

Tax Map/Block/Parcel
No. 74-14-795

Building Permit/Zoning
Certificate No. 91-2383

Case 3614

**OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND**

APPLICANT: Techstar, Inc.
c/o Dave Borkowski
12158 Mt. Albert Road
Ellicott City, Maryland 21043

AGENT: Davis, Renn & Associates, Inc.
P.O. Box 246
Hagerstown, Maryland 21741

REQUEST: Variances reducing the minimum required front yard of 60 feet to 30 feet for proposed lots 1, 7 and 8 of Marriott Wood subdivision, Section 2

LOCATION: Northeasterly side of Sunset Drive beginning about 100 feet southeast of Liberty Lake Drive intersection and extending about 700 feet to the southeast in Election District 5

BASES: Article 5C, Section 5.5; Article 15, Section 15.5; Ordinance 1E. (The Carroll County Zoning Ordinance)

HEARING HELD: September 24, 1991

On September 24, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning the requested variances.

The Board visited the site September 18, 1991, by viewing it from Sunset Drive.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board will deny the requested variances.

The pertinent findings determining the Board's decision include the following facts:

FINDINGS OF FACT

The 8.4 acre parcel of land is located on the northeasterly side of Sunset Drive southeast of Liberty Lake Drive intersection. It is completely wooded, with young growth of brush and trees.

The parcel is zoned "R-40,000" Residence District as depicted on zoning map 74A. With the exception of the adjoining lot to the northwest, fronting on Sunset Drive, which is zoned "R-20,000" Residence District, the adjoining properties northeast of Sunset Drive are zoned "R-40,000" Residence District. The notation on Applicant's Exhibit 1 that nearby properties to the southeast are zoned "R-20,000" Residence District is error. The lots located on the southwesterly side of Sunset Drive, opposite proposed lots 1, 7 and 8 are zoned "R-20,000" Residence District.

The configuration of the property is depicted by the Zoning Variance Plan for Marriott Wood II, identified as Applicant's Exhibit 2. The plan portrays the applicant's concept for the subdivision of the land into eight lots for purposes of residential development. Six of the lots would have the minimum required lot area of 40,000 square feet. Of the lots in question, lot 8 would have 43,000 square feet; lots 1 and 7 would have areas of 40,000 square feet.

The configuration of lot 1 is defined by exterior boundary lines of the property and the proposed cul-de-sac. The proposed cul-de-sac and division lines separating lots 6 and 8 define the configuration of lot 7. The existing southeasterly side property lines and division lines of lots 6 and 7, and a stormwater management area define lot 8.

Lots 1, 7 and 8 front on Sunset Drive. Lots 1 and 7 also front on a proposed cul-de-sac identified on the plan as Sunrise Court. As proposed, lots 1 and 7 would be corner lots. Although the front setback from Sunrise Court for lot 7 is incorrectly shown as 40 feet, instead of 60 feet, the buildable area is at least comparable to that of lot 1. As lot 8 is designed with a front yard of 60 feet and rear yard of 50 feet, a dwelling 25 feet in depth--as opposed to width--could be located on the lot. The proposed depth of the lot, as measured from the front property line to the proposed rear property line, appears to be the problem--not the wetland soil.

The applicant alleges:

1. Subdivision of the parcel for residential purposes is limited by terrain, a spring, the wet weather drainage course of the spring, wetland soils, and requirement of 30 feet of right-of-way for Sunset Drive measured from the center line of the road. (The identification and delineation of the wetland is from reference material only; not from on-site investigation. See General Notes; Applicant's Exhibit 2.)

2. Reduction of the minimum required front yard for lots 1, 7 and 8 would be compatible with the existing residences located on the opposite side of Sunset Drive and the residence on the adjoining lot to the northwest.
3. Without the variances to the minimum required front yard, the buildable areas of lots 1, 7 and 8 will not be sufficiently large to accommodate the size of dwellings that the applicant wishes to construct on the lots.
4. The economics pertaining to residential development of the property require maximum lotting of the parcel.

No evidence was submitted to substantiate the allegations other than the plans identified as Applicant's Exhibit 1 and 2.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The land use regulations for the "R-40,000" Residence District are expressed in Article 5C. Section 5C.5 specifies that the minimum required front yard for a dwelling is 60 feet; side yards are 20 feet; and, rear yards are 50 feet.

Article 4, Section 4.1 states:

The regulations set by this ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land except as hereinafter provided.

Article 20, Section 20.40 defines yard and reads:

An open space on the same lot with a principal building(s) which lies between such building(s) and the lot line and is open and unoccupied from the ground up.

- (a) Front yard. A yard extending across the full width of the lot and lying between the front lot line and the nearest line of the principal building.
- (b) Rear yard. A yard extending across the full width of the lot and lying between

the rear lot line and the nearest line of the principal building.

- (c) Side yard. A yard between the side line of the lot and the nearest line of the principal building and extending from the front yard to the rear yard.

Article 20, Section 20.25 defines a lot and reads in relevant part:

A piece or parcel of land occupied or intended to be occupied by a principal building and its accessory buildings and uses, including all open spaces required by this ordinance, and having frontage on a street as defined herein or a common open space in the case of multi-family dwellings within a Planned Unit Development. (Amended 4/18/88)

- (a) Lot corner. A lot abutting on two or more streets at their intersection, where the interior angle of the intersection does not exceed one hundred thirty-five (135) degrees.
- (b) Lot frontage. (Amended 2/15/68) The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as required herein, except that not more than one rear yard shall be required. (Emphasis added.)

Article 20, Section 20.39 defines a variance as:

...relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship. (Emphasis added.)

Article 15, Sections 15.0 and 15.5 read respectively and in relevant part:

The regulations specified in this ordinance shall be subject to the following exceptions, modifications, and interpretations:

The Board may authorize, upon appeal, in accordance with Section 17.2, variances from...yard regulations.... The Board may grant such variance only in cases where the strict compliance with the terms of this ordinance would result in practical difficulty and unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to public health, safety and general welfare. (Emphasis added.)

Article 17, Section 17.2 states in relevant part:

The Board shall have the following powers:

- (c) To authorize, upon appeal in special cases, such variance from the terms of the ordinance as will not be contrary to the public interests, where owing to special conditions, enforcement of the provisions of this ordinance will result in unwarranted hardship and injustice and which will most nearly accomplish the purpose and intent of the regulations of the Zoning Ordinance. (Emphasis added.)

REASONING

It is the applicant's burden of proof to establish that conditions peculiar to this property warrant relaxation of the strict enforcement of the minimum requirements of the zoning ordinance.

From the record, it is evident that: eight lots are the maximum number of lots that can be created by subdivision of the parcel; the buildable areas of lots 1 and 7 can accommodate relatively large dwellings without authorization of the requested variances; and, although the depth of the buildable area of lot 8 is about 25 feet, it is the direct result of the applicant's own concept plan. There is no evidence that the concept plan cannot be adjusted to improve the buildable area of lot 8 without diminishing the number of proposed lots.

From the testimony and evidence presented, it is evident that the requested variances are neither compelling nor urgent, but represent conveniences, and possibly economic advantages, to the applicant. The variances are unnecessary to allow residential development of the proposed lots, or subdivision of the parcel for residential development.

CONCLUSION

The requested variances are without merit and are hereby denied.

Oct. 22, 1991
Date

John Totura
John Totura, Chairman

JDN/bdc/C3614DEC
October 21, 1991