

Standards for Granting a Zoning Variance

Municipal Code Section 6-3-6:2. Standards for Variances: Any recommendation by the Planning and Zoning Commission and any decision by the City Council shall be predicated on evidence and finding that:

Minimum Lot Area Per Dwelling Unit:

1. *The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan; and*

The proposed variance is in harmony with the general purpose of this Title and the adopted comprehensive master plan. Petitioner has operated Martin Avenue Apartments for approximately forty (40) years. Today Martin Avenue Apartments is situated on a 3.32 acre lot. In its current configuration, Martin Avenue Apartments does not meet the lot area requirement. Today, Martin Avenue Apartments has a lot area of 1, 192 square feet/dwelling unit. The Code requires 2,600 square feet/dwelling unit.

Upon subdivision of the Subject Property, Martin Avenue Apartments will be situated on the newly created "Lot 1", a 2.41 acre lot. The proposed multi-family dwellings will be situated on the newly created "Lot 2", a 0.91 acre lot. The respective lot area per dwelling unit is proposed at 868 square feet for "Lot 1" and 587 square feet for "Lot 2".

The lot area requirement is a measurement of density, or rather how many dwelling units are permitted on a per-acre basis. Density limitations ensure that public facilities, be it utilities, schools, parks, or roadway infrastructure, are not overwhelmed by the number of people produced from a development. Age-restricted communities have a substantially different impact on community facilities than would a standard market-rate residential project. This has been widely recognized by the City, the Park District, and the School District in the negotiation of impact fees applicable to a development. Age-restricted developments always have fewer residents per dwelling unit which correlates directly to a reduction in demand on public services. Moreover, seniors typically utilize public services, such as roads, during non-peak hours thereby further minimizing any impact reducing impact of their already reduced demand. Here, given the profile of studio and 1-bedroom apartment units and the low-income nature of the development, a study of the existing Martin Avenue Apartments shows even greater reductions than a typical age-restricted community in the number of residents per dwelling unit and other incidences of demand such as vehicle ownership.

Accordingly, given the unique profile of the existing/proposed development, the variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan.

2. *Strict enforcement of this Title would result in practical difficulties or impose exceptional hardships due to special and unusual conditions which are not generally found on other properties in the same zoning district; and*

Strict enforcement of this Title would result in practical difficulties or impose exceptional hardships due to special and unusual conditions which are not generally found on other properties in the same zoning district. The Petitioner seeks to construct sixty-eight (68) dwelling units targeted toward a narrowly tailored market of persons who are over the age of fifty-five (55) meeting certain poverty thresholds established by the federal government. The Affordable Housing Planning and Appeal Act ("AHPAA"), in particular Section 310 JLCS 67/25, mandates municipalities approve

an affordable housing plan providing at minimum ten (10) percent of their year-round housing units as affordable. It is well known that Naperville currently does not have a plan to meet the ten (10) percent State requirement. Petitioner's proposed unit count assists the City of Naperville in reaching the ten (10) percent statutory mandate. Strict enforcement of this Title would: i) place new restrictions on the historic operation of the existing Martin Avenue Apartments; and ii) absolutely prohibit the addition of any new dwelling units in furtherance of the City's affordable housing needs. The proposed variance is appropriate in light of both the State standards for affordable housing and the City's goals to provide diverse housing stock to serve its low-income population.

Moreover, the location of the Subject Property is in and of itself a unique condition. The Subject Property is located in a largely commercial/institutional corridor with an abundance of open space. No other nearby residents would perceive the proposed development as creating a negative impact given its unique location in the community. The Subject Property is uniquely positioned to absorb the impact of the proposed use.

3. *The variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property.*

If granted, the proposed variance will not alter the essential character of the neighborhood and will not be a substantial detriment to the adjacent property. The introduction of a sixty-eight (68) unit multi-family dwelling, consisting solely of low-income seniors, will cause no change in the essential character of the neighborhood. Today, the activity associated with the hospital, medical office building and parks, define the neighborhood. The relatively minor addition of sixty-eight (68) age-restricted low-income senior apartments will not alter the character of this area. Instead, the proposed apartment building will provide a substantial improvement to the current condition, will increase the number of affordable housing units within the City of Naperville and enable Petitioner to utilize the acreage of the newly created lots to its highest and best use.

