

PUBLIC SEWER STATUS VERIFIED BY

ISSUE DATE: 09/09/11

PERMIT

P 535972

APPROVAL DATE: 12/1/11

A REPAIR

Septic Repair

ON-SITE SEWAGE DISPOSAL SYSTEM
HOWARD COUNTY HEALTH DEPARTMENT
BUREAU OF ENVIRONMENTAL HEALTH

Rajesh K. Chopra IS PERMITTED TO INSTALL ALTER

ADDRESS: 10308 castlefield st PHONE NUMBER: 410 750 9110

SUBDIVISION: _____ LOT NUMBER: _____

ADDRESS: 13306 Route 108 PROPERTY OWNER: Rajesh K. Chopra

SEPTIC TANK CAPACITY (GALLONS): 1500

PUMP CHAMBER CAPACITY (GALLONS): N/A

NUMBER OF BEDROOMS: 4

3.5' - 7'

SQUARE FEET OF HOUSE: <3500

LINEAR FEET OF TRENCH REQUIRED: 120

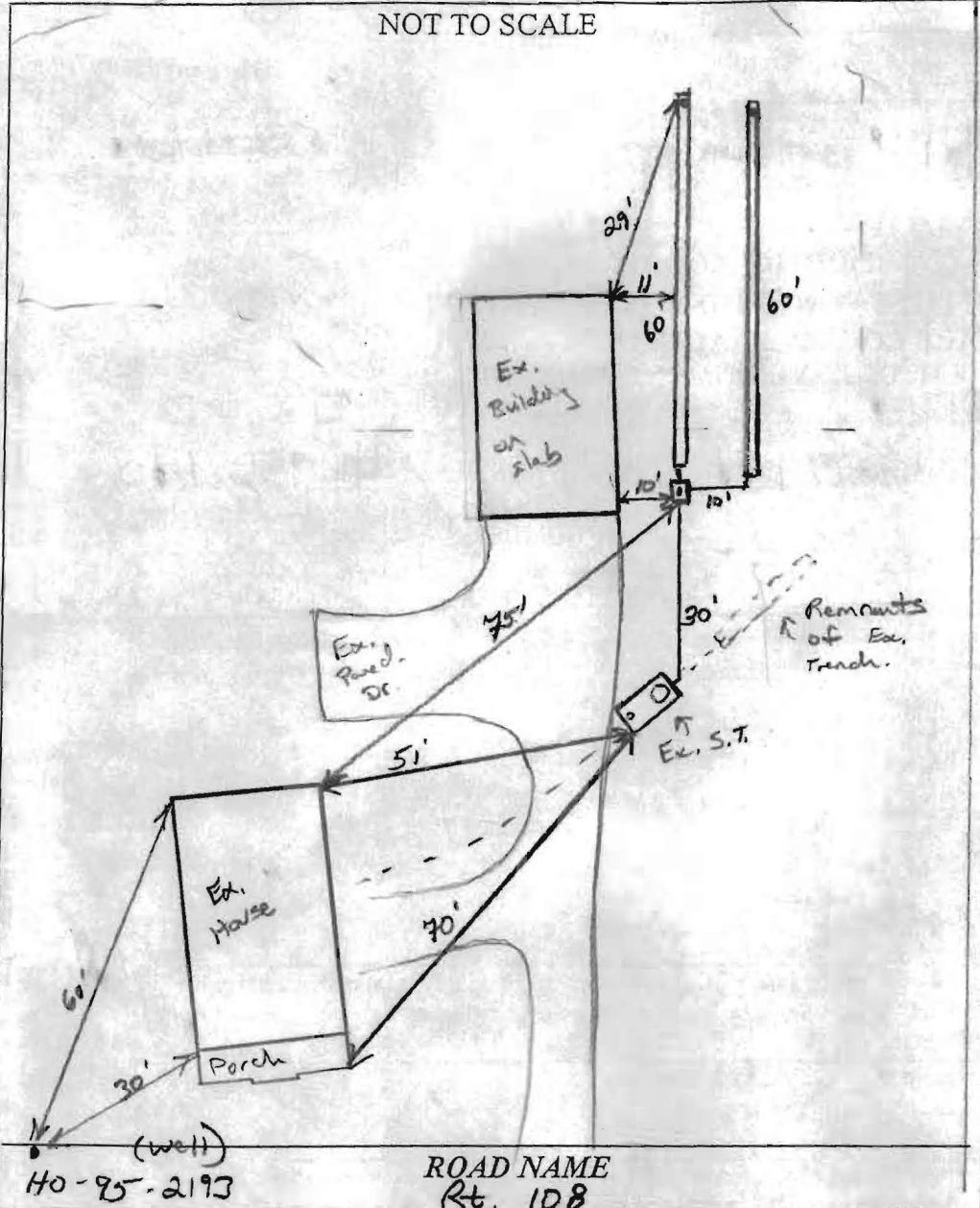
TRENCHES:	Trenches to be <u>2</u> feet wide. Inlet <u>4</u> feet below original grade. Bottom maximum depth <u>7</u> feet below grade. Effective area begins at <u> </u> feet below original grade with <u> </u> feet of stone below distribution pipe. <i>~47 ton #2 stone</i>
LOCATION:	To be determined at time of repair system layout. <u>2x60' trenches</u>
NOTES:	A new septic tank must be installed at least 100' removed from new well. Drywell may be kept per Sanitarian approval at time of repair layout. It will be filled with clean stone (3/4" or larger) with plumbing connecting the observation pipe installed in the middle. A trench will be added extending out from the drywell on contour within the approved septic reserve area.

