Present

Anastasia Johnson, Member - Present

Wm. Carl Isler, Member – Present.

Renee Alston, Member - Present

Teia Hill - Present

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, Petitioners request that the Board approve a variance/ waiver of the requirement in Section 27-420(a) that precludes the erection of a fence more than four (4) feet high in the front yard on lots of one (1) acre or less, without the approval of a variance. Petitioners propose to obtain a building permit for the installation of a 6-foot fence. Waivers of the fence height and location requirements for a fence over 4 feet in height in the front yard/side yard (abutting White House Road) are requested.

Evidence Presented

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

1. The property was subdivided in January 2003, contains 13,150 square feet, and is zoned RSF-95 (Residential Single Family-95). (Exhibits 2 and 4.) It is improved with a 3,548-square-foot single-family detached dwelling. Petitioners wish to erect a six-foot-tall fence. Petitioner's lot is a through lot with frontage on both Southern Springs Lane and White House Road. Through lots are considered to have two front yards – one along each of its parallel street fronting lot lines.

2. The property is an irregularly shaped rectangular parcel that slightly narrows along its frontage on White House Road. Petitioner would like to install a 6-foot-tall sigh-tight white vinyl fence with one -foot-wide walk gate around the rear of their property. (Exhibit 2.) Petitioners request a waiver of the requirement that the fence may only be a maximum of 4-feet-tall if located in a front yard.

3. Mr. Akinpetide testified that the Petitioners have toddlers and would like to safely allow them to play in the backyard. He also noted there is a lot of traffic, vehicular and pedestrian, along White House Road, and pedestrians often cut through their property. The fence would, therefore, discourage trespassing, increase safety, and provide privacy for the family. There is a public utility easement and a stand of trees to the rear of their lot and the fence will be installed inside of both, closer to the rear of the home.

4. Mr. Akinpetide also noted that other properties near their home have erected similar fencing, and theirs should not detract from the character of the neighborhood. (Exhibits 10(b) and (c)) A photograph of the proposed fencing was submitted into the record. (Exhibit 3) Petitioners also submitted additional photographs of its property and other adjacent dwellings. (Exhibit 5(a)-(k))

5. The record was left open at the conclusion of the hearing on January 11, 2023, to allow Petitioners the opportunity to submit the recommendation of approval from the Heritage Glen Homeowner's Association.

6. The item was submitted shortly thereafter and included in the record. (Exhibits 17 and 18.) The Board voted unanimously to approve the request at its January 25, 2023, meeting.

Applicable Code Section and Authority

The revised Zoning Ordinance took effect on April 1, 2024, upon the effective date of the Countywide Map Amendment. This Ordinance provides a new procedure for those that would like to construct a 6-foot-tall-fence on a through lot, requiring an administrative waiver request and the approval of a security exemption plan by the Board of Appeals. However, Section 27-1903 allows a development application to utilize the provisions of the prior Zoning Ordinance until April 1, 2024. Accordingly, this request is reviewed using Sections 27-230 (a) and 420 (a) of the prior Zoning Ordinance. These Sections provide as follows:

Sec. 27-230. Criteria for granting appeals involving variances.

- (a) A variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:
 - (1) A specific parcel of land is physically unique and unusual in a manner different from the nature of surrounding properties with respect to exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary conditions peculiar to the specific parcel (such as historical significance or environmentally sensitive features)
 - (2) The particular uniqueness and peculiarity of the specific property causes a zoning provision to impact disproportionately upon that property, such that strict application of the provision will result in peculiar and unusual practical difficulties to the owner of the property
 - (3) Such variance is the minimum reasonably necessary to overcome the exceptional physical conditions
 - (4) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any area master plan, sector plan, or transit district development plan affecting the subject property; and
 - (5) Such variance will not substantially impair the use and enjoyment of adjacent properties.
 - (6) Notwithstanding any other provision of this Section, a variance may not be granted if the practical difficulty is self-inflicted by the owner of the property.

Sec. 27-420. Fences and walls.

- (a) Unless otherwise provided, fences and walls (including retaining walls) more than six (6) feet high shall not be located in any required yard and shall meet the setback requirements for main buildings. (See Figure 42.) On lots consisting of one (1) acre or less, fences in the front yard shall not be more than four (4) feet high unless a variance is approved by the Board of Appeals. In the case of a corner lot consisting of one (1) acre or less, fences in the front yard or side yard shall not be more than four (4) feet high unless a variance is approved by the Board of Appeals. Fences constructed pursuant to a

validly issued building permit prior to October 1, 2008, shall not be deemed nonconforming; however, replacement of an existing fence must comply with the four (4) foot limitation.

