



REPORT TO THE BOARD OF APPEALS
Request for a Variance
Docket #1320
December 10, 2013

SUMMARY OF REQUEST

Property Owner: US Home Corporation

Applicant: Soltesz, Inc. (Agent: Patrick Wackerle, P.E.)

Project #: Docket #1320 (BOA 130022)

Project Request: The applicant is requesting a variance to the 40' set back from the golf course safety zone (building restriction line)

Subject Property: Located at 5071 Brideshead Court, Waldorf, MD, Tax Map 24, Parcel 149, Grid 14, Gleneagles, Parcel G, Lot G56

Zoning: Planned Unit Development (PUD)

Background: Per the Base Zone Regulations, Article VI, §297-93, activity within this zone is based on Docket 90. Docket 90 is guidelines between St. Charles and the Commissioners. These guidelines develop the PUD Rights and responsibilities of both parties.

Incorporated in Docket 90 was a requirement for a safety zone between the White Plains Golf Course and the subject subdivision known as Gleneagles Neighborhood Parcel G. The safety zone was established approximately 100' from the fairway of Hole #1. A fence along the property line of the golf course is required along the property line of the golf course which is to be designed to discourage intrusion onto the golf course and to reduce damage from golf balls. In addition, a 15' wide buffer containing trees, outside the safety zone is required.

The requirement also requires that all dwelling units adjacent to the golf course shall be located at least 40 feet from the safety zone, or 25 feet from the property line, whichever is greater. The subject lot (G56) is located directly behind Hole #1 and shows a requirement for an additional increase to the rear BRL (25' instead of 15') on the record plat. When the applicant applied for the building permit to construct the house on this lot, the site plan showed the normally required 15' rear building restriction instead of the required 25' rear building restriction as required as part of the safety zone requirement. Unfortunately, this was not picked up by the applicant (or the Zoning Reviewer) until after the house was built.

Special Exception #1320

Criteria for Approval and Findings:

Section 297-416, (B) & (C) of the Charles County Code provide the criteria that must be met for the Board to grant a variance.

Subsection (B) “The Board is authorized to grant variances from the strict application of these regulations when, by reason of exceptional narrowness, shallowness or shape of specific parcels of property or by reason of exceptional topographical conditions or other extraordinary situations or conditions of specific parcels of property, the strict application of the regulations of this chapter would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of said property. However, the Board of Appeals shall not grant variances that will substantially impair the intent, purpose and integrity of this chapter. This provision shall not be construed to permit the Board, under the guise of a variance, to change the permitted use of land.”

Pursuant to §297-416, J, The burden of persuasion and of presenting evidence sufficient to allow the Board to reach a conclusion that the required criteria listed in subsections B & C have been met remains with the applicant seeking the variance.

Staff Findings: *Staff does not find the existence of any exceptional narrowness, shallowness or shape of the property, or any exceptional topographical conditions or other extraordinary situations or conditions of the property that would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon the owner of said property due to the strict application of the regulations of this chapter.*

Subsection (C): In addition to the general required in Subsection B above, variance requests shall not be granted unless the following criteria are met:

- 1) That special conditions or circumstances exist that are unique to the subject property or structure and that a strict enforcement of the provisions would result in unwarranted hardship which is not generally shared by owners of property in the same land use classification.

Staff Finding: *Staff does not find that special conditions or circumstances exist that are unique to the subject property or structure and that a strict enforcement of the provisions would result in unwarranted hardship which is not generally shared by owners of property in the same land use classification.*

- 2) Strict enforcement of the provisions of this chapter would deprive the property owner of rights commonly shared by other owners of property in the area.

Staff Finding: *Strict enforcement of the provisions of this chapter will not deprive the property owner of rights commonly shared by other owners of property in the area.*

Special Exception #1320

- 3) That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the same zone/land use classification.

Staff Finding: *The granting of the requested variance could confer upon the applicant special privilege that would be denied to other owners of like property and/or structures within the same zone/land use classification unless a variance is submitted by such owners of like property and/or structures.*

- 4) The variance request is not based upon conditions or circumstances which are self-created or self-imposed.

Staff Finding: *The request is based upon conditions or circumstances which are self-created or self-imposed by the applicant. However, when the permit to build the house was submitted to Codes, Permits and Inspections Services, the Zoning Reviewer was not aware of and did not see the requirement for the safety zone on the record plat and approved the location as drawn.*

- 5) Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient justification for a variance.

Staff Finding: *The applicant is not claiming greater profitability or lack of knowledge of the restrictions.*

- 6) The proposed variance is consistent with the Charles County Comprehensive Plan.

Staff Finding: *The subject property is located in an area designated as Planned Unit Development (PUD) in the 2006 Comprehensive Plan. Staff finds that the proposed Variance for this property is not inconsistent with the 2006 Charles County Comprehensive Plan. We do not anticipate any adverse impacts to the surrounding area from the proposed variance.*

Although the variance request is self-created and all the requirements outlined in Subsection 297-416, (B) & (C), have not been met, staff recommends the board approve variance requested since the maps provided as part of their application does not show a negative impact on the surrounding properties. In addition, if the additional setback requirement was detected at time of building permit application by the Zoning Reviewer, this application would not be necessary as an after the fact request.

Attachments: Zoning, Vicinity, Aerial Maps

Prepared By: Cyndi C. Bilbra, Planning Technician

Special Exception #1320