PLANS APPROVED: K. Wolf DATE: 9/9/11

- NOTE: PERMIT VOID AFTER 2 YEARS
- NOTE: CONTRACTOR RESPONSIBLE FOR SCHEDULING A PRE-CONSTRUCTION INSPECTION FOR ALL INSTALLATIONS
- NOTE: WATERTIGHT SEPTIC TANKS REQUIRED
- NOTE: ALL PARTS OF SEPTIC SYSTEM SHALL BE 100 FEET FROM ANY WATER WELL
- NOTE: MANHOLE RISERS REQUIRED ON ALL SEPTIC TANKS AND PUMP CHAMBERS
- NOTE: AN ELECTRICAL PERMIT IS REQUIRED FOR INSTALLATION OF ANY ELECTRICAL COMPONENTS OF THE SYSTEM

NEITHER THE HOWARD COUNTY COUNCIL OR THE HEALTH DEPARTMENT IS RESPONSIBLE FOR THE SUCCESSFUL OPERATION OF ANY SYSTEM PERMITTEE RESPONSIBLE FOR OBTAINING FINAL APPROVAL ON THIS PERMIT CALL 410-313-1771 FOR INSPECTION OF SEPTIC SYSTEM

NOT TO SCALE



TRENCH/DRAINFIELD DATA		
WIDTH	INLET	BOTTOM
2'	4'	7.5'
NUMBER OF TRENCHES		2
TOTAL LENGTH		120'
ABSORPTION AREA		
DISTRIBUTION BOX LEVEL		Levelers
DISTRIBUTION BOX BAFFLE		Yes
DISTRIBUTION BOX PORT		Yes

SEPTIC TANK DATA	
SEPTIC TANK 1 LEVEL	Yes
MANUFACTURER	?
CAPACITY	1250? GAL
SEAM LOC	mid (not leaky)
TANK LID DEPTH	2.5'
BAFFLES	New Rear
BAFFLE FILTER	
MANHOLE LOC	Rear
6" PORT LOC	Front
WATERTIGHT TEST	OK
SLOTTED	NO
DATE ON LID	
PUMP/SEPTIC TANK LEVEL N/A	
MANUFACTURER	
CAPACITY	
SEAM LOC	
TANK LID DEPTH	
BAFFLES	
BAFFLE FILTER	
MANHOLE LOC	
6" PORT LOC	
WATERTIGHT TEST	
SLOTTED	
DATE ON LID	

PRE-CONSTRUCTION:

11/8/11 met w/ Hatfields on-site for layout. Contractor needs to find where ex. footing trench runs. Install 2x4's on center or w/ ex trench contour but stay at least 10' separation from trench. Depending on ex trench location, trenches may be installed above or below trench. New Dbox will be installed along w/ other on tank and new piping from tank out. (KW) 11/20/11

INSTALLATION:

starting they set Dbox per layout (~10' off corner of garage) and are now looking for ex trench. (KW)

11/30/11 (11am) New Dbox set per layout. Top trench installed lower trench started. Contractor found only parts of failed trench which seemed to have only 1' of stone. (KW)

