

IN THE MATTER OF	:	BEFORE THE
LIGHTHOUSE SENIOR LIVING at ROSE MANOR, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 14-037V

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DECISION AND ORDER

On February 23, 2015, 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 Lighthouse Senior Living at Rose Manor, LLC, for a variance to reduce the required structure and use setback from a residential use from 75 feet to 16.3 feet for an addition to an existing structure in a POR (Planned Office Research) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations.

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Sang Oh, Esquire, represented the petitioner. Matthew Abel testified in support of the petition. Shirley Beaser, Vince Wilding, Evelyn Kellner and Patricia Hatton testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located in the 2nd Election District on the southwest corner of the North Ridge Road and Adderly Avenue intersection. It is identified

as Tax Map 17, Grid 23, Parcel 666, Lot C-2 and known as 3100 North Ridge Road (the Property).

2. Property Description. The 4.085-acre irregularly shaped Property is improved with a 27,529sf senior living facility (the structure). To the structure's north is an entranceway off Adderly Avenue and there is a parking lot to the east. Just before the parking lot and structures is a narrow driveway providing access to the side and rear of the structure and a dumpster area. This driveway runs along the northwestern lot line and at its closest, is 3.2' from the common property line with the adjacent age-restricted development, the Gatherings at Ellicott Mills. Topography is level, with small hills in the eastern and southern areas. There is also a large stormwater management facility in the southeastern portion of the Property.

3. Vicinal Properties. To the northwest, the POR zoned Parcel A, Lot C-4 is improved with the structures and uses of the Gatherings at Ellicott Mills, which is still under development. Parcel D to the southwest and west is currently unimproved and under review for an age-restricted adult housing community. The Property is bordered on the north by Adderly Avenue and on the east, by Ridge Road. The southern property closest to the Property is undeveloped near the common lot line.

4. Zoning History. The Technical Staff Report (TSR) discusses the zoning history of the Property. When the original structure was approved under SDP-84-049 on December 19, 1983, Parcels A and D were also zoned POR and had no residential uses and the approved SDP met all setbacks. In 2005, a building permit was approved for an addition located eleven feet from the

western lot line, there being no setback from POR zoned properties without a residential use.

On March 25, 2013, through SDP-12-038, a 127-unit age restricted development was approved on Parcel A, Lot C-4, the Gatherings at Ellicott Mills. Consequent to this approval, new development on the Property must adhere to the 75-foot setback from the adjoining POR zoned property unless a variance is requested and approved.

5. The Variance Request (§ 115.0.D.3.a). Because the proposed addition would encroach into the 75-foot setback, petitioner is requesting a reduction in the setback to 16.3 feet. The petition states the addition would continue the use of the senior living facility by adding eight dwelling units. The addition would have building materials to match the existing structure, including an asphalt shingled roof, brick and painted lap siding, painted synthetic wood trim, clad wood windows, aluminum and glass entrance doors and a membrane flat roof. The petition further states the addition must be constructed in a manner contributing to the existing functionality of the structure.

6. Matthew Abel testified to being a project engineer. He testified that the Property is unique because the structure is now noncompliant to the Zoning Regulations. Consequently, any addition along the common lot line with the Gatherings at Ellicott Mills requires a variance. The actual addition would comprise an additional 4,000±sf.

7. Shirley Beaser, Vince Wilding, Evelyn Kellner and Patricia Hatton, all residents of the Gatherings at Ellicott Mills, testified in opposition to the petition, contending there were other areas where the addition could be built and that it would be intrusive. They also expressed

concern about debris and odors from the dumpster uses, and the smell of cigarette smoke, apparently, from noisy employees taking an outside break by the side entrance and one resident wandering into their building. A light on the side entrance is on all the time and shines directly into one of the units. Ms. Kellner requested additional tree and vegetation plantings at an appropriate height along the rear driveway and leading to the addition, and the maintenance of all plantings. She also requested that any new lighting be shielded to prevent light intrusion into the adjacent residential use (Building One). The residents also testified that they are unable to use garages close to the common property line because of flooding and other problems.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.0.B.2.a of the Regulations. Pursuant to this section, the Hearing Examiner may grant a variance only if the Petitioner demonstrates compliance with all four variance criteria. Based upon the foregoing Findings of Fact, and for the reasons stated below, the Hearing Examiner finds the requested variance complies with Section 130.0.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 130.0.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. *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).

