



# THE PRINCE GEORGE'S COUNTY GOVERNMENT

BOARD OF ZONING APPEALS

BOARD OF ADMINISTRATIVE APPEALS

WAYNE K. CURRY COUNTY ADMINISTRATION BUILDING, LARGO, MARYLAND 20774  
TELEPHONE (301) 952-3220

## *NOTICE OF FINAL DECISION*

## *OF BOARD OF APPEALS*

RE: Case No. V-117-21 Cheryl Lowe

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 8, 2022

## **CERTIFICATE OF SERVICE**

This is to certify that on November 3, 2022, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

A handwritten signature in black ink, appearing to read "Barbara J. Stone". Below the signature, the name "Barbara J. Stone" is printed in a smaller, sans-serif font, followed by the title "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*

Petitioners: Cheryl Lowe

Appeal No.: V-117-21

Subject Property: Parcel 76, Tax Map 107, Grid C3, being 6300 Kirby Road, Clinton, Prince George's County, Maryland

Counsel for Petitioner: Bruce Johnson, Esq.

Heard: March 9, 2022; Decided: June 8, 2022

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 27-442(i)(Table VIII), which prescribes that accessory buildings shall be set back 60 feet from the front street line, 2 feet from any side or rear lot line, shall not exceed 15 feet in height and generally be located only in the rear yard, or in the yard opposite the designated front of the main building on lots having no rear yard (through lots) and on corner lots where the designated front of the main building faces the side street. Petitioner proposes to validate existing conditions (location of accessory buildings (1 shed and garage) and obtain a building permit for the construction of a 6-foot wooden privacy fence. Variances of 1-foot rear lot line setback for the shed and 2 feet rear lot line setback for the accessory buildings (garage) and a waiver of the fence location and height requirements for a fence over 4 feet in height in the front yard/side yard (abutting Kirby Road) are requested.

**Evidence Presented**

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

1. The property was subdivided by deed in 1997, contains 30,178 square feet, is Zoned R-80 (One-Family Detached Residential) and is improved with a single-family dwelling, driveway, 2 sheds, two covered areas and garage. Exhibits (Exhs.) 2 (A),<sup>1</sup>

2. Petitioner proposes to validate existing two conditions (1 shed and a garage) and obtain a building permit for the construction of a 6-foot wooden privacy fence to be located on the front and left sides of the property. Variances of 1-foot rear lot line setback for one shed and 2 feet rear lot line setback for the third shed and a waiver of the fence location and height requirements for a fence over 4 feet in height in the front yard/side yard (abutting Kirby Road) were requested. Exhs. 2 (A), 3, 4, 7, 8, 9 (A) thru (F) and 17.

3. Counsel Bruce Johnson questioned Petitioner Cheryl Lowe who stated:

- a) The property was purchased in 1995.
- b) The property is almost or a little over  $\frac{3}{4}$  of an acre. Originally, when Ms. Rahman and her ex-husband bought the property, it had flat land next to it on the left side, if you were looking at

<sup>1</sup> The Board notes that two additional sheds will be removed and are not addressed herein, and another shed, fence and a portion of the driveway are located off of the subject property which is identified under L. 1977 and F. 356 as Parcel 2, under the ownership of Prince George's Venture. That adjoining property may be a storm water pond. See Exhs. 2 (A), 8, and 10 (C) and 17 (PGAtlas photos).

the house from the street. On that side, a sediment pond was put in because construction was done on Route 5. Now, Maryland State owns a portion of her property. A good portion of that area is located going down the driveway.

- c) Petitioner is seeking replacement of the existing 6-foot fence which is falling apart and dilapidated. Parts of the fence are missing and have to be reinforced. She has one commercial property, in the front of her property, which is across the street being Southern Maryland Oil (gas station). To the left of her property is a single-family dwelling and to the right is a possible storm water pond.
- d) The back of the subject property borders woods on adjoining property owned by Korean Baptist Church of Washington. She has a 21-year-old disabled daughter who lives with her and one of the reasons why she wanted the proposed tall fence (separating the woods) was to protect her children.
- e) The traffic from Old Branch Avenue, which is a main thoroughfare, carries both residential and commercial vehicles including tractor-trailers and dump trucks. During rush hour it is very busy as many people use Old Branch Avenue as an arterial to exit Route 5.
- f) There are many commercial buildings surrounding and adjacent to her property.
- g) The 6-feet fence is needed because of the surrounding commercial properties
- h) She has two rather large Mastiff breed dogs, and a 4-foot fence would not stop these dogs. With the 6-foot fence, the dogs would be allowed to roam the property freely.
- i) She is aware of break-ins to vehicles and houses in the area and a tall fence will provide safety. Exhs, 2 (A), 3, 4, 7, 8, 9 (A) thru (F) and 17.

