

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(4 Marbledale Court)		
4 th Election District	*	OFFICE OF
4 th Council District		
Michael Gitagia & Shareba Kerriem	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
Petitioners	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0063-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Michael Gitagia & Shareba Kerriem, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to approve an increase in the number of beds for an existing Assisted Living Facility I to 7 beds in lieu of the maximum allowed 4 beds.

Michael Gitagia and Shareba Kerriem appeared in support of the petition. Several neighbors opposed the request. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency opined the proposed use would not be compatible with the pattern of the community. A site plan was marked and admitted as Petitioners’ Exhibit 1.

According to the site plan the subject property is approximately 10,846 sq. ft. in size and zoned DR 3.5, although the state tax record reflects the property is 11,700 sq. ft. in size. The property is improved with a single family dwelling which at the time of Petitioners’ purchase in 2013 had four bedrooms. Petitioners indicated the home now has five bedrooms. Petitioners are licensed by the State of Maryland to care for elderly adults in their home, and currently have four

Assisted Living Facility (ALF) residents. They would like to care for three additional residents, for a total of seven ALF patients.

An ALF I is defined under the B.C.Z.R. as one which “accommodates fewer than eight resident clients.” B.C.Z.R. §101.1. As such, the request is acceptable from that standpoint and the ALF I use is permitted by right in the DR 3.5 zone. B.C.Z.R. §432A.1.A.1. The decisive issue in this case concerns density.

The Regulations provide that density for ALFs “shall be calculated at 0.25 for each bed.” B.C.Z.R. §101.1. As such, I believe the correct density calculation is as follows:

$$\begin{aligned} 11,700 \text{ sq. ft. (lot size)} / 43,560 \text{ (acre)} &= .27 \text{ acre} \\ \text{DR 3.5 (max zone density per acre)} \times .27 \text{ acre} &= .945 \text{ density units.} \end{aligned}$$

Seven ALF beds would generate 1.75 density units (i.e., 7 x 0.25) while Petitioners’ lot (.27 acre) yields only .945 density units. The Department of Permits, Approvals and Inspections publishes a “Zoning Use Permit Checklist” which addresses this issue. Under “Filing Requirements,” that document indicates that for “more than four beds density/area calculations must be shown on the plan.” *Id.* at ¶6. The document contains a density chart at the bottom of the page which indicates that for “5-8 beds...2 density lots required.” As such, I do not believe Petitioners have sufficient density at the site to accommodate seven ALF residents.

If I had discretion in this matter it may be that I would approve the request. Petitioners are obviously caring and responsible individuals, and I have no doubt the seniors in their home are well-treated. But I am not permitted to approve a use that conflicts with the Zoning Regulations, and the petition must therefore be denied.

THEREFORE, IT IS ORDERED this 10th day of **October, 2017** by this Administrative Law Judge, that the Petition for Special Hearing to approve an increase in the number of beds for

an existing Assisted Living Facility I to 7 beds in lieu of the maximum allowed 4 beds, be and is hereby DENIED.

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

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

JEB:slh