Parking:

1. *The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan; and*

The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan. The parking requirements are intended to ensure that a particular use provides sufficient on-site parking to meet the specific and unique parking demands of each specific use. Currently, the site has a total of eighty-five (85) standard parking spaces and eight (8) accessible parking spaces for a total of ninety-three (93) parking spaces. In keeping with the purpose and intent of the development (to provide additional low-income senior housing), Petitioner proposes to re-stripe the existing parking to increase the accessible parking spaces by seven (7) parking spaces and increase standard parking by one (1) space; therefore, Petitioner's total site parking will be one hundred and one (101) parking spaces (fifteen (15) accessible and eighty-six (86) standard).

Petitioner performed an analysis of the current parking needs of Martin Avenue Apartments over a period of four (4) days which included Super Bowl Sunday. Based upon this analysis one can reasonably infer the parking needs of the proposed development because it will function identical to Martin Avenue Apartments. Petitioner's analysis demonstrates that on average the parking demand is fifty-four (54) parking spaces. This average parking demand correlates to a parking ratio of 0.44 spaces/unit (fifty-four (54) divided by one hundred and twenty-one (121) units). Petitioner's

analysis further evidences a peak parking demand of sixty-four (64) parking spaces. The peak parking demand correlates to a parking ratio of 0.52 parking spaces/unit (sixty-four (64) divided by one hundred and twenty-one (121) units). Petitioner's development plan presently show a parking ratio of 0.53 spaces/unit. Petitioner respectfully seeks a variance to establish a minimum requirement of 0.53 spaces/unit. With an average parking demand ratio of 0.44 spaces/unit, Petitioner's proposed ratio of 0.53 spaces/unit provides sufficient parking spaces to meet the average demand. Additionally, Petitioner's proposed ratio of 0.53 spaces/unit provides enough parking to meet the current peak demand of 0.52 spaces/unit. Additionally, a significant amount of on-street parking is proximate to the development. The on-street parking can provide overflow parking spaces in the unlikely event additional parking needed.

The Code contemplates that "other unique characteristics of the development which warrant a reduced level of guest parking" may be considered. Here, the new sixty-eight (68) unit apartment building will consist only of one (1) bedroom units. One (1) bedroom units are typically leased to a single resident, thereby reducing vehicle demand. Moreover, a survey of the residents shows a low incidence of vehicle ownership which is reflected in evening and early morning parking counts. The proposed variance does not undermine the intent and purpose of the Title or the Comprehensive Plan because: (1) all units will be one (1) bedroom; (2) sufficient parking spaces are being provided to meet the average and peak parking demand; (3) access to sufficient on-street parking is readily available; and (4) the majority of the occupants will not own a car. In sum, sufficient parking will be provided to meet the specific parking demands anticipated to be generated by the development.

2. *Strict enforcement of this Title would result in practical difficulties or impose exceptional hardships due to special and unusual conditions which are not generally found on other properties in the same zoning district; and*

Strict enforcement of this Title would result in practical difficulties or impose exceptional hardships due to special and unusual conditions which are not generally found on other properties in the same zoning district. Petitioner proposes to develop the Subject Property as age-restricted low-income senior apartments. The City's generally applicable parking requirements do not account for the unique nature of age-restricted senior housing, low income housing or the 1-bedroom studio/1-bedroom type arrangement proposed here. The parking analysis conducted by Petitioner and as outlined above, evidences the actual parking requirement associated with the proposed use. Absent the proposed variance, Petitioner could not meet Code requirements for the existing use of the Property much less develop additional units to meet well-established housing demand in the City of Naperville.

Important to note, many properties within the same zoning district do not have the same amount of on-street parking spaces available to them. The on-street parking is not necessary to meet regular demand or peak demand but is readily available to provide additional parking should the need arise.

Residents will find a large amount of amenities within walking distance of the Subject Property. A fitness center, park, medical center and hospital are all adjacent to the Subject Property. Other amenities such as grocery and general merchandise are also within close proximity. Additionally, the Subject Property is served by Pace bus service, with a stop located immediately proximate to the Subject Property. With such a broad array of amenity in close proximity to the Subject Property, the need to own a vehicle is decreased and with that, the need for additional parking spaces.