4. She further testified that the plastic shed and the shed that is actually a woodshed will be removed.

5. She explained that the vehicles parked on the property belong to friends who carpool or commute. She thought that if their cars were registered and tagged it would be legal to park the vehicles on her property. She does not charge for the parking although at least 6 of the vehicles belong to her friends who commute or carpool. She was not aware that she could not have a parking area on her property for those vehicles without a Use & Occupancy permit. Exhs. 2 (A), 3, 4, 7, 8, 9 (A) thru (F) and 17.

6. The driveway and shed that is on Parcel 2 will remain.<sup>2</sup> Exhs, 2 (A), 3, 4, 7, 8, 9 (A) thru (F) and 17.

7. She noted that she is unaware of any easement granting permission to cross adjoining property; being the "road taking" which occurred in the late 90s; and construction was performed on the "malfunction junction" where Route 5 and Alexander Ferry Road come together. Exhs, 2 (A), 3, 4, 7, 8, 9 (A) thru (F) and 17.

8. On December 30, 2021, an email was received from Jerry Mamaug, Duley and Associates, Inc. stated as indicated on the notes it may be "one or more" of the (conditions).

9. Exhs. 2(A) and 17, which are the site plan and revised site plan highlighted that:

A) The House Location Survey (Certified "Site Plan") drawn by Duley and Associates, Inc., has been found to be one or more of the following, which is identified on the site plan and Exhibit as Notice:

- 1.) Mathematically incorrect
- 2.) Incomplete
- 3.) Not found at all
- 4.) Does not agree with existing field monumentation
- 5.) Does not agree with tax assessment records
- 6.) Does not agree with the apparent lines of possession
- 7.) Does not agree with prior surveys

<sup>2</sup> Petitioner was advised by the Board that a variance cannot be granted for any structure or any drivable area which is located off the subject property.

B). Property may be subject to a road-way acquisition information shown hereon is a combined interpretation of some or all of the above.

C) A boundary survey is recommended to determine the exact location of boundary lines & improvements encroachments may exist. Exhs. 2 (A) thru (B),

10. On March 23, 2022, the case was heard as a Discussion/Decision case. A revised site plan removing the two sheds and showing both the new fence and old fence was submitted. The record was held open as Attorney Bruce Johnson has not reported any information regarding the easement. Exh. 17.

11. On April 20, 2022, the case was heard as a Discussion/Decision case with no response from Attorney Johnson. In an e-mail from Inspector William Edelen, he confirmed that there is no Use and Occupancy for the parking lot. Mr. Edelen stated that Petitioner must cease and desist from using the subject

12. On June 8, 2022, the case was heard as a Discussion/Decision case, but again no response from Attorney Bruce Johnson.

#### 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 do not comply with the applicable standards set forth in Section 27-230, more specifically:

1. The Board also finds that variances associated with the shed, fence and driveway portion that are located within the adjoining property, which is identified as Parcel 2, under the ownership of Prince George's Venture under L. 1977 and F. 356, cannot be granted.

2. The Board will not grant variances for the contested area in which a Use and Occupancy permit (the disputed "public" parking area) is required and has not been granted.

3. Sufficient information or documentation was never submitted related to the issue of an easement.

BE IT THEREFORE RESOLVED, unanimously, that variances of 1-foot rear lot line setback for the shed and 2 feet rear lot line setback for the accessory buildings (garage) and a waiver of the fence location and height requirements for a fence over 4 feet in height in the front yard/side yard (abutting Kirby Road) in order to validate the existing conditions and obtain a building permit for the construction of a 6-foot wooden privacy fence on the property located at 6300 Kirby Road, Clinton, Prince George's County, Maryland, be and are hereby DENIED.

BOARD OF ZONING APPEALS

By:

  
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 27-234 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.