12/1/11 (pm) system complete. New outlet baffles added to tank. OK to cover all work. Rep well letter to be sent out. (KW)

FINAL INSPECTOR K. Way DATE OF APPROVAL 12/1/11

IN THE MATTER OF : BEFORE THE
RAJESH CHOPRA : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 09-022C&V

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DECISION AND ORDER

On August 10, 2009, 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 Rajesh Chopra for approval of a 16-bed Nursing Home and Residential Care Facility Conditional Use (an assisted living facility) and a variance to reduce the 50-foot use setback from a public street right-of-way to 27 feet for a privacy fence in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District, filed pursuant to Sections 131.N.37 and 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to advertising notice of the hearing and posting the subject property as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the Petitioner. Joe Rutter testified in favor of the petition. Dan O'Leary, Glenn Price, Mike Fennessy, Hilda Mathieu, Earl Lauer, and Liz Davis (also representing the Greater Highland Crossroad Association) testified in opposition to the petition.

A Preliminary Matter

At the outset of the hearing, Mr. O'Leary contended the Petitioner failed to comply with Section 131.F.1.a(1)'s requirement that adjoining property receive written notice of the pre-submission community meeting, stating he had not received such notice. As he pointed out, the graphic on Page 1 of the Technical Staff Report (the "TSR"), shows his property, Parcel 81, as a long, narrow, V-shaped lot, the rear section of which touches the subject property. He also stated he went to the pre-submission meeting on April 27, 2009 at 7 p.m., the time he contended was posted on the County web page, but no one was there. In response to questioning, he stated that he had hosted a community meeting with the Petitioner prior to the pre-submission meeting.

As Section 131.F.1.g of the Zoning Regulations states, the purpose of a pre-submission community meeting is to "allow the petitioner to provide information to the community regarding the proposed conditional use and to allow community residents to ask questions and discuss any issues they have concerning the proposal." My review of the case folder indicates that the hearing was scheduled to be held at 6:00 p.m. on April 27, 2009. According to Mr. Oh, the meeting was held at that time and date and the pre-submission meeting sign on the Property had been posted with the date and time. Mr. Oh also stated that there were meetings with the community prior to the pre-submission meeting.

In my view, Mr. O'Leary had adequate opportunity to discuss the proposed conditional use and variance with the Petitioner prior to their submission. Although Mr. O'Leary did not receive written notice, he was clearly aware of the meeting, if mistaken

about the time. Second, he had ample opportunity to discuss the petitions with the Petitioner or his representatives, having hosted a meeting with the Petitioner or his representatives prior to the pre-submission meeting.

Exhibits

The Petitioner introduced into evidence the exhibits as follows.

1. Amended Conditional Use Plan dated March 2009, depicting a 30-foot parking setback from the northeast lot line.
2. Joseph Rutter, Curriculum Vitae
3. Elevations and Floor Plans
4. Howard County General Plan Excerpts, concerning senior and disabled housing
5. Area Map referring to Exhibits 6 & 7
6. Maryland Real Property Data Searches showing square footage of dwellings in Paternal Gift Farm
7. Maryland Real Property Data Searches showing square footage of dwellings in Koandah Garden Estates, Section 1
8. Maryland Real Property Data Searches showing square footage of dwellings in Harwood W. Owings Property RS

The Opponents introduced into evidence the exhibits as follows.

1. Greater Highland Crossroads Association letter designating Daniel R. O'Leary as association representative
2. Photographs of Property

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The 1.15-acre (49,910 square feet), generally rectangular subject property is

located in the 5th Election District on the north side of Clarksville Pike (MD 108) about 750 feet northeast of Highland Road. It has a street address of 13306 Clarksville Pike and is referenced on Tax Map 40, Grid 5, as Parcel 66 (the "Property").

2. The Property is about 166 wide, 297 feet deep along the northeast side lot line and 321 feet deep along the southwest side lot line. It is improved by a two-story, frame, single-family detached dwelling sited in the southeast portion, somewhat less than 50 feet from the possible future right of way line, according to the Amended Conditional Use Plan dated March 2009 (Petitioner's Exhibit 1). To the dwelling's northwest is a large accessory building. A paved driveway provides access from Clarksville Pike and runs past the house to the accessory building. The Property is dotted by trees and vegetation along its perimeters, with the remainder of the Property in open lawn.