3. *The variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property.*

The variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to the adjacent property. As exhibited by Petitioner's parking analysis, the existing Martin Avenue Apartments has an average parking demand of 0.44 spaces/unit and a peak demand of 0.52 spaces/unit. The proposed parking supply of 0.53 spaces/unit will accommodate both the average and peak demand of the proposed development. In the event additional parking is needed, on-street parking is also available to provide additional overflow parking. Accordingly, the proposed variance will not alter the character or diminish property values because parking can be appropriately accommodated.

Building Height:

1. *The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan; and*

The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan. Code requires that the maximum height for all residential buildings in the OCI Zoning District be forty-three (43) feet. The building height restriction is reflective of the intent of the OCI District to act as a transitional space between lower density residential uses and more intensive commercial uses. Here, despite the OCI zoning that is well-established, there is no adjacent low-intensity residential use that would be impacted as a result of an increase in the building height. Petitioner's proposed building will be constructed at fifty-five (55) feet, exceeding the maximum height permitted in the OCI Zoning District. However, the proposed apartment building will be situated in the rear of the Property located behind the existing three (3) story Martin Avenue Apartments. The existing Martin Avenue Apartments will provide a buffer for the new apartment building and provides a natural transition toward the taller building, similar to the strategy that has been applied on the adjacent hospital property.

Although the buildings will be under separate ownership, Petitioner's intent is for the buildings to function as one unified campus eliminating any light or air encroachment created by the new apartment building. The existing resident garden will remain, providing ample open space for residents. Additionally, because the character of the neighborhood consists largely of multi-story structures such as Edwards Hospital (directly adjacent to the proposed apartment building) there will be no impact on the character of the neighbor. The fact that the neighborhood consists of taller multi-story buildings, the existing building providing a buffer from the right-of-way, open space amenity remaining largely unchanged, and the overall functionality of the campus, the requested variance is in harmony with purpose and intent of this Title.

2. *Strict enforcement of this Title would result in practical difficulties or impose exceptional hardships due to special and unusual conditions which are not generally found on other properties in the same zoning district; and*

Strict enforcement of this Title would result in practical difficulties or impose exceptional hardships due to special and unusual conditions which are not generally found on other properties in the same zoning district. A reduction in building height will undermine Petition's intended vision for Subject Property and Petitioner's ability to utilize the Subject Property to its highest and best use. Admittedly, reducing building height has the effect of reducing the unit count which directly correlates to Petitioner's ability to obtain IHDA tax credits in order to finance the proposed construction of the new apartment building. Reducing dwelling unit count negatively affects Petitioner's proposal to IHDA thereby reducing Petitioner's chances of favorably obtaining tax credits under the program and its goal of providing affordable housing units in Naperville. Without

the IHDA tax credits the proposed development is no longer viable. Therefore, strict enforcement of this Title causes the proposed development to no longer be viable.

3. *The variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property.*

The variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property. As previously mentioned, virtually all buildings adjacent to the proposed apartment building are multi-story and in some cases substantially greater in height than that proposed by Petitioner. At fifty-five (55) feet Petitioner's proposed apartment building is consistent with the already established character of the neighborhood. Additionally, there is no impact to the character of the neighborhood given the new apartment building will be located behind the existing Martin Avenue Apartments, providing an appropriate transition toward the Martin Avenue right-of-way where the public will generally perceive the building.

In conclusion, the addition of the proposed building will not alter the essential character of the neighborhood but instead will improve the neighborhood by providing additional low-income senior housing in Naperville.

Side Yard Setback:

1. *The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan; and*

The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan. The OCI zoning district requires an interior side yard setback of ten (10) feet. Petitioner proposes to reduce the eastern interior side yard setback from ten (10) feet to zero (0) for "Lot 2". In addition, Petitioner proposes to reduce the western side yard setback from ten (10) feet to zero (0) for "Lot 1". Setback requirements may serve a variety of purposes. From a practical perspective, setbacks ensure proper separation between structures and create sufficient space to accommodate required utility installations. Here, the proposed variance is in harmony with the purpose and intent of the zoning ordinance because it will not hinder utility installation nor does it create any separation concerns between structures. The intent behind the proposed development is to have entire development function as unified campus. As such, the existing Martin Avenue Apartments will share a common access point with the proposed apartment building allowing residents to pass from one building to the other. The preliminary engineering plans submitted herewith depict the proposed layout of all utilities necessary to service both the existing Martin Avenue Apartments and proposed apartment building. All of the utilities are reasonably accommodated within utility easements that will be incorporated into the documentation as part of the final plat process.

