

IN THE MATTER OF	:	BEFORE THE
<b>Structures R Us</b>	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 25-022V

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**DECISION AND ORDER**

On March 12, 2026, 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 Structures R Us (Petitioner) for a variance to reduce the minimum structure and use rear yard setback, from 10 feet to 5 feet, a variance of 5 ft, for an inground swimming pool and two sheds, in Council District 5, Tax Map 22, Grid 12, Parcel 360, Lot 4, also identified as 3704 Red Oak Lane, Ellicott City, Maryland, in the RR (Rural Residential) DEO (Density Exchange Option) Zoning District, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (the HCZR) for a variance from § 105.0.E.4.a.(4).(c)..

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

Hearing Examiner Rules of Procedure. Structures R Us (Petitioner), represented by Kourosh Mechanic and Faegheh Habibi (Property Owners) appeared in support of the Petition. Todd Sonnenleiter, Alex Chin, Bill Hester, John Roberts, Malika Abbas, Harry Walker and Micheal Ruane, all immediate neighbors of the subject Property, appeared in opposition.

Opposition submitted the following Exhibits:

- Ex 1. Plat 11184, filed April 13, 1994, a resubdivision of Lots 31 and 32 for the Lowe Property Lots 1-4
- Ex 2. Email from arborist re 1" per inch of tree diameter must be maintained around the tree roots to preserve a tree
- Ex 3. Email interchange with Petitioner regarding the continued maintenance of the trees on Mr. Sonneleiters property
- Ex 4. Google pictures showing the clearing of all the trees in the Forest Conservation Easement on the Property and all the landscaping within the 20 ft easement for existing Forest Buffer Retention area
- Ex 5. Photo of drainage swale along the rear of the Property and 100 ft Tulip Poplar on the Sonneleiter property two feet from the Property line.
- Ex 6. Photo of drainage swale along the rear of the Property
- Ex 7. Photo of pink boundary ribbons along the joint property line also showing the removal of all vegetation in the Forest Conservation Easement on the

Property and in the 20 ft easement for existing Forest Buffer Retention area

- Ex 8. Legislative intent of the Howard County Zoning Regulations
- Ex 9. Photo of 100 ft Tulip Poplar two feet from the mutual property line
- Ex 10. Photo of 100-inch tree circumference requiring a 31.8 ft radius of no tree root removal
- Ex 11. Photo of two-foot measurement from the tree to the property line
- Ex 12. Photo of tape measurement with mutually agreed property stakes
- Ex 13. Site Plan with no-disturbance area for the Tulip Poplar tree superimposed
- Ex 14. Google ariel of neighborhood 5/12/2023 prior to Petitioner purchase of the Property and subsequent tree/landscaping removal
- Ex 15. Photo from Sonneleiter home down 30 ft to the Property to the denuded area proposed for the pool and sheds
- Ex 16. October 15, 2025 violation for wood chip piles and tree removal on the Property
- Ex 17. Email with County arborist regarding arborists repeated request for corrective action and Petitioners failure to comply
- Ex 18. Arborists continued investigation and continued violations
- Ex 19. Recorded Covenants
- Ex 20. Ariel of denuded portion of Property

Ex 21. Site Plan superimposed over area of tree removal

### **FINDINGS OF FACT**

Based upon the evidence of record, the Hearing Examiner finds as follows:

1. Property Identification and Description. The approximately 3.17-acre property is located on the west side of Red Oak Lane, south of its intersection with Benson Branch Road, east of Md Rt 32, south of Triadelphia Rd, west of Folly Quarter Road and north of Benson Branch Park. The subject Property lies in Council District 5, is identified as Tax Map 22, Grid 12, Parcel 360, Lot 4, and is known as 3704 Red Oak Lane, Ellicott City, Maryland (the Property). The Property is developed with a single-family detached dwelling and is in a development of similar dwellings, lot sizes and shapes, topography and woodland.

