

IN THE MATTER OF : BEFORE THE
STAVROU ASSOCIATES : HOWARD COUNTY
 : BOARD OF APPEALS
Petitioner : HEARING EXAMINER
 : BA Case No. 11-014V

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DECISION AND ORDER

On July 11, 2011, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Stavrou Associates for multiple setback variances related to a redevelopment proposal that includes a variety of residential structures in an R-A-15 (Residential-Apartments) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the notice and posting requirement of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Thomas Meachum, Esquire, represented the Petitioner. John J. Klein, Thomas Carbo, Stephen Moore, and Robert Vogel testified in support of the petition. William Nichols testified in opposition to the petition.

The Petitioner introduced into evidence the exhibits as follows.

1. Hilltop Redevelopment Community Meeting Schedule
2. Aerial photograph, and representational images of redevelopment proposal
3. Amended Variance Plan, dated July 2011
4. List of Requested Variances (six)

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. Property Identification. The subject property is located on the west side of Ellicott Mills Drive, about 200 feet south of Fels Lane, and is also known as 3558-3690 Mt. Aida Drive. The subject property is officially identified as Tax Map 25, Block 7, Parcel 291, Lots 1-73 and Parcels A and B (the Property).

2. General Property Description. The Howard County Housing Commission-owned, 15.23-acre Property is the site of the existing Hilltop Housing community, which is proposed to be redeveloped as a government use area in the Property's northern section, and a larger residential use area to the south and southeast. The variances requested are for the proposed residential use area (the Site).

3. Adjacent Properties. The R-A-15 and POR (Planned Office Research) area to the Site's north is a proposed recreation center and related facilities and parking. To the Site's east, across Ellicott Mills Drive, the R-VH (Residential: Village Housing) zoned properties are developed with residential uses fronting on Fels Lane and a public recreation center. The R-VH zoned properties to the south are in residential use and the dwellings front directly on or close to Main Street. To the west, the B-2 (Business: General) zoned property is used in part for a nonconforming outdoor storage yard use. The R-SC (Residential: Single Cluster) zoned property to the west is developed with single-family detached dwellings fronting on Klein Avenue, beyond a wooded area.

4. The Requested Variances. The Petitioner is proposing to redevelop the existing

Hilltop community with a variety of housing types and is therefore requesting the variances from Zoning Regulations Section 112.D as follows (Petitioner's Exhibit 4). The locations of these requested variances are denoted on the July 11, 2011 variance plan (Petitioner's Exhibit 3).

1. Section 112.D.4.a.(1)(a). A reduction in the 30-foot front structure setback to Ellicott Mills Drive (a Minor Arterial) to 29 feet
2. Section 112.D.4.c.(2)(a). A reduction in the 75-foot setback from an R-SC district for single-family attached dwellings to 62 feet
3. Section 112.D.4.c.(2)(b). A reduction in the 100-foot setback from an R-SC district for apartment dwellings to 60 feet
4. Section 112.D.4.c.(2)(c). A reduction in the setback from an R-SC district for "other structures or uses"

Retaining Wall: From 50 feet to 10 feet

Parking: From 50 feet to 11 feet

Fencing: From 50 feet to 3 feet

Dumpster and Enclosure: From 50 feet to 45 feet

Dumpster and Enclosure: From 50 feet to 18 feet

5. Section 112.D.4.c.(3)(a). A reduction in the 50-foot setback from an R-VH district for apartment dwellings to 30 feet
6. Section 112.D.4.c.(3)(b). A reduction in the setback from an R-VH district for "other structures and uses"

Parking Lot: From 20 feet to 10 feet

Fence: From 20 feet to 5 feet

Retaining Wall: From 20 feet to 9 feet

5. Thomas Carbo, Deputy Director for Howard County Housing, testified to overseeing all the housing programs for the Department of Housing and the Howard County Housing Commission. Regarding Hilltop Housing, he explained it was built around 1970 to replace substandard housing in the immediate area. He also provided a brief history of the County's

desire to provide a new vision for affordable housing, including the redevelopment of Hilltop as an inclusionary, mixed-income housing development. This redevelopment involves increasing the number of units to provide market rate housing, but the increase will be less than the total number of units permitted.

6. Stephen Moore of Stavrou Associates testified to being the Hilltop redeveloper. Referring to Petitioner's Exhibit 2A, he explained the current zoning allows 204 units and 198 units are proposed. The goal is to create a mixed income community with 90 affordable units and 108 market rate units, which would make the redevelopment financially feasible. Three residential product types are proposed: manor homes with private entrances, stacked townhouses, and garden apartments. The existing topography would be utilized to provide entrances and underground parking.

