

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-3-15 Adrienne Weaver

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: March 11, 2015.

CERTIFICATE OF SERVICE

This is to certify that on June 1, 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: 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: Adrienne Weaver
Appeal No.: V-3-15
Subject Property: Lot 28, Block B, Wildercroft Subdivision, being 6503 Good Luck Road, Riverdale,
Prince George's County, Maryland
Witnesses: Edward Weaver, Petitioner's father
Alfred Whitmore, neighbor
Margaret Colon-Diaz, neighbor
Linda Oliver, neighbor
Thomas Powers, owner of adjoining property (tenant on property)
Heard: February 25, 2015; Decided: March 11, 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 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 a variance from Section 27-442(i)(Table VIII) of the Zoning Ordinance, which prescribes that accessory buildings used for housing animals shall be located 25 feet from any side or rear lot line. Petitioner proposes to construct a dog kennel. Variances of 11 feet left side, 13 feet right side and 20 feet rear lot line setbacks for a dog kennel are requested.

Evidence Presented

The following testimony and evidence were presented to the Board for its consideration:

1. The property contains 25,740 square feet, is zoned R-R (Rural Residential) and is improved with a single-family dwelling and driveway. Exhibits ("Exhs.") 2, 4, 14 and 15. The single-family dwelling was built in 1920. Exhs. 14 and 15.
2. The property fronts on Greenbelt Road approximately midway between its intersection with Oakland and Auburn Avenues. Exh. 16(A).
3. The property is an irregularly shaped lot. Exhs. 2, 4, 10 and 11. The existing asphalt driveway is long and extends from the street to the yard behind the house where the driveway forms a circular loop. Exhs. 2 and 16(A).
4. The property was originally subdivided in 1985 (as Lot 24), but was legally created in its current configuration when a plat was recorded in 1993 to show and validate a lot line adjustment. Exhs. 4 through 10 and 18.
5. Petitioner would like to construct a 15' x 40' dog kennel in the rear yard, but variances must be approved before a building permit may be issued. Since the proposed kennel, which would be located at the end of an existing circular drive, would be 14 feet from the left side lot line, 12 feet from the right side lot line and 5 feet from the rear lot line, variances of 11 feet left side, 13 feet right side and 20 feet rear lot line setbacks for a dog kennel were requested.

6. Petitioner testified that she has six dogs, four bouviers and two American bulldogs, for which she would like to build the proposed kennel. See Exhs. 28 through 33. Petitioner stated that the proposed kennel would have six runs, each run having 6-foot fencing, and the dogs would not have access to run freely around the yard.

7. She stated that her lot is long and narrow and because of the location of her house on the lot, the only feasible place to put the kennel is in the back portion of the lot. She explained that because the lot is only 66 feet wide at the rear and the kennel would be 40 feet long, there is insufficient space to meet the required 25-foot setbacks in the rear yard. She stated that she would like the kennel in the rear to be as far away from the street as possible to reduce the barking. Petitioner explained that without a variance she would have to relocate her driveway to the right side area on her property that would then affect the Whitmore and Colon-Diaz (Lots 22 & 23, Block B) properties.

8. She explained that because of her allergies the dogs are currently placed in the rear yard on a tether. She stated that because the dogs were outside more, the dogs have made more noise. She explained that the dogs are outside when the weather is sufficiently warm, each dog has its own doghouse with straw and water, and the dogs do not remain out overnight.

9. Petitioner stated that she had discussed her kennel plan with her neighbors with the exception of Mr. Whitmore and Mr. Powers. She stated that neighbor Linda Oliver and her daughter (Lot 23, Block B) objected to the proposed kennel because of its impact on the sale of their property.

10. Petitioner testified that three properties would be directly affected by locating the kennel in the far rear of the property – namely, the Whitmore (Lot 22, Block B), Powers (Lot 28) and Mayhew (Part of Lot 2, Block B) properties. See also Exhs. 2, 10 and 11. She explained that the openings in the proposed kennel would face away from the Powers property.

11. Alfred Whitmore, whose property backs up to one side of Petitioner's rear yard, opposed the proposed location of the kennel. He testified that he has a swimming pool and the dogs prevent him from enjoying his back yard.

12. Thomas Powers, the owner of the property located behind Petitioner's property (Exhs. 37 and 38), testified that his property is the one would be most affected by the proposed location of the kennel and is opposed to the request. He stated that his house is located 12 feet from the rear property line shared with Petitioner where the proposed kennel would be built (Exhs. 16(A), 39(A) and (B)). He submitted a letter from his tenant voicing concerns about Petitioner's dogs never being allowed indoors and barking all day and night. Exh. 40. He opined that a privacy fence constructed between the proposed kennel and his house will not mitigate dog smell or noise.

13. Linda Oliver, whose property adjoins Mr. Whitmore's property and also backs up to the side of Petitioner's property, opposed the variance request.

14. Edward Weaver, Petitioner's father, believed that no-bark collars would work for the dogs and explained that the dog noises were not derived solely from his daughter's dogs.

15. Petitioner testified that as a show of good faith, she has ordered no-bark collars for all her dogs. Exh. 36. She stated that she plans on keeping the no-bark collars on the dogs from 8:00 P.M. until 8:00 A.M., which is a more generous allotment of time than required by the noise ordinance for her area, which she believes is 10:00 P.M. to 7:00 A.M.

16. Petitioner also testified that there are at least four other properties with dogs "around" her property, but she is not aware of any other kennels in the neighborhood. She submitted a map indicating the number and types of dogs on her lot and the surrounding properties. Exh. 34.

17. The Subdivision Section of The Maryland-National Capital Park and Planning Commission reviewed the request and stated that the current deed recorded at Liber 31356/ Folio 126 correctly reflects the legal description of the property (Lot 28, Block B) and the SDAT property description appears to be incorrect in referencing part of Lot 27 and part of Lot 28. Exh. 18.

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 presented, the Board finds that:

1. The subject property narrows in the rear and the lot is extremely odd shaped, particularly compared to adjoining lots. See Exh. 10.
2. The strict application of the Zoning Ordinance would not result, however, in peculiar and unusual practical difficulties or an exceptional or undue hardship upon the owner of the property. Petitioner testified and evidence (Exh. 2) was presented to show that sufficient area is available for a kennel to be located along the right side of the subject property without a variance.

BE IT THEREFORE RESOLVED, by majority vote, Ms. Mack absent, that 11 feet left side, 13 feet right side and 20 feet rear lot line setbacks for a dog kennel in order to construct a 15' x 40 dog kennel located in the rear yard on the property located at Lot 28, Block B, Wildercroft Subdivision, being 6503 Good Luck Road, Riverdale, Prince George's County, Maryland, are hereby DENIED.

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 27-234 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.