

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(9412 Belair Road)		
11 th Election District	*	OFFICE OF
6 th Council District		
Maliheh Investment Properties, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2015-0112-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 9412 Belair Road. The Petition was filed on behalf of the legal owner of the subject property, Maliheh Investment Properties, LLC. The Special Exception petition seeks relief pursuant to §§202.3.B and 1B01.1.C.3 of the Baltimore County Zoning Regulations (B.C.Z.R) to permit a Convalescent Home providing Domiciliary (Assisted Living) Care. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit No. 2.

Appearing in support of the request were owner Khashy Varzandeh and Kenneth Wells, a licensed surveyor whose firm prepared the site plan. Jennifer R. Busse, Esquire represented the Petitioner. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing.

Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). These will be discussed below.

The subject property is approximately 1 acre and is zoned R-O-A. The property is improved with a one story building now used as an Assisted Living Facility II (ALF). The Petitioner proposes to expand the operation which would constitute a convalescent home under the B.C.Z.R. That use is permitted by special exception in the R-O-A (and D.R.) zone.

Special Exception Law in Maryland

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People’s Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. In this case, Mr. Wells opined that Petitioner satisfied the B.C.Z.R. §502.1 standards, and I concur. As such, the petition for special exception will be granted.

ZAC Comments

The Bureau of DPR indicated that “local open space” would be required, as would a landscape plan. The site plan (Ex. 2) shows that 4,263 sq. ft. of “relocated open space” is being provided, although it is unclear whether that constitutes “amenity open space” or “local open space.” Only assisted living facilities (ALF)—and not convalescent homes-- are required to provide 10% “private open space,” per B.C.Z.R. §432A.1.C.3. This case involves a convalescent home, and such a use does not require amenity or private “open space.”

Local open space (LOS) is required by Article 32, Title 4 of the County Code in “development” cases. Under the law, “development” is broadly defined, to include the

“improvement of property for any purpose involving building.” BCC § 32-4-101(p). Thus, it may be that LOS is required here (or that, as noted in Ms. Tansey’s January 22, 2015 e-mail, a waiver of same is available under Resolution 63-00). In any event, that issue will be considered if and when the County requires a “development plan” to be submitted prior to the issuance of permits, and Mr. Wells testified that the County may not require such a plan in this case.

In addition, Petitioner has submitted a schematic landscape plan (Ex. 4), and Mr. Wells explained that plantings far in excess of what the Landscape Manual requires will be provided. A condition regarding final landscape plan approval will be included in the Order which follows.

The DOP indicated that it initially had several concerns with the project, but that through meetings and discussions with the Petitioner the site plan was revised to address these issues. The DOP noted it had “no objection to granting the special exception,” and the recommendations set forth in its ZAC comment will be included as conditions in the Order.

RTA

A discussion took place at the hearing concerning whether or not the RTA regulations were applicable in this case. The regulations provide that the RTA applies in the R-O-A zone, subject to certain exceptions not applicable in this case. B.C.Z.R. §202.4. But this is only when “the property to be developed is zoned D.R. [or in this case, R-O-A., per §202.4.A] and lies adjacent to land zoned D.R.1, D.R. 2, D.R. 3.5, D.R. 5.5 or RC”. B.C.Z.R. §1B01.1.B.1.b. Here, as shown on the County zoning map (Exhibit 1), the adjacent property is zoned R-O-A. As such, I do not believe the RTA requirements are applicable in this case.

However, in an abundance of caution, and notwithstanding my reasoning above, the Petitioner has requested a modification of the RTA standards pursuant to B.C.Z.R. §1B01.1.B.1.c. Petitioner contends the proposed improvements and use are compatible with the surrounding uses

and that it has complied to the extent possible with the RTA requirements. I concur, and believe the modification meets the spirit and intent of the Regulations without adversely impacting any adjacent property or the surrounding locale. In addition, a similar modification of the RTA requirements was granted by the Zoning Commissioner in Case No. 94-405-XA, and I believe that relief still applies to the property today.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 4th day of February, 2015, that the Petition for Special Exception to permit a Convalescent Home providing Domiciliary (Assisted Living) Care, be and is hereby GRANTED.

IT IS FURTHER ORDERED that a modification to the RTA requirements pursuant to B.C.Z.R. §1B01.1.B.1.c., based upon a finding that the proposed use and improvements are compatible with the surrounding uses and that compliance to the extent possible with the RTA requirements has been achieved, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner shall have five (5) years from the date hereof in which to utilize the special exception.
3. Petitioner must comply with the four (4) requests set forth in the DOP ZAC comment, a copy of which is attached hereto.
4. Prior to issuance of permits, Petitioner must submit for approval by Baltimore County a landscape plan.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JEB/sln

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County