

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(3507 N. Rolling Road)
2nd Election District
4th Council District
Olufemi Olawale &
Omowumi Olawale
Legal Owners
Petitioners**

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2018-0207-XA**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 3507 N. Rolling Road. The Petitions were filed on behalf of the legal owner of the subject property.

The Special Exception petition seeks to allow a community care center on property zoned DR 5.5. The Petition for Variance seeks: **(1)** pursuant to section 1B01.2.C.1.a, a non-residential principal building side yard setback of 10 ft. in lieu of the required 20 ft.; **(2)** pursuant to the Residential Transition Area (“RTA”) requirements in section 1B01.1.B.1.e.(5) to allow an 8 ft. setback and an 8 ft. buffer from the lot line to the proposed parking pad in lieu of the required 75 ft. setback and 50 ft. buffer, and an 11 ft. setback and 11 ft. buffer from the lot line to the existing non-residential principle structure in lieu of the required 75 ft. setback and 50 ft. buffer; **(3)** to approve a modified parking plan under section 409.12.B; and **(4)** to allow a community care center use within the RTA. A site plan was marked as Petitioners’ Exhibit 1.

Appearing in support of the petitions were Olufemi Olawale & Omowumi Olawale and landscape architect Nick Linehan. A neighbor attended the hearing to obtain additional information regarding the requests. The Petition was advertised and posted as required by the

BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). That agency did not oppose the requests.

The subject property is approximately 7,500 square feet in size and zoned DR 5.5. The property is improved with a single-family dwelling constructed in 1949. Petitioners are health-care professionals (a nurse and nurse practitioner) and operate pursuant to a state license (Ex. 4) a psychiatric rehabilitation program for adults and minors. Petitioners and the case workers they employ see patients in their homes, and they explained many of their clients live in group homes or half-way houses. Patients are not seen or treated at the subject property. Petitioners explained they intend to use the subject property for administrative purposes associated with the community care center, such as billing, payroll, and scheduling case workers. Petitioners testified the operation at the subject property has two employees, and they anticipate that on a day-to-day basis approximately three (3) vehicles would come and go from the site.

SPECIAL EXCEPTION

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 *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized 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. Mr. Linehan opined Petitioners satisfied the requirements of B.C.Z.R. §502.1 and the case law interpreting that provision. In the absence of any evidence to the contrary, and in light of the presumption under Maryland law, the petition for special exception will be granted.

VARIANCES

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 property is narrow and deep (50' x 150') and Petitioners are constrained by existing site improvements including a single-family dwelling constructed in 1949. As such the property is unique. If the BCZR were strictly interpreted Petitioners would suffer a practical difficulty since they would be unable to operate the care center. Finally, I find that the variances can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of County and/or community opposition.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 18th day of **July, 2018**, that the Petition for Special Exception to allow a community care center on property zoned DR 5.5, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance: **(1)** pursuant to section 1B01.2.C.1.a, to permit a non-residential principal building side yard setback of 10 ft. in lieu of the required 20 ft.; **(2)** pursuant to the Residential Transition Area (“RTA”) requirements in section 1B01.1.B.1.e.(5) to allow an 8 ft. setback and an 8 ft. buffer from the lot line to the proposed parking pad in lieu of the required 75 ft. setback and 50 ft. buffer, and an 11 ft. setback and 11 ft. buffer from the lot line to the existing non-residential principle structure in lieu of the required 75 ft. setback and 50 ft. buffer; **(3)** to approve a modified parking plan under section 409.12.B; and

(4) to allow a community care center use within the RTA, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. Within 15 days of the date hereof, Petitioners must submit for approval by the DOP a revised plan depicting landscaping to be installed along the 34' wide section of the property to be used for off-street parking.
3. The hours of operation shall be limited to 9 a.m.-6 p.m. Monday-Friday. The center shall not operate or be staffed on Saturday or Sunday.
4. The subject property shall be used only for administrative activities associated with the community care center operated by Petitioners. No patients or clients shall be seen or treated on the subject property.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln