

NOTICE OF FINAL DECISION
OF BOARD OF APPEALS

RE: Case No. V-43-13 Brian Stoute

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: July 10, 2013 .

CERTIFICATE OF SERVICE

This is to certify that on August 20, 2013 , 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
 Ashleigh Cluster Homeowners Association, Inc.
 Other Interested Parties

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

Petitioner: Brian Stoute

Appeal No.: V-43-13

Subject Property: Lot 24, Block C, Ashleigh Cluster Subdivision, being 14917 Doveheart Lane, Bowie,
Prince George's County, Maryland

Witnesses: Natalie Stoute, wife of Petitioner

Kenneth Green, neighbor & vice president of Ashleigh Cluster Homeowners Association

Heard and Decided: July 10, 2013

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 27-420(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 or side yard shall not be more than four (4) feet high without the approval of a variance. Petitioner proposes to construct a 6-foot vinyl privacy fence on a corner lot in the side yard abutting a street. Waivers of the location and height requirements for a fence in the side 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 1998, contains 15,730 square feet, is zoned R-R (Rural Residential) and is improved with a single-family dwelling and driveway. Exhibits ("Exhs.") 3, 5, 11 and 12. The existing dwelling was built in 2010. Exhs. 11 and 12.
2. The property is a corner lot, with the house facing the legal front street. Exh. 3. The property is on a cul-de-sac located within an approved cluster subdivision. Exhs. 3, 5, 13(A), 18 and 19.
3. Petitioner would like to construct a 6-foot vinyl privacy fence around the back yard (Exhs. 2 and 3), but variances are needed to obtain a building permit. Since the property is a corner lot and the fence would exceed 4 feet in height and extend past the side of the dwelling into the side yard abutting a street, waivers of the fence location and height requirements were requested. Exh. 15.
4. Petitioner stated that the proposed fence would be constructed inside the property line and would not obstruct the community driveway/walkway next to the rear yard. Petitioner further stated that the fence would serve as a protective barrier for his two young children when they play in the backyard and explained that he intends to build a pool within the backyard and the 6-foot fence would satisfy the requirement for the height of a fence around a future swimming pool. Exh. 2.
5. Petitioner testified that when he moved to the property, the land behind his house was vacant, but the driveway (road) next to the rear yard, which has not been named, now leads to three recently constructed

houses as well as a stormwater management pond on the other side of the driveway (road). Exhs. 6(C), 6(E), 6(F), 13(A) and 13(B). He explained that the walking trail behind his house does not concern him as much as the prospect of a lot of traffic on the driveway (road).

6. Natalie Stoute testified that a house across the street has a 6-foot wooden fence. Exh. 7. She stated that the proposed privacy fence would be khaki-colored with white posts. Exh. 4(b).

7. Ashleigh Cluster Homeowners Association, Inc. ("Association") approved the request. Exh. 8. Kenneth Green, Vice President of the Association, testified that there are no issues with regard to the proposed fence. He explained that a chain was put across the driveway/road because people were driving on the right-of-way and dumping.

8. The Subdivision Section of the Maryland-National Capital Park and Planning Commission reviewed the request with regard to the description of the property contained on the record plat of Ashleigh Cluster Subdivision (VJ 184 @ 62 – Lot 24, Block C). The Subdivision Section stated that the proposed development is a home improvement as defined in Section 27-107.01(a) (117.1) of the Zoning Ordinance and if the variance is granted the applicant should contact the Urban Design Section to determine if a revision to Detailed Site Plan DSP-95103 is required prior to building permit. Exh. 19.

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 located on a cul-de-sac, an unnamed driveway next to the rear yard leading to previously vacant land where new houses are being constructed, the proposed fence intended to provide screening from increasing traffic and security for children playing in the yard, the fence not obstructing vehicular or pedestrian traffic on the unnamed driveway, Petitioner planning to construct a pool in the rear yard, County Code Section 4-140 requiring that a fence at least six (6) feet in height enclose a swimming pool for safety purposes, 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, unanimously, that waivers of the fence location and height requirements in order to construct a 6-foot vinyl privacy fence on a corner lot in the side yard abutting a street on the property located at Lot 24, Block C, Ashleigh Cluster Subdivision, being 14917 Doveheart Lane, Bowie, 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) and (b).

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.