

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-112-13 Olive Street Property 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: February 19, 2014.

CERTIFICATE OF SERVICE

This is to certify that on March 4, 2014, 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
DPIE/Building Code Official, Permitting
Other Interested Parties

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

Petitioner: Olive Street Property LLC

Appeal No.: V-112-13

Subject Property: Parcel 110, Tax Map 58, Grid D4, being 1721 Olive Street, Capitol Heights,
Prince George's County, Maryland

Counsel for Petitioner: Norman Rivera, Esq.

Witnesses: Paul Tharp, property manager

Raymond Harris, engineer/architect consultant

Heard and Decided: February 19, 2014

Board Members Present and Voting: Bobbie S. Mack, Chairperson
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 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 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), 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]; Section 27-470(b)(3), which prescribes that a vehicle towing station shall be screened by a wall or fence at least 6 feet high; and Section 27-470(c)(1), which prescribes that outdoor storage shall not be visible from a street. Petitioner proposes to validate an existing 8-foot concrete wall and an 8-foot chain link fence in order to obtain a use and occupancy permit. Variances of 30 feet setback from the street line of Olive Street, 35 feet setback from the street line of North Addison Road, and waivers of the fence/wall yard location requirement and vehicle towing station/outdoor storage screening requirements are requested.

Evidence Presented

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

1. The property contains 1.163 acres, is zoned I-2 (Heavy Industrial) and is improved with a shed, 8-foot concrete fence and 8-foot chain link fencing. Exhibits ("Exhs.") 3, 9 and 10.
2. The property is on a dead end street and is a narrow, almost rectangular lot. Exhs. 3, 11(A) and 12.
3. Petitioner would like to obtain a use and occupancy permit for a vehicle towing station, but before the permit may be obtained, variances for fence/wall locations and waivers of the screening requirements for a vehicle towing station/outdoor storage must be approved. Exh. 5.
4. An 8-foot chain link fence, some of which has sight-tight covering, and an 8-foot concrete fence are located along property lines or in certain locations where the fence does not meet main structure

setbacks. Exhs. 3, 4(a) through (d). Variances of 30 feet front yard setback, 35 feet side street yard setback, and waivers of the location requirement for an existing 8-foot concrete fence and 8-foot chain link fencing and screening requirement for outdoor storage were requested. Exhs. 14 and 19.

5. Counsel for Petitioner stated that under current new state law, as a vehicle towing station Petitioner must hold vehicles for at least eleven days before the vehicles may be demolished for scrap metal. It was explained that in order to maximize room for storage of the vehicles, the variance is needed to maintain the 8-foot fencing in its current location. He further explained that the parcel is on a dead end street and has a narrow rectangular shape. Counsel stated that it would be a hardship to move the fences to meet the required setbacks because the area of the storage facility on the site would be reduced. Counsel further stated that the property has been zoned I-2 and the I-2 Zone permits the use in compliance with the General Plan and/or the Cheverly-Tuxedo Master Plan and Sectional Map Amendment for the property.

6. Paul Tharp, the property manager, stated that the variance is requested for fencing that has existed in its current location along the boundary of the property for the last 30 years. He testified that the current fence parameters have existed since at least the late 1960s. He stated that the 8-foot concrete fence along the dead end portion of North Addison Street was a substitute for the original chain link fence that was destroyed by trucks and machinery activity of the neighboring trash recycling facility on the opposite side of the road, circa 1999. He explained that this portion of North Addison has no through traffic, is used solely by the two properties that adjoin it, and has been fenced, limited access by Consolidated Waste Industries (one of those two property owners) for the last 10 years. He stated that the variance is necessary to maximize the capacity of the lot to store up to 100 vehicles at any one time (Exh. 24) in conformance with changes in the Maryland Transportation Code which requires holding and notification of "last registered owners" for junk vehicles to be scrapped that do not have titles. Exh. 2.

7. Mr. Tharp testified that the prior use of the property was as a truck storage lot and prior to that for storage of antique vehicles as part of a junkyard.

8. He stated that there is a small "booth" on the property for an attendant that is not a permanent structure. He explained that the part of the fence encroaching approximately 6 inches beyond the street line will be moved.

9. He further stated that there is a single-family residence across the street, railroad tracks to the rear, the trash company on one side and condominium businesses down a steep hill to the other side of the property. Exhs. 4(D), 11(A) and (B). He testified that there will be no increase in traffic and that street sweepers are run through the area to keep the streets clean.

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 variances comply with the applicable standards set forth in Section 27-230, more specifically:

Due to the narrowness of the property, the property being located on a dead end street, variances for fence/wall locations and waivers of the screening requirements for a vehicle towing station/outdoor storage

being needed to obtain a use and occupancy permit for a vehicle towing station, the current fence parameters having existed since at least the late 1960s, new state law requiring that vehicles be held for at least eleven days before they may be demolished for scrap metal, maintenance of the current fence locations being necessary to maximize vehicle storage space, the I-2 Zone permitting the use, and the character of the neighborhood, 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, by majority vote, Mr. Scott absent, that variances of 30 feet setback from the street line of Olive Street, 35 feet setback from the street line of North Addison Road, and waivers of the fence/wall yard location requirement and vehicle towing station/outdoor storage screening requirements in order to validate an existing 8-foot concrete fence and existing 8-foot chain link fencing and obtain an use and occupancy permit for the property located at Parcel 110, Tax Map 58, Grid D4, being 1721 Olive Street, Capitol Heights, Prince George's County, Maryland, be and are hereby APPROVED. Approval of the variances is contingent upon development in compliance with the approved site plan, Exhibit 3, and the approved elevation plans, Exhibits 4(a) through (d).

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.