3. Vicinal Properties. To the southwest is the CCT-zoned (Community Center Transition) zoned condominium office portion of Highland Crossing, a commercial development. Further southwest, the B-1 portion of Highland Crossing is used for retail and commercial service businesses.

Other adjacent properties are zoned RR-DEO. Parcels 46 and 514 to the north and northwest are each improved with a single-family detached dwelling, with long driveways off Highland Avenue. Parcel 264 to the northeast is improved with a single-family detached dwelling fronting on MD 108. Across MD 108 to the southeast is Parcel 74, a two-lot site, with the south lot improved by a one and one-half story single-family detached dwelling fronting on MD 108.

4. Roads. MD 108 in this location has two travel lanes and about 27 feet of paving within a proposed right-of-way ("ROW"). The posted speed limit is 35 MPH. It is my experience that the actual travel speed is much higher. The estimated sight distance from the existing driveway entrance is more than 800 feet to the northeast. The sight distance to the southwest is limited by vegetation. According to the TSR, once this vegetation is removed with improvements to MD 108, the sight distance would be more than 750 to the Highland Road/MD 216 intersection.

5. Water and Sewer Service. The site is served by private well and septic. On the Amended Conditional Use Plan (Petitioner's Exhibit 1), wells are depicted on the proposed building's southeast side. The large septic area would be located behind the proposed building, to the north and northwest.

6. General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Rural Residential." The General Plan Transportation Map depicts MD 108 in this location as a Major Collector.

7. The Proposal. The Petitioner is seeking to redevelop the Property by demolishing the existing dwelling and replacing it with a 16-bed assisted living facility¹ and a manager's apartment. The facility would include space for offices, a kitchen, dining and living rooms, a gathering area and various service areas. The 9,500-square foot, two-story building would be sited in the southeastern portion of the Property and 50 feet from

¹ Section 103.A.14. of the Zoning Regulations defines an assisted living facility as "[a] residential care facility that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination of these services to at least nine persons who are unable to perform, or who need

the future MD 108 ROW. A new, wider driveway to be located in about the same location as the existing drive would provide access to an 8-space parking lot adjoining the building on its northeast side. As permitted by Section 131.N.37.D, the Petitioner is requesting that I approve a 20-foot reduction in the 50-foot setback from the northeastern residentially zoned property to accommodate the parking spaces.

The Petitioner is also seeking a variance to reduce the 50-foot use setback from a public street right-of-way, as required by Section 105.E.5, to 27 feet for a privacy fence.

8. According to the TSR, the Property was apparently created before the 1948 enactment of the Zoning Regulations, making it a noncomplying lot. The lot is relatively small and/or shallow in comparison to neighboring RR-zoned residential properties. Additionally, the Property will be reduced in size by the MD 108 ROW dedication, which, according the General Plan, is to occur as part of improvement to MD 108 between Trotter Road and MD 32.

9. Mr. Rutter testified that the building is compatible in scale and architecture with residential development in the vicinity. It echoes the adjoining Highland Crossing commercial development in scale and in appearance is designed to appear more residential in character through detailing and bulk. He also stated that while its depth is greater, it would not be noticeable from MD 108. It was also his opinion that bringing the building forward provided for a better transition between the commercial and residential uses. Additionally, the parking and fence locations are designed to direct motor vehicle

assistance in performing, the activities of daily living and is under a license or certificate issued by the State of Maryland as an assisted living facility.

lights into the building and block glare into the dwelling to the north. Two employees would work the day shift, with occasional visitors. No outside activities are proposed and there is no dumpster or parking lot lighting.

10. During cross-examination, Mr. Rutter testified that the location of the building also took into account the commercial development. Regarding the location of the parking, he stated that it was preferable to locating it directly across from the dwellings behind it. The building's square shape reduces its bulk. Had the building been long and narrow, it would appear larger.

11. He also stated that all setbacks are measured from a future 80-foot ROW, and that the Petitioner will have to apply to the State Highway Administration for access to MD 108.

12. In his opinion, the proposed use is consistent with the General Plan, which calls for an increase in housing and assisted living opportunities for older residents.

13. During cross-examination and in rebuttal, Mr. Rutter agreed with the Opposition that the size of the proposed septic areas drove the need for the variance.