7. Robert Vogel testified to the Site's uniqueness relative to other area RA-15 apartment properties, maps of which were submitted with the supplement to the petition. Comparatively, the Site has several physical differences, including its "boot" shape and the topography resulting from the cut and fill design and construction of the original development, when land was removed from the Ellicott Mills Drive area and deposited on the Hilltop community site. There are steep slopes on portions of the Site, established landscaping and specimen trees. Additionally, the location of the Site in the Hudson Tiber watershed requires a county hundred-year stormwater management system and the project must meet state water quality standards.

8. Discussing the first variance request, a one-foot reduction in the front structure

setback to Ellicott Mills Drive, Mr. Vogel explained it is less than the existing encroachment. The second variance request, a 13-foot reduction in the setback from an R-SC district for single-family attached dwellings, is less than the current encroachment of the existing parking near the common western property line with Char-Mar Land Corporation. The third variance request reduces the 100-foot setback for apartment dwellings to 60 feet. The fourth variance from the required setback from an R-SC district for other structures and uses is to accommodate a retaining wall, fencing, parking and enclosed dumpsters. The fifth requested variance from the apartment dwelling setback is to accommodate the apartment dwellings, and the sixth, to accommodate a fence, parking and retaining wall. These variances are the minimum needed to preserve the wooded buffers, specimen trees, steep slopes and other environmental features as well as to maintain the buffer along Ellicott Mills Drive. Mr. Vogel also testified that the July 2011 variance plan incorporates two reductions in the variances originally requested (Nos. 4 and 6) and these changes are noted on Petitioner's Exhibit 4. As a result, the retaining walls along the west property line will be an additional three and four feet from the western property line.

9. Discussing the potential adverse impact on neighboring properties, Mr. Vogel testified the redevelopment is designed in part to retain the existing landscaping. New landscaping and an ornamental and functional fence along the west side go beyond the required Type C landscape buffer. The dumpsters will be landscaped and shielded and there will be a limitation on when the dumpsters are serviced. Internal landscaping will also help to mitigate the visual impact of the redevelopment.

10. In response to a question from the Hearing Examiner about the location of the

closest residence from the south property line, Mr. Vogel testified to meeting with the owner/s of the closest residence, which is about 110 feet away, and to continuing the discussion for possible additional landscaping at the appropriate time.

11. The Petitioner will address compliance with Zoning Regulations Section 134 lighting requirements during site development plan review.

12. John J. Klein, the Char-Mar Land Corporation property owner to the west of the site, testified to having no objection to the redevelopment project, including the location of dumpsters.

13. William Nichols testified that Hilltop residents trespass through the Ellicott Hills community close to the cul-de-sac off Chapel View Road. For this reason, he would prefer a solid fence to deter trespassers. Dumpsters would attract rats. He would like to see the redevelopment proposal revised to reduce its impact on the community.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made. Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a.(1) through (4), and therefore may be granted.

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property has an irregular "boot" shape and exceptional topography, including steep slopes. Other existing features include multiple specimen trees. All these conditions greatly reduce the resultant building envelope. Consequently, I conclude the Property's irregular shape, topography and other physical features are unique physical conditions causing the Petitioner practical difficulties in complying with the setback requirements, in accordance with Section 130.B.2.a.(1).

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

The proposed redevelopment, a mix of garden apartments, stacked townhouses and attached dwellings, are similar to those in the community or district in which the lot is located. As the evidence shows, the redevelopment will be well landscaped and feature multiple amenities. The redevelopment also includes underground parking and interior landscaping, which will help to mitigate its visual impact, and the Petitioner is proposing perimeter fencing and landscaping that exceeds minimum requirements. Importantly, the redevelopment will increase the public welfare through the establishment of a well designed, economically viable, and environmentally sustainable residential community. The variances will therefore not alter the essential character of the neighborhood in which the lot is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a.(2).

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties in complying strictly with the setback regulations arise from the original development of the property in the 1970s, which created the current topography and were not created by the Petitioner, in accordance with Section 130.B.2.a.(3).

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

The Petitioner is proposing fewer dwelling units than permitted. I conclude from Mr. Vogel's testimony that the project's design is intended to produce minimal disturbance to the Site's existing landscaping and topography. Within the intent and purpose of the regulations,

then, the variances are the minimum necessary to afford relief, in accordance with Section 130.B.2.a.(4).

ORDER

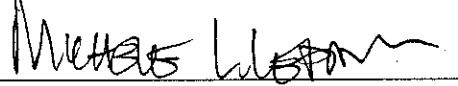
Based upon the foregoing, it is this 18th Day of July 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Stavrou Associates for multiple setback variances related to a redevelopment proposal that includes apartment buildings, single-family attached dwellings, and stacked townhouses in an R-A-15 (Residential-Apartments) Zoning District, is **GRANTED**;

Provided, however, that:

1. The variances shall apply only to the uses and structures as described in the petition submitted and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFavre

Date Mailed: _____

7/21/11

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.