With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thus.

In the zoning context, the ‘unique’ aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. *In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls.* *North v. St. Mary’s County*, 99 Md. App. 502, 514, 638 A.2d 1175 (1994) (italics added).

Additionally, Section 128.0.B.2 of the Zoning Regulations permits additions to noncomplying structures through the variance process.

In this case, the Property is not only irregularly shaped, but the existing structure is lawfully noncompliant to the Zoning Regulations. Consequently, the location of the existing

structure, together with the Property's irregular shape, would cause any rear/side addition to encroach into the 75-foot setback. Given the location of the noncomplying structure and the proposed request for an addition designed to comply with the functional requirements of the use, practical difficulties arise in complying strictly with the setback regulation. Additionally, the Property is encumbered by steep slopes and a stormwater management facility, and structures are not permitted in this area. The Hearing Examiner concludes the Property's shape and the location of the noncomplying structure are unique conditions causing the Petitioner practical difficulty in complying with the 75-foot residential use setback requirement, in accordance with Section 130.0.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 addition would be set back 16.3 feet from the common lot line with the Gatherings at Ellicott Mills property. Although this setback would bring the proposed addition closer to the multi-story residences on Lot C-2, other portions of the existing, lawfully noncomplying structure are much closer to the property line and pre-date the adjoining residential uses, leading the Hearing Examiner to conclude the variance would not alter the essential character of the neighborhood or district.

The addition will be designed and built to preserve the structure's existing appearance. Concerning any substantial impairment to the appropriate use of adjacent property, the nearest residences of the Gatherings at Ellicott Mills, the Hearing Examiner heard testimony

that the very presence of the addition would be inappropriate. This general objection, in itself, is not a legal basis for denying a variance petition. However, these neighbors also expressed concerns about lighting and noise. The Hearing Examiner is therefore conditioning approval on any addition entrance/exit being used for emergency access only, on specifically excluding any deliveries or pickups at this entrance, and by further requiring that any outside lighting be kept to a minimum and shielded. Additionally, no outside area associated with the addition shall be used as a resident or employee "patio." As conditioned, the Hearing Examiner concludes the requested variance will not substantially impair the appropriate use or development of adjacent property and it will not be detrimental to the public welfare. The petition complies with Section 130.0.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 Petitioner did not create the practical difficulties, which are attributable to the Property's irregular shape, the lawfully noncomplying structure and the adjoining residential development. The petition complies with Section 130.0.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 proposed variance is for a reasonable use of the Property to ensure the continuing functionality of the use. It is therefore the minimum necessary to afford relief, in compliance with Section 130.0.B.2.a.(4).

Opposition Concerns

The Hearing Examiner acknowledges the concerns of the adjoining residents, but as she explained at the hearing, these concerns for the most part are not matters that may be considered in the decision to approve or deny the requested variance. Still, she noted during the proceeding, that some concerns, such as open, unenclosed dumpsters, may violate approved site development plans and could be subject to a zoning complaint. The Hearing Examiner further notes that their request for additional landscaping may not be viable, especially under pine trees. The Petitioner did agree to meet with the residents to discuss these concerns, as well as the possibility of planting additional vegetation on the adjoining property.

ORDER

Based upon the foregoing, it is this **18th Day of March 2015**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:


That the Petition of Lighthouse Senior Living at Rose Manor, LLC, for a variance to reduce the required structure and use setback from a residential use from 75 feet to 16.3 feet for an addition to an existing structure in a POR (Planned Office Research) Zoning District is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition as depicted on the Variance Plan and not to any other activities, uses, structures, or additions on the Property.
2. Any outdoor lighting shall be shielded from adjoining properties.
3. Any addition entrance/exit is for emergency use only. No deliveries or pickups are permitted.
4. No employee or resident shall use any curtilage of the addition as an outside employee break or smoke area or resident patio.
5. Petitioner shall obtain all required permits.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER


Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar 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.