14. Regarding the uniqueness of the Property, he testified it is smaller and narrower than typical RR properties, which creates practical difficulties in developing the Property, considering the impact of the 50-foot residential setback to the northeast and the 75-foot front setback dedication requirements. Bringing the building closer to the road would also make a good transition between the commercial uses to the south and increase the distance from the dwellings behind the Property. The requested variance is

also the minimum necessary because it is the least amount necessary to accommodate the facility.

15. Mr. O'Leary testified that the vegetation and utility poles in the Property's southwest corner prevent adequate sight distance.

16. In response to testimony from Opponents concerning their fears of children wandering on the Property or residents of the facility wandering on neighboring properties, Mr. Oh stated the Petitioner would agree to fence the Property along the northeast/north, and northwest lot lines as a condition of approval.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, determined to deny the petitions conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

1. Harmony with the General Plan. Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and

b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

General Plan Policies and Consistency. The General Plan designates the area as Rural Residential. Smaller assisted living facilities—those with 16 or fewer beds—are not uncommon in rural residential areas. Importantly, Chapter 4 of General Plan stresses the county's need to provide for a significant increase in the elderly population, including specialized housing, observing that assisted living in small group homes is more affordable. Policy 4.3 supports the "expansion of affordable congregate housing arrangements throughout the County for the elderly, the disabled and special populations." Policy 4.22 supports residential opportunities to "[m]eet the needs of special populations in a more traditional residential neighborhood setting" (Petitioner's Exhibit 4).

Although the proposed 16-bed assisted living facility is the maximum permitted by the conditional use category, it is nonetheless a smaller facility and one contemplated by the General Plan. It will also be located in an area where there is only one other such facility in the MD 108/MD 216 vicinity (the facility on Scaggsville Road), to my knowledge. There is no evidence that the proposed use is contrary to the General Plan's policies, development patterns, land uses, densities, or intensities, or any time lines set forth in the plan for development and rezoning and implementation. I therefore conclude the proposed use is harmonious with and consistent with the General Plan, as it furthers the policies and is a contemplated land use.

The Nature and Intensity of the Use. The proposed conditional use petition is for a 16-bed, assisted living facility on a 1.15-acre (49,910 square feet) site (or somewhat less factoring out the future ROW). Although the TSR and several witnesses described

the proposed facility as an institutional use, General Plan Policy 4.3 alternatively characterizes the use as a congregate living/housing arrangement and on Page 82 of Chapter 4, and stresses the need for additional senior housing for populations needing various levels of support and services. In nature, then, the proposed conditional use, while institutional, has a strong residential character.

Given the facility's residential character and use, the intensity of the use is relatively low. It will generate low traffic levels, and the facility is predominately an indoor use.

The size of the site in relation to the use. Although the site's size appears to be somewhat small based upon the variance request, the Property nonetheless complies with the 40,000 minimum square feet required by Section 131.N.37, even if the ROW is factored out.

The location of the site with respect to streets giving access to the site. The Property fronts on MD 108, a Major Collector, and it is close to MD 216, a Minor Arterial.

The appropriateness of the conditional use in combination with a permitted use on the site. This section is inapplicable, as no such combination of uses is proposed.

2. Adverse Effect. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (d) access.

When assessing a proposed conditional use under these criteria, we must first recognize that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed use would have adverse effects in a B-2 District. The proper question is whether there are facts and circumstances showing that the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, I conclude the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a nursing home, residential care or assisted living facility in an RR district.

a. Physical Conditions. Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The petition states the proposed use will not generate anything out of the ordinary for the type of use and there is no evidence that it will cause fumes, odors, glare,

vibrations, or hazards. No dumpster or outdoor parking lighting is proposed. I therefore conclude that any inherent operational adverse effects resulting from the proposed conditional use will not be greater at the subject site than elsewhere in the zone or other applicable zones.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The building will comply with height regulations for the district and would be located in the southeast corner of the Property, a location that maximizes its distance from neighboring residential properties. Additionally, the building will be located closest to the dumpster and parking area of Highland Crossing. The Petitioner's proposal to erect a six-foot high, white vinyl privacy fence 27 feet from the adjoining residentially zoned property to the northeast is intended to minimize the glare from motor vehicles. The proposed reduction of the 50-foot setback from this same property will be mitigated by a Type C landscaping buffer, which will continue along the Property's rear lot line. The Petitioner has also agreed to install solid fencing along these lot lines, which I am requiring as a condition of approval. I therefore conclude the location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

An eight-space parking area is proposed adjoining the northeast side of the building and eight spaces are required under Section 133. No loading or refuse area is proposed. The parking lot and driveway are optimally located and will be screened from public roads and residential uses.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

Upon removal of the existing vegetation in the Property's southeast corner, the ingress/egress drive will provide safe access with adequate sight distance. Acceleration and deceleration lanes may not be necessary for this particular use at this particular location.