The Property is subject to “Lowe Subdivision Declaration of Covenants, Conditions, and Restrictions”, filed January 16, 1997 and recorded in the Howard County Land Records at Liber 3901, Folio 0233. Paragraph 2, Article I “Covenants, Conditions and Restrictions” states in pertinent part, “Before any.... swimming pool... shall be commenced, constructed or erected on any Lot, the plans and specifications therefore, in duplicate, showing the nature, kind, shape, height, materials, color, locations and approximate cost of the Structure, alteration or alteration and the applicable landscape plan shall be submitted to and approved in writing by the Developer....”

2. Vicinal Properties. Adjoining properties are zoned RR-DEO and are developed

with single-family detached dwellings.

3. Agency Comments. There are no agency or department comments in opposition to the proposed variance request.

The Bureau of Environmental Health stated "The property owner will have to submit a waiver request to the Health Department Deputy Director (Jeff Williams) asking for a reduced setback from the septic tank to the proposed pool. The minimum setback requirement is 10 feet from a pool to a septic tank. As part of the waiver approval, the Health Department will require that the septic tank be field-located and the proposed pool should be staked out. For the best chance of a waiver approval, a minimum of 5 feet should be maintained from the pool and the septic tank. As part of the waiver process, a site visit from a licensed Health Specialist will occur before approval is given. At the time of a building permit, a site plan should show a measured distance between the pool and septic tank.

The Development Engineering Division takes NO EXCEPTION to the request to reduce the rear yard setback to 3' – 6" for the installation of a pool based on the justification presented in the Petition.

The Resource Conservation Division has no objection to the proposed variance.

The Department of Fire and Rescue Services has no comment on, nor objection to, this request.

The Division of Land Development has no objection to granting this rear setback variance and offers the following consideration: The proposed pool encroaches into a 20' easement for existing forest buffer retention. This buffer easement is not part of the Forest Conservation easement and appears to be in place to fulfill the perimeter landscaping

obligations that were in effect at the time of development. However, DLD was unable to locate the supplemental plans associated with this subdivision to confirm this landscaping requirement. The proposed pool should be sufficiently buffered from the adjacent property to meet the landscape requirements.

4. The Requested Variance. Petitioner is requesting a variance to reduce the minimum structure and use rear yard setback for a structure, from 10 feet to 5 feet, a variance of 5 feet, for an inground swimming pool. Petitioner is also requesting a variance of 5 feet from the 10-foot rear yard setback for the 2 additional sheds to be located near the pool.

5. Opposition. Lot 3, the subject Property, was created by resubdivision in 1994. Lot 3 includes a 30 ft Building Restriction Line (BRL) and a 20' easement for Forest Buffer Retention along the Sonneleiter abutting Property line. There is a drainage swale along this property line and at least one 100 ft Tulip Poplar on the Sonneleiter property two feet from the Property line.

The submitted Site Plan includes the drainage swale, the rise in topography from 456 to 460 from the front of the proposed pool to the rear of the Property, and the 20 ft easement for existing Forest Buffer Retention. Although the proposed pool does not include dimensions, Petitioner testified that he would like a rectangular pool 13'x25.4', a retaining wall with a fence on top, a walkway around the pool and pool coping, none of which are shown on the Site Plan.

Petitioner purchased the Property approximately one year ago and by October 2025 had removed the trees and landscaping in the Forest Conservation Easement area and in the 20 ft Forest Buffer Retention area, all without approval from the County or the

Developer as required by the 1997 Covenants. The only existing landscape buffering is on adjacent property like the Sonneleiters and the Ruanes.

Petitioner admits that he removed all landscape buffering from his Property and the variance request does not propose reforestation or any landscape plantings at all. A different-shaped pool would not require a variance, and the larger proposed shed could be relocated to outside the setback requirements. The pool could be more conveniently placed abutting the existing patio without necessitating a variance but would potentially require the relocation of a sewage line.

