

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(8219 Scotts Level Road)	*	OFFICE OF
2 <sup>nd</sup> Election District		
2 <sup>nd</sup> Council District	*	ADMINISTRATIVE HEARINGS
Marina McDonald	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	<b>Case No. 2018-0167-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of Marina McDonald, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve an Assisted Living Facility I (“ALF”) at 8219 Scotts Level Road within 1,000 ft. (551 ft. separation) of another property with an existing ALF I (8222 Brattle Road).

A petition for variance seeks: (1) to allow 2 parking spaces in lieu of the required 3 spaces; and (2) to allow a parking space with a 1 ft. setback from the property line in lieu of the required 10 ft. and to allow the parking in front of the property in lieu of the required side and rear only. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Marina McDonald appeared in support of the requests. There were no protestants or interested citizens in attendance. 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 did not oppose the requests.

## SPECIAL HEARING

The Office of Zoning Review instructed Petitioner to file a petition for special hearing after it discovered another ALF I in the same neighborhood. *See* B.C.Z.R. §432A.1.A.3. According to the County it is located 551 ft. from the subject property, measured “as the crow flies.” Petitioner noted that the other ALF is on another street in the community and is not visible from their home. As such, I do not believe approving the special hearing request would in any way have a detrimental impact upon the community.

## VARIANCE

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

The subject property has irregular dimensions and is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because she would be unable to operate an Assisted Living Facility. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the absence of County and/or community opposition.

THEREFORE, IT IS ORDERED this 2<sup>nd</sup> day of **March, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to approve an Assisted Living Facility I (“ALF”) within 1,000 ft. (551 ft.

separation) of another property with an existing ALF I (8222 Brattle Road), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to allow 2 parking spaces in lieu of the required 3 spaces; and (2) to allow a parking space with a 1 ft. setback from the property line in lieu of the required 10 ft. and to allow the parking in front of the property in lieu of the required side and rear only, 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 her 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. The Assisted Living Facility (“ALF”) shall have a maximum of three patients.
3. No signage identifying or concerning the ALF shall be permitted at the subject property.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln