

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

Petitioner: All Saints Church MD Convocation

Appeal No.: V-131-18

Subject Property: Lot 11, Block B, Kenilworth Interchange Industrial Park Subdivision, being 4825 Lydell Road, Hyattsville, Prince George's County, Maryland

Municipality: Town of Cheverly

Counsel for Petitioner and Electric Guard Dog: Daniel Lynch, Esq., McNamee Hosea

Witnesses: Michael Payt, Electric Guard Dog

Oladipo Famuyiwa, Administrator, All Saints Church MD Convocation

Heard: December 5, 2018; Decided: January 9, 2019

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 requirements for main buildings; Section 27-474(b)(Table I) 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 be located 20 feet from any side and rear lot lines abutting residentially-zoned land and shall have a total side yard setback of 30 feet from adjoining land in any nonresidential zone. Petitioner proposes to construct a 10-foot electric security fence inside the existing chain link fence. Variances of 25 feet front yard setback, 20 feet rear yard setback from residentially zoned land, 30 feet total 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 1965, contains 41,099 square feet, is zoned I-1 (Light Industrial) and is improved with a 6' chain link fence and used as leasable property for the use of auto storage yard. Exhibits (Exhs.) 3, 5, 9, 10 and 11 (A) thru (F).

2. Petitioner would like to construct a 10-foot electrical fence, which would be located inside the existing chain link fence. As the fence exceeds 6 feet in height, and will be along the property lines, variances of 25 feet front yard setback, 20 feet rear yard setback from residentially zoned land, 30 feet total side yard setback and a waiver of the fence location requirement were requested. Exhs. 2, 3, 4, and 6.

3. Attorney Daniel Lynch explained that the subject property is being used as a storage yard for vehicle that have been impounded and is surrounded by a chain link fence with access from Lydell Road. In order to provide additional security, Petitioner is proposing to add an additional 10-foot-high security electric fence inside of the existing fence. The electric fence is installed inside the existing to allow for a barrier between the property and the actual electric fence. It is asking for a variance of 19.9 feet. Exhs. 2, 3, 4 and 6.

4. Mr. Lynch stated that the extraordinary condition of the property is that it is a rather small industrial piece of property; it is less than an acre in size. It is necessary to keep the security fence as close to the existing fence as possible so that a "dead zone" is not created (as if someone were to get in, having someone caught between the two fences). With regard to the practical difficulty, he states that if the applicant were to meet the current setback requirement, approximately 7,000 square feet of storage area would be lost. He further stated the property has been developed in accordance with the I-1 Zone standards. He explained that the rear half of the property is unusable because it is wooded and slopes at a steep grade; which is an area of 20,00 square feet that cannot be used for auto storage. Exhs. 2, 3, 4 and 6.

5. Michael Payt, Electric Guard Dog, testified that the 10-feet high fence is the industry standard. He explained that with the additional 3-4 strands of wire, the fence is raised sufficiently higher to deter someone from hurtling the electric fence. The fence is alarmed in the event that someone tries to cut the fence. Exhs. 2, 3, 4 and 6.

6. Oladipo Famuyiwa stated that the property to the rear of the building belongs to the Town of Cheverly. He further stated that because the church (Lot 10, Block B, owned by All Saints Church MD Convocation) is directly beside the storage area (Lot 11, Block B, owned by All Saints Church MD Convocation) he is concerned about the safety of the children in the church. Exhs. 2, 3, 4 and 6.

7. Michael Payt explained that a child could not be hurt because that person would have to be behind a fence that has an aperture of only 2.14 inches. He noted that the fence is operating off of a 12-volt battery; it is never connected to the electrical infrastructure.

7. The Town of Cheverly requested denial of the variance. Exh. 22.

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. 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. Even assuming that the security for impounded vehicles suggests an extraordinary situation and much of the industrial land is unusable, the Board believes that the safety of the children (who may be "attracted" to the fence) and others of the church is paramount in this matter, given their proximity to the 10-foot electrical fence.

3. The Board notes that Petitioner failed to produce a copy of a Redacted Lease that was requested.
4. The Board also gives considerable weight to the decision to the Town of Cheverly to recommend denial of the variance and the apprehension of Oladipo Famuyiwa, the administrator of the church.

BE IT THEREFORE RESOLVED, unanimously, that variances of 25 feet front yard setback, 20 feet rear yard setback from residentially zoned land, 30 feet total side yard setback and a waiver of the fence location requirement in order to construct a 10-foot electric security fence inside the existing chain link fence on the property located at Lot 11, Block B, Kenilworth Interchange Industrial Park Subdivision, being 4825 Lydell Road, Hyattsville, Prince George's County, Maryland, be and are hereby DENIED.

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 27-234 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.