

*NOTICE OF FINAL DECISION*

*OF BOARD OF APPEALS*

RE: Case No. V-54-16 Recycling Properties 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: June 22, 2016.

**CERTIFICATE OF SERVICE**

This is to certify that on July 13, 2016, 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  
DPIE/Inspections Division

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

Petitioner: Recycling Properties LLC

Appeal No.: V-54-16

Subject Property: Parcel K, Pebbles' Addition to Kenilworth Subdivision, being 1710 Olive Street, Capitol Heights, Prince George's County, Maryland

Counsel for Petitioner: Traci Scudder, Esq.

Witnesses: Paul Tharp, Information Officer, Recycling Properties LLC

Malak Bahrami, Little Diversified Architectural Consulting

Brent O'Connell, Construction Standards Inspector, Department of Permitting, Inspections and Enforcement ("DPIE")

Heard and Decided: June 22, 2016

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 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 27-474(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. Petitioner proposes to validate and obtain a building permit for an above-ground water tank. A variance of 26 feet front street line setback from the ultimate right-of-way of Olive Street is requested.

Evidence Presented

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

1. The property contains 170,575 square feet (3.9 acres), is zoned I-2 (Heavy Industrial) and is improved with a one-story block building, two warehouses, a shop area and parking, scales and parking and driveway area. Exhibits ("Exhs.") 2, 10, 11 and 12(A) thru (F).
2. The existing right-of-way width shown on the submitted site plan for Olive Street is 60 feet. Exh. 2. Since the ultimate right-of-way width of Olive Street is 70 feet, the front street line is considered to be set back 35 feet from the center line of Olive Street.
3. In 1990, the Board granted (Appeal No. 10511) a waiver of the fence height requirement to erect an 8-foot fence at the property line. Exh. 6.
4. Petitioner was cited by DPIE with Violation Notice BVN 45866-14-0 ("Violation Notice"), dated November 21, 2014, requiring that permit(s) be obtained for work done on the property, "including but not limited to footing and foundation wall installed", or the work be removed. Exh. 7.

5. DPIE Inspector O'Connell testified that he did not issue the Violation Notice to Petitioner (citing that the issuing inspector has retired), but confirmed that the water tank needs a building permit.

6. Petitioner would like to obtain a building permit for a 44' x 45' above-ground water tank (Exhs. 3(a) thru (c)), but a variance is required. Since the tank is located approximately 4 feet from the front street line at the closest point, a variance of 26 feet front street line setback from the ultimate right-of-way of Olive Street was requested. Exh. 13.

7. Paul Tharp testified that the subject property is located on the west side of Olive Street just north of S Street in Capitol Heights; to the north is Addison Road, to the south all the way to US Route 50 is I-2 (Heavy Industrial) zoned property. He stated that the property is improved with two warehouses, one each on the northern and southern borders with parking area in between.

8. He further testified that Petitioner purchased the property about 10 years ago and currently operates a non-ferrous (non-magnetic) recycling business in the southern and western portions of the building. He explained that Petitioner owns the two properties on S Street to the north which accommodate non-ferrous metals being brought in, a property across Olive Street that is part of an industrial complex where non-ferrous processing is done in a warehouse at the corner of Olive and S Streets, and property to the west where many who work in the industrial complex park their vehicles. He stated that to the south are the back ends of residential properties along Addison Street. *See* Exhs. 12(A) and (C) thru (F).

9. He further testified that a water holding tank was put in at the southeast corner of the subject property, the highest point in the property, so that large amounts of water can be fed to a media plant for non-ferrous processing. He stated that normal 2-inch water supply lines are too small and the tank is filled from a nearby hydrant on Olive Street next to the southern warehouse because the hydrant provides enough water volume and pressure.

10. Mr. Tharp stated that the water tank was built after it was wrongly assumed that the setback variance approved in 1990 for the 8-foot fence would cover the tank because it would be inside the fence. He explained that operation of the processing business is not possible without the tank.

11. Malak Bahrami testified that the tank stores a large volume of pre-processing water that is needed. He explained that this is clean water and that once the "bad" water is required by the assembly line that it is a part of, they draw down the tank and process or "wash out" the water and whatever can be is recycled back into the tank. He stated that the tank is gravity-fed and its hydraulic pressure is provided by the tank's location on the site (the highest point). He further stated that the tank's location is the closest to the water source – the hydrant – and this proximity reduces the number of times and quantity of water taken in, thereby reducing any drain on the fire suppression system.

#### 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 complies with the applicable standards set forth in Section 27-230, more specifically:

Due to the location of the property in an industrial area, the topography of the property, the water tank being built after a wrong assumption that the previous variance approval was sufficient because the tank is located behind the 8-foot fence, the tank being necessary to the operation on the site, the tank needing more than normal water volume and pressure, the tank being gravity-fed, the tank's location being the highest point on the site, the tank's location close to its water source (hydrant), proximity to the water source reducing the number of times and quantity of water taken in and reducing drain on the fire suppression system, 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 a variance of 26 feet front street line setback from the ultimate right-of-way of Olive Street in order to validate and obtain a building permit for a 44' x 45' above-ground water tank on the property located at Parcel K, Pebbles' Addition to Kenilworth Subdivision, being 1710 Olive Street, Capitol Heights, Prince George's County, Maryland, be and is hereby APPROVED. Approval of the variance is contingent upon development in compliance with the approved site plan, Exhibit 2, and the approved elevation plans, Exhibits 3(a) thru (c).

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.