Findings of the Board

After hearing all the testimony and reviewing the evidence of record, the Board finds that the requested variance/waiver does comply with the applicable standards set forth in Section 27-230, more specifically:

Due to the property being subdivided in 2003 and developed in conformance with the Ordinance in effect at that time, the existing lot is a through lot. Through lots are defined as having two front yards and Section 420(a), *supra*, mandates that any fencing of front yards be no higher than four feet. Petitioners have requested a waiver of this section to allow a slightly taller fence that will protect Petitioners young children from wandering from the rear yard, provide privacy from those walking or driving along White House Road, and ensure that pedestrians no longer trespass through their property as they travel in the area. All the neighboring lots are not through lots and Petitioners situation is, therefore, unique. Some other neighboring properties have erected a fence similar to that requested in the instant application, and approval would not adversely impact the character of the neighborhood. Attractive fencing is common for single-family residential areas so granting the relief requested would not substantially impair the intent, purpose and integrity of the General Plan or Master Plan. Denying the request would result in a peculiar and unusual practical difficulty upon the owner of the property to not have protections for their family forcing them to make limited use of a significant portion of their lot. Finally, the practical difficulty is not self-inflicted but results from the platting of the lot and the zoning provision's disproportionate impact on the property.

BE IT THEREFORE RESOLVED, by majority vote, Ms. Teia Hill absent, that waiver of Section 27-420's prohibition of the erection of a fence in excess of 4 feet tall in a front yard in order to obtain a building permit to install a fence around the rear yard facing White House Road on the property located at 1615 Southern Springs Lane, Upper Marlboro, Prince George's County, Maryland, be and is hereby APPROVED. Approval of the variance is contingent upon development in compliance with the approved site plan, Exhibit 2, and the picture of the proposed fence, Exhibit 3.

BOARD OF ZONING APPEALS

By:


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.

