

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-48-15 Darrell & Annette Dreher

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: June 24, 2015.

CERTIFICATE OF SERVICE

This is to certify that on October 5, 2015, 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: Petitioners
Adjoining Property Owners
M-NCPPC, Permit Review Section
DPIE/Building Code Official, Permitting
Tantallon North Area Civic Association
Other Interested Parties

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

Petitioners: Darrell & Annette Dreher

Appeal No.: V-48-15

Subject Property: Lot 26, Block J, Tantallon North Subdivision, being 601 Kawa Court, Fort Washington,
Prince George's County, Maryland

Witnesses: Shanaye Dreher, Petitioners' daughter

Shevonne Dreher, Petitioners' daughter

Freda Brockington, neighbor

Cornelius Haynes, neighbor

Mildred Haynes, neighbor

Shirley Evans, neighbor

Everett Jones, neighbor

Gerald Lucas, Vice President, Tantallon North Area Civic Association

Earon Williams

Heard: June 10, 2015; Decided: June 24, 2015

Board Members Present and Voting: 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, Petitioners request that the Board approve variances from Section 27-420(a) of the Zoning Ordinance, which prescribes that on corner lots consisting of one (1) acre or less, fences and walls in the front yard shall not be more than four (4) feet high without the approval of a variance. Petitioners propose to construct a 6-foot white vinyl privacy fence with lattice in the front yard. Waivers of the fence location and height requirements for a fence in the front yard on a corner lot are requested.

Evidence Presented

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

1. The property was subdivided in 1986, contains 21,661 square feet, is zoned R-R (Rural Residential) and is improved with a single-family dwelling and driveway. Exhibits ("Exhs.") 2, 4, 9 and 10. The existing single-family dwelling was built in 1989.¹ Exhs. 9 and 10.

2. The property is a corner lot located at the lip of a cul-de-sac (Kawa Court). The dwelling faces the legal side street (Aten Street) and driveway access is off of the legal front street (Kawa Court). Exh. 2.

3. Petitioners would like to construct a 6-foot white vinyl privacy fence with lattice which would enclose an in-ground swimming pool and extend into the legal front yard, but variances are needed. Since

¹ In 1987, the Board approved a variance (Appeal No. 8877) to the rear yard setback requirement to construct a new single family dwelling on the subject corner lot. Exh. 7.

the proposed fence would be over 4 feet in height and located in the front yard on a corner lot, waivers of the fence location and height requirements for a fence in the front yard on a corner lot were requested. Exh. 13.

4. Petitioners explained that an in-ground swimming pool is being installed for which a 6-foot fence is required.² Exhs. 1 and 6.

5. Petitioner Annette Dreher testified that the swimming pool is being built to facilitate physical therapy for elderly parents, care for her own health condition and provide recreation for grandchildren.

6. Shevonne Dreher testified that she earned a degree in clinical exercise science and believes the proposed pool would benefit her grandparents. She testified that a neighborhood swimming pool does not exist in the community.

7. Annette Dreher testified that an uphill slope of about 3 feet exists at the edge of the yard where the proposed fence will be built. Exhs. 19(A), (D) and (E). She stated that photographs submitted illustrate that there is no other (suitable) place on the subject property to build the pool other than the proposed location. Exhs. 5(A) through (C), 19(A) through (G). *See also* Exhs. 11(B) through (E). She noted that there will be 16 feet between the proposed fence and the street curb.

8. She testified that there are quite a few fences on properties in the community, including a 6-foot wooden fence located in a yard two houses from the subject property (Lot 24). Exh. 19(E). She further stated that several wooden fences are located on their street (Kawa Court) and several vinyl fences exist on the next street.

9. She stated that there are several neighborhood properties with swimming pools, one of which is located directly behind Shirley Evans' property (Lot 25 next door) and another behind Everett Jones' property (Lot 10 across from the cul-de-sac). *See* Exh. 11(A).

10. Darrell Dreher stated that the location of the proposed 6-foot fence would not cause any blockage of visibility for traffic. Exhs. 19(B) and (C).

11. Cornelius Haynes, owner of property across the cul-de-sac (Lot 23) from Petitioners' property explained that Petitioners' proposed pool and fence will be located behind their garage. Exhs. 20(A), (C) and (E). He stated that, therefore, it is debatable whether the proposed fence would block any view of the corner (Exhs. 20(B) through (E)) and testified that he can only see as far as Petitioners' driveway from his front door (Exh. 20(E)). He is concerned that if fencing spreads, neighborhood standards may not be maintained and resale value will be affected.

