

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(8307 Oakleigh Road)		
9 th Election District	*	OF ADMINISTRATIVE
5 th Council District		
Maritza Muneton	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2018-0282-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Maritza Muneton, legal owner of the subject property (“Petitioner”). The Petition seeks variance relief from §§ 432A.1.C.1 and 432A.1.C.2 of the Baltimore County Zoning Regulations (“BCZR”) to permit two (2) parking spaces/delivery area to be located in the front yard with a setback of 0 ft. for a proposed Assisted Living Facility (“ALF”) I in lieu of the required side or rear yard and minimum 10 ft. A site plan was marked as Petitioner’s Exhibit 1.

Maritza Muneton appeared in support of the petition. There were no Protestants or interested citizens in attendance. 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 opposed the request.

The site is approximately 9,500 square feet in size and zoned DR 5.5. The property is improved with a single family dwelling constructed in 1976. Petitioner would like to care for elderly and/or disabled patients in her home. An Assisted Living Facility I (“ALF”) is permitted by right (with a use permit) in the DR 5.5 zone. BCZR §432A.1.A.1. As frequently happens, an owner proposing an ALF in a single-family dwelling will require variance relief to comply with

the off-street parking regulations which are specific to this use.

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 lot is narrow and deep (approximately 50' x 200') and is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because she would be unable to operate an ALF. Finally, I find that the variance (subject to the conditions below) 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. The DOP expressed concern with the shared driveway which provides access to the site, and feared that the proposed ALF use would create a hardship for the adjacent owners. Petitioner presented letters of support from the adjacent owners on both sides of her home, and I believe the proposed use will not impact the neighbor's ingress and egress from their home.

Petitioner explained she would like to care for four (4) ALF patients at her home. As discussed at the hearing, I believe that an operation of that size would overcrowd the site, given the size of the dwelling and the limited space available for parking. As also discussed at the hearing, Petitioner could at a later date seek to amend this restriction upon submittal of a more detailed site plan prepared by a surveyor or engineer demonstrating that sufficient space exists to provide parking on site to safely and conveniently accommodate parking for residents, staff and medical suppliers and/or providers who might routinely visit an ALF with four (4) beds.

THEREFORE, IT IS ORDERED, this 29th day of **May, 2018**, by the Administrative Law

Judge for Baltimore County, that the Petition for Variance pursuant to Sections 432A.1.C.1 and 432A.1.C.2 of the Baltimore County Zoning Regulations (“BCZR”) to permit two (2) parking spaces/delivery area to be located in the front yard with a setback of 0 ft. for a proposed Assisted Living Facility (“ALF”) I in lieu of the required side or rear yard and minimum 10 ft., 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. Petitioner shall be permitted to have a maximum of three (3) ALF patients/beds in 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