The proposed pool location will degrade and destabilize the Sonneleiter property and result in the loss of 100year old Tulip Poplars. The drainage swale was not addressed nor was a plan provided to protect the Sonneleiter property sloping down into the proposed pool area. The photos show that Petitioners house and pool are clearly visible to adjoining and neighboring homes now that Petitioner has denuded the Forest Conservation and Forest Buffer Retention areas.

In summary, (1) the proposed Site Plan lacks the necessary details regarding the dimensions of the pool and its attendant hardscape including a retaining wall, (2) the Site Plan fails to address the existing restrictions including the Covenants, the 20 ft easement for existing Forest Retention Buffer, and the Forest Conservation Easement, and (3) the required prerequisites of approval of a variance cannot be met as (a) the Property is not unique as it shares all of the characteristics of the neighborhood with large irregularly shaped wooded lots with sometimes severe topography, periodic flooding and water runoff and erosion problems, (b) the removal of all the trees and landscaping in the Forest Conservation Easement and Forest Buffer Retention area has changed the character of

the neighborhood and adversely affected the use and development of the neighborhood, (c) the practical difficulties or hardship are self-created as there many other locations for the pool and shed which do not require a variance, and (d) Petitioner is asking that his neighbors make sacrifices of their land, privacy and viewshed so that Petitioner does not have to.

### **CONCLUSIONS OF LAW**

The standards of variances are contained in HCZR § 130.0.B.2.a. 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 fails to comply with § 130.0.B.2.a.(1) through (4) and therefore may not 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.**

Compliance with the first criterion is a two-part test. 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).

The Property is not unique or different in physical characteristics from surrounding properties and there are no existing physical constraints which cause the Property Owners practical difficulty in complying with the current bulk area requirements for the minimum structure and use rear yard setback for structures in accordance with §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 variance will alter the essential character of the neighborhood in which the lot is located, will substantially impair the appropriate use or development of adjacent properties, and will be detrimental to the public welfare, in accordance with § 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 practical difficulty and hardship in complying strictly with the bulk regulations arise from circumstances which were created by the Property Owners, in accordance with §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 variance sought, a reduction of 5 feet from the minimum structure and use rear yard setback for structures, is not necessary to permit the reasonable construction and use of an inground swimming pool. Within the intent and purpose of the regulations, no variance is needed as the swimming pool and sheds can be developed at many other locations on the Property, in accordance with §130.0.B.2.a.(4).

**(5) That no variance be granted to the minimum criteria established in Section 131.0 or Conditional Uses except where specifically provided therein or in an historic district. Nothing herein shall be construed to prevent the granting of variances in any zoning district other than to the minimum criteria established in Section 131.0.**

The Subject Property is not located in a Historic District.

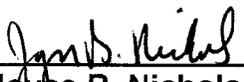
Not only does the instant request fail to comply with the required variance prerequisites, Petitioners failure to comply with the Covenants recorded on the Property. Covenants run with the land and were recorded prior to Petitioners purchase of the Property. Petitioners request for a rear yard setback variance for a swimming pool and two sheds is premature as Petitioner has not requested approval from his predecessor in interest, who created the lots and recorded the covenants, nor obtained approval in writing for the proposed swimming pool and two sheds. Until Petitioner can provide written approval of the proposal as required by the Covenants, your Examiner cannot find compliance with the variance request. Additionally, Petitioner must satisfactorily address the Forest Conservation Easement and the 20 ft easement for Forest Buffer Retention prior to consideration of a variance request.

**ORDER**

Based upon the foregoing, it is this 16th day of March, 2026, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Structures R Us for a variance to decrease the minimum rear yard structure and use setback for a structure, from 10 feet to 5 feet, a variance of 5 feet, in order to construct an inground swimming pool and construct two sheds, in Council District 5, Tax Map 22, Grid 12, Parcel 360, Lot 4, also identified as 3704 Red Oak Lane, Ellicott City, Maryland, in the RR (Rural Residential) DEO (Density Exchange Option) Zoning District, be and is hereby **DENIED**. The variance request is in violation of recorded Covenants on the Property and the Forest Retention Buffer shown on the Plat.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
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Joyce B. Nichols

**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.