II. Specific Criteria for Nursing Homes and Residential Care Facilities (Section 131.N.37)

a. The facility shall have 16 or fewer beds.

The Proposed Use will have a maximum of 16 beds, in accordance with Section 131.N.37.a.

b. The lot for which the home is proposed is at least 40,000 square feet in size.

The 49,910 square foot Property accords with Section 131.N.37.b, even with the ROW area factored out.

c. The design of new structures or additions to existing structures will be compatible in scale and character with residential development in

the vicinity, as demonstrated by architectural elevations or renderings submitted with the petition showing.

Much of the testimony and documentary evidence in this case went to the issue of the building's compatibility with vicinal residential development. To demonstrate compatibility, the Petitioner introduced into evidence the square footage of several residences in the Property's general, but not immediate, vicinity. The Opponents argued that to be compatible, the building must look more like the smaller, rectangular dwellings in the immediate vicinity.

Both arguments incorrectly reduce "compatibility" to a matter of geography and/or size. Compatibility is not to be found by enlarging the geographic "vicinity" for my consideration, as the Petitioner would have it, a geography that is notably larger than the "neighborhood" considered in his petition for the requested variance, as discussed below in Part III, Section 130.B.2(2). Nor is compatibility simply a matter of mimicking neighboring dwellings, as the Opponents would have it.

Compatibility has a broader meaning, the capability of existing together in harmony, existing together with something else. Random House Dictionary of the English Language, Second Edition. Therefore, my consideration of a proposed structure's compatibility with vicinal residential development requires me to assess not just its size and shape, but also its massing and height, roof form, façade fenestration, entrance features, exterior construction, materials and colors, architectural detailing, the setback and placement, and orientation of the building on the lot in relation to vicinal buildings, and landscape elements.

Considering these elements of compatibility, I conclude the proposed facility is compatible with residential development in the vicinity, and, thus, accords with Section 131.N.37.c. The Petitioner has proposed a 9,500 square foot, somewhat square, two-story facility in the southeast portion of the Property. The building's exterior will be muted in color and constructed of several materials, which will break up the massing. The front and rear elevations will have projecting or sloped roofs. Window groupings are residential in appearance and varied. The front and rear entrances will be covered and the entrance doors themselves have the look of a large dwelling. Although the building is larger than neighborhood residences, its strong residential character will reduce the appearance of its bulk. In addition, the building will be set back from MD 108 and located on the site to maximize its distance from neighboring residences, and the front elevation will face the street to present the facility as more residential in character.²

d. Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially zoned properties other than public road right-of-ways. The Hearing Authority may reduce this setback to no less than 20 feet or the minimum setback required by the zoning district, whichever is greater, if:

- (1) The adjoining land is committed to a long term institutional or open space use that provides an equivalent or better buffer for vicinal residential development; or**
- (2) The petition includes detailed plans for screening, consisting of a combination of a solid fence or wall and landscaping, or an equivalent combination, that presents an attractive and effective buffer for neighboring residential properties.**

² In contrast, had the building been designed in the institutional mode of many regional assisted living facilities, with large single pane windows, a flat roof, and parking surrounding the structure, I would have been unlikely to conclude it was compatible with vicinal residential development.

The building and parking areas are more than 50 feet from all residentially zoned properties to the rear. Because the parking area lies within the 50-foot setback from the residential zoned property to the northeast, Parcel 264, the Petitioner is requesting that I reduce the setback to 30 feet, the distance from the parking area to the northeast lot line, according to the Amended Conditional Use Plan. In support of this reduction, the Petitioner is proposing to locate a six-foot high, white vinyl privacy fence parallel to the parking area and 27 feet from the common lot line to reduce glare, as well as a Type C landscaping buffer, which will continue along the Property's rear lot line. The Petitioner has also agreed to install solid fencing along these lot lines, which I am requiring as a condition of approval. Based on the proposed fencing and landscaping, I conclude the petition complies with Section 131.N.37.d.

e. At least 20 percent of the area within the building envelope shall be green space, not used for buildings, parking area or driveways. The building envelope is formed by the required structure setbacks from property lines and public street rights-of-way.