The variance will be unnoticeable to the naked eye and will provide substantial improvement to the existing Martin Avenue Apartment campus. Ultimately, the combined use of "Lot 1 " and "Lot 2" will be governed by a private declaration that will establish the rights and obligations between the connected buildings.

2. *Strict enforcement of this Title would result in practical difficulties or impose exceptional hardships due to special and unusual conditions which are not generally found on other properties in the same zoning district; and*

Strict enforcement of the Title would result in practical difficulties or impose exceptional hardships due to special and unusual conditions which are generally not found on other properties in the same zoning district. Given the proposed use there is a substantial need to eliminate barriers that discourage social interaction and use of the shared common facilities. Here, the new sixty-eight (68) unit multi-family dwellings will have a small common area but enjoy efficiency of shared use of existing common area and facilities with Martin Avenue Apartments. Without the setback variance there would be barriers to the entry and shared facilities.

3. *The variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property.*

The variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property. The variance will be internal to the existing Martin Avenue Apartments and the proposed new multi-family dwellings. All exterior setbacks will be met. The Subject Property will look and function as though it is a single property despite the fact that the buildings will be owned by different entities. Approval of the variance will permit the Subject Property to be owned by different entities fulfilling the legal formalities required to obtain the federal tax credits necessary to fund the proposed development.

Emergency Access Drive Setback:

1. *The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan; and*

The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan. The Code prohibits parking facilities to be located within five (5) feet of any property line. Presently, the Code does not distinguish between a parking facility and a fire access lane. To that end, the Code considers a fire access lane to be a parking facility. Consequently, the fire access lane may not be located within five (5) feet of the property line. The purpose of the five (5) foot parking facility property line requirement is to protect adjacent property owners from harmful encroachment by incompatible uses. In this case, any harmful encroachment by an incompatible use is absent because the adjacent uses are consistent and in harmony with Petitioner's proposed use. Petitioner's request could be restated as permitting a fire access lane to be located approximately two (2) feet from the property line instead of five (5) feet. Important to note, the fire access lane will be gated and will be utilized only in emergency situations. Therefore, it will not cause a detriment to the adjacent property owners.

2. *Strict enforcement of this Title would result in practical difficulties or impose exceptional hardships due to special and unusual conditions which are not generally found on other properties in the same zoning district; and*

Strict enforcement of the five (5) foot parking facility property line requirement would result in practical difficulties due to the special and unusual conditions of the Subject Property. Petitioner desires to maximize open space while also providing sufficient fire lane access and proper turning movements for fire trucks. In order to provide such vehicle movement, the fire access lane will need to be situated approximately two (2) feet from the property line instead of five (5) feet. The small three (3) foot difference, will have virtually no effect on the adjacent property and will be unnoticeable by the naked eye. Without the foregoing requested relief Petitioner will not be able to provide additional open space and the new apartment building would have to be positioned further north impacting the joint entry way and Petitioner's intent of creating a unified campus feel.

For these reasons strict compliance with the five (5) foot setback would have an appreciable adverse effect upon the Subject Property by limiting the full use and enjoyment of the Subject Property.

3. *The variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property.*

The variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to the adjacent property. Because the adjacent property is a fitness facility and park district property, approval of Petitioner's variance request will have no appreciable effect on the adjacent property nor the essential character of the neighborhood. Instead approval of the variance will permit the Petitioner to create a unified campus, provide additional open space, and allow emergency fire trucks to safely navigate the campus. In addition, it will allow Petitioner to utilize the Subject Property to its highest and best use and permit the construction of a new sixty-eight (68) unit apartment building consistent with OCI zoning district and Naperville's goals of providing additional affordable senior housing.