12. Shirley Evans, owner of Lot 25 next door, testified that Petitioners' back yard is directly adjacent to her front yard. Exhs. 24(A) and (B). She stated that a Declaration of Covenants which covers "Lots 1-38 both inclusive of Block J" and several other lots run with the land and should be enforced. Exh. 28.³

² Pursuant to Sections 4-209 and 4-255 of the Zoning Ordinance, an outdoor residential swimming pool shall be enclosed by a barrier the top of which shall be at least six (6) feet above grade.

³ Specifically, the covenants, in pertinent parts, state that:

2. No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to the market value being commensurate with the existing structures, quality of workmanship and material, harmony of external design with existing structures, [...] and as to location with respect to topography and finish grade elevations. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line unless similarly approved.

14. Enforcement shall be by proceedings *at law or in equity* against any person or persons violating or attempting to violate any covenants to either restrain violations or recover damages. (Emphasis added.) (Exh. 27)

13. Ms. Evans stated that there must be adequate visibility for drivers of vehicles entering and exiting the cul-de-sac and maneuvering past parked vehicles in the cul-de-sac. Exhs. 23(A) and (B). She stated that having the proposed 6-foot fence and swimming pool constructed adjacent to her front yard would negatively impact her property value. Exhs. 24(A) and (B). She testified that noise can already be heard from a pool in the next cul-de-sac and she is concerned about noise levels in Kawa Court from the proposed pool. Exhs. 25(A) and (B). She also expressed concern that the proximity of the proposed swimming pool so close to her front yard poses an unknown environmental impact; construction could pose problems with property lines, drainage issues and health concerns if not maintained properly. Exh. 26.

14. She testified that she is aware of other fences in the subdivision, but the ones she has seen are behind, not to the side of the house or adjacent to someone's front yard.

15. Freda Brockington, owner of property next door to Petitioners on Aten Street (Lot 27), testified that she understands the concerns raised by Mr. Haynes and Ms. Evans, but believes on a corner lot a fence will be seen no matter where it is located and the proposed fence might be better to view than the back of Petitioners' house. She stated that she has been "working" in real estate for 20 years and believes swimming pools generally increase property values and become a problem only if the property is not maintained. She recalled that a property in the next block has a white vinyl fence and a property in the next cul-de-sac has a pool.

16. Everett Jones, owner of property across Aten Street from the cul-de-sac (Lot 10), testified that because the subject property is not located in his cul-de-sac, the proposed fence will not directly affect him. He stated that a swimming pool and fence exist on property located directly behind him and he himself is planning to construct a fence in the future.

17. Gerald Lucas, Vice President, Tantallon North Area Civic Association ("Association"), testified that the Association is a civic organization that does not have covenants. He understands, however, that the covenants apply to about 87 or so other properties in Tantallon North area where houses were built by an earlier developer. He testified that there are several properties in Tantallon North that have fences that are generally located only on the side or to the back of the existing dwelling with no portion in front of the house to impede any view. He stated that many of these fences are wooden fences, but a few are vinyl. He further stated that the only fence in Tantallon North that is in front of the house is a 4-foot iron fence on Autumnwood Lane. He explained that the Association took the position that that the proposed fence should not be 6 feet because it would be inconsistent with (the appearance of) the community.

18. He further offered, however, that the Association finds that the subject fence would be located more on the side as opposed to the front of the home and although the fence might impede Ms. Evans' view of Aten Street, it would not impede her view of Kawa Court, the street on which she lives.

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 property being a corner lot, the property being located on the lip of a cul-de-sac, the dwelling facing the legal side street, the shallowness of the yard behind the dwelling, the only suitable location for Petitioners' swimming pool being in the legal front and side yards, a fence at least 6 feet in height being required by County Code Sections 4-209 and 4-255 to enclose a swimming pool, other assorted neighborhood fencing existing (including on Kawa Court), other private swimming pools existing in the community, 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(s) of the property.

BE IT THEREFORE RESOLVED, by majority vote, Ms. Mack abstaining, that waivers of the fence location and height requirements for a fence in the front yard on a corner lot in order to construct a 6-foot white vinyl privacy fence with lattice in the front yard on the property located at Lot 26, Block J, Tantallon North Subdivision, being 601 Kawa Court, Fort Washington, 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 2, and the approved elevation plans, Exhibits 3(a) and (b).

BOARD OF ZONING APPEALS

By: (Original Signed)
Albert C. Scott, Vice Chairman

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.