The Amended Conditional Use Plan states that 67% of the total area of the building envelope, in accordance with Section 131.N.37.e.

III. The Variance Request (Section 130.B.2)

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 the Petitioner proves all four variance standards. 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, there is no dispute that the Property is a substandard, nonconforming lot. It is also smaller and/or shallower than surrounding properties, as depicted on Page 1 of the TSR. Parcel 264 is larger, Parcels 74 and 72 are deeper, and Parcels 85, 51 and 514 are both larger and deeper. Considering the 75-foot setback from the MD 108 ROW, and the 30-foot setback from the residentially zoned Parcel 264, the resultant building envelope appears uniquely limited. Consequently, the proposed building may

not be practically located on the Property without a variance. I therefore conclude the Property's size and shallowness 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.

Because I am approving the Conditional Use petition, the proposed assisted living facility will be a permitted use.³ Because the building is compatible with vicinal residential development, as discussed above, the variance for the building will not alter the essential character of the neighborhood or district and will not substantially impair the appropriate use or development of adjacent property. Moreover, the 16-bed assisted living facility in an area will be constructed in an area where there is only one other such facility (on MD 216) to my knowledge, As such, its presence in the community will improve the public welfare, not be detrimental to it, 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.

³ An approved conditional use is a permitted use.

The practical difficulties in complying strictly with the setback regulation arise from the location of the substandard, noncomplying lot and was 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 proposed 16-bed assisted living facility is a reasonable size for the Conditional Use Category. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

IV. Opposition Testimony

Once a petitioner presents sufficient evidence establishing its proposed use meets the requirements of the statute, it is incumbent upon those opposed to the petition to show the use at the proposed location would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone. *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

The persons who testified in opposition to the proposed conditional use have not met their burden of showing the proposed use would have an atypical burden upon adjoining and surrounding properties. The speculative nature of their testimony about the public welfare and safety does not sufficiently demonstrate any adverse effects unique or different from those ordinarily associated with a residential care facility in an RR-DEO zoning district. The County Council has already determined that nursing homes and

residential care facilities are presumptively compatible with RR-DEO-zoned communities. In this case, there is insufficient credible evidence in the record to defeat this presumption.

As to the Opposition's testimony about the septic system's safety, including the potential presence of medication in the septic area, Maryland courts instruct that the unsupported conclusions or fears of witnesses to the effect that the proposed use of the property will or will not result in harm amount to nothing more than vague and general expressions of opinion, which are lacking in probative value. *Anderson v. Sawyer*, 23 Md. App. 612, 329 A.2d 716 (1974). Because the Opposition's testimony in this case was unsupported by any evidence that the anticipated harmful effects are likely to occur, I must afford it no weight. Equally important is the fact that I am not permitted to make a specific evaluation as to the environmental or public health impact of the septic system. This is the province of the Health Department and the Maryland Department of the Environment. Where the County or State occupies a field of regulation, it is not within my authority to preclude their judgment.

ORDER

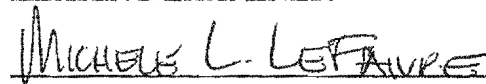
Based upon the foregoing, it is this 27th day of August 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petitions of Rajesh Chopra for a 16-bed Nursing Home and Residential Care Facility (an assisted living facility) Conditional Use, and a variance to reduce the 50-foot use setback from a public street right-of-way to 27 feet for a privacy fence, in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District are **GRANTED;**

Provided, however that:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the Conditional Use as described in the petition and as depicted on the Amended Conditional Use Plan and not to any other activities, uses, or structures on the Property.
2. The Petitioner shall install solid fencing along the northeast (the common lot line shared with Parcel 264) and north/northwest (rear) lot lines.
3. The Petitioner shall install a Type C landscape buffer along the northeast (the common lot line shared with Parcel 264) and north/northwest (rear) lot lines.
4. The Petitioner shall comply with all federal, state, and local regulations.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 9/1/09

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.

currently 2 story bldg
conditional use request
↓ 20' to 50' for parking
↓ from 50 to 27' setback
from road

* Recognition that variance
to road setback is
due to septic

pg 5 (The proposal is
specify 16 bed assisted
living facility)

pg 9 supports this type of use
in Gen Plan