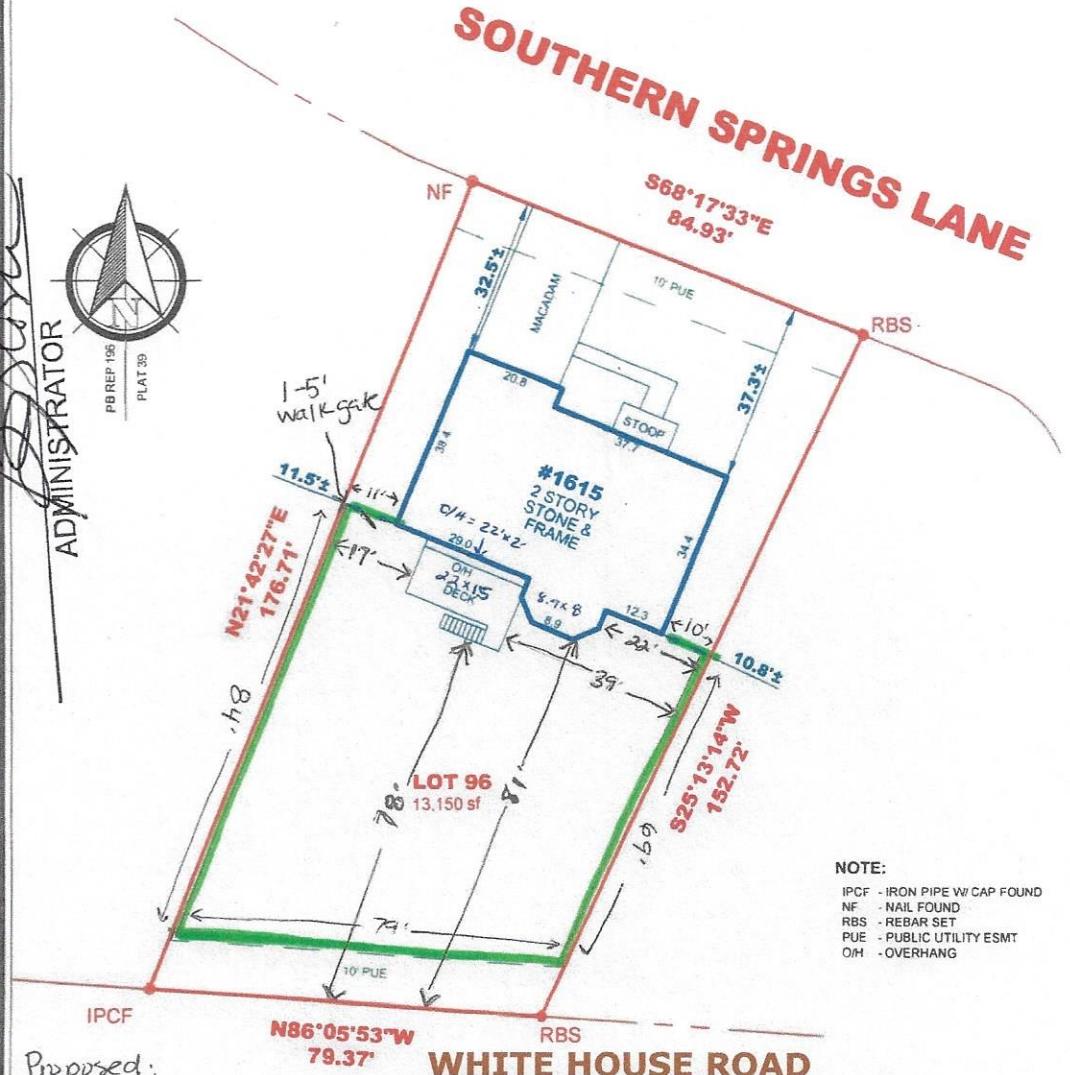
BOARD OF APPEALS

APPROVED *Bob Glass* JAN 25 2013

ADMINISTRATOR



PBREP 196
PLAT 39



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SURVEYOR'S CERTIFICATE

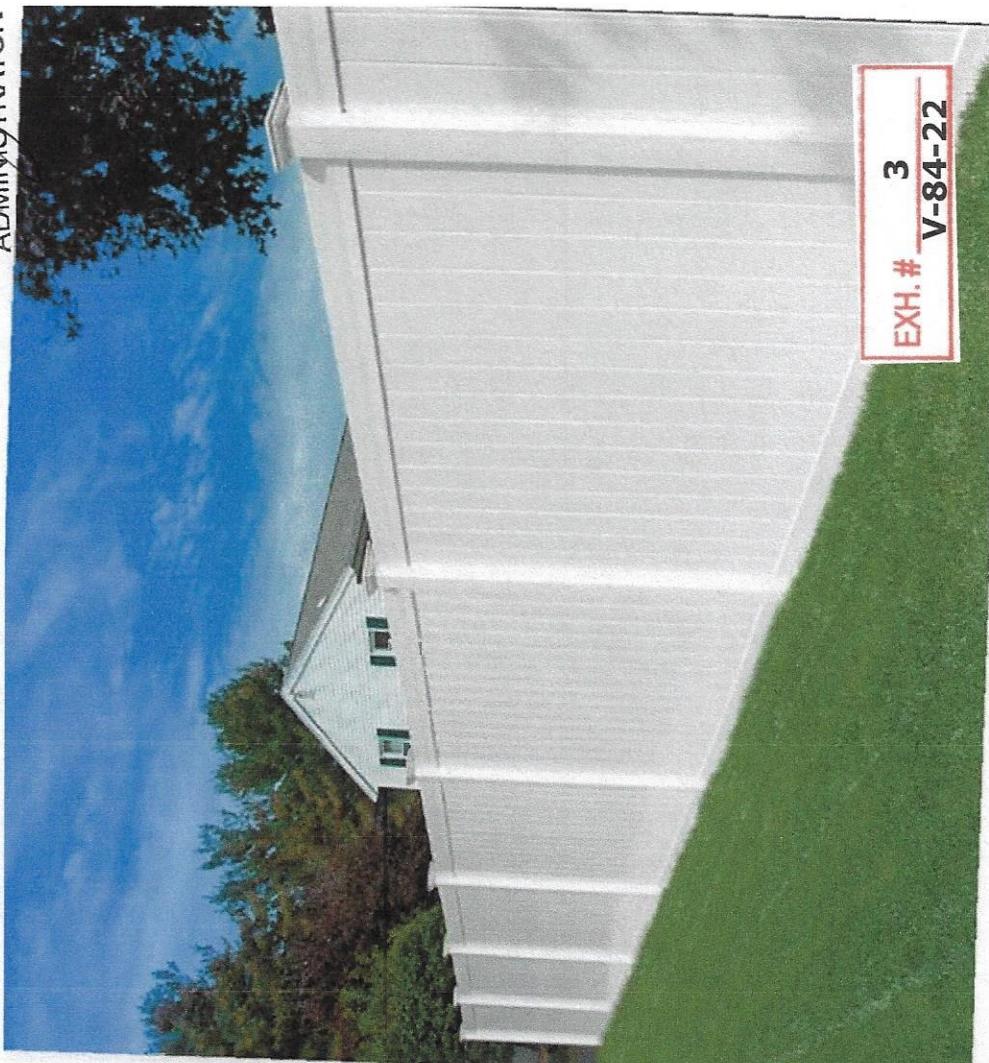
I HEREBY STATE THAT I WAS IN RESPONSIBLE CHARGE OVER THE PREPARATION OF THIS PLAT AND THE SURVEY WORK REFLECTED HEREIN AND IT IS IN COMPLIANCE WITH THE REQUIREMENTS SETFORTH IN REGULATION 12 CHAPTER 09 13.06 OF THE CODE OF MARYLAND ANNOTATED REGULATIONS. NO TITLE REPORT WAS FURNISHED TO NOR DONE BY THIS COMPANY. SAID PROPERTY SUBJECT TO ALL NOTES, RESTRICTIONS AND EASEMENT OF RECORD. BUILDING RESTRICTION LINES AND EASEMENTS NOT SHOWN ON RECORD PLAT MAY NOT BE SHOWN HEREON.

EXH. # **2**
V-84-22

BOARD OF APPEALS

APPROVED JAN 25 2023

B. B. L. 2023
ADMINISTRATOR



EXH. # 3
V-84-22