

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(4730 Byron Road)		
2 nd Election District	*	OFFICE OF
2 nd Council District		
Christina Miller	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
	*	FOR BALTIMORE COUNTY
Petitioner		
	*	Case No. 2019-0090-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 Christina Miller, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve a use permit for an Assisted Living Facility (“ALF”) I for a maximum of four (4) beds and to approve an ALF I within 1,000 ft. of another property with an existing ALF I. A site plan was marked and admitted as Petitioner’s Exhibit 1.

Christina Miller 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”). Although that agency did not oppose the special hearing request, it noted (correctly) the proposed parking for the ALF was located less than 10 feet from the property boundary necessitating variance relief. This issue was discussed with Petitioner at the hearing, and the Petition will be amended to include a request for variance concerning the parking setback.

The subject property is 0.216 acres in size and is improved with a single-family dwelling constructed in 1963. The property is located in Pikesville and is zoned DR 5.5. Petitioner, who is a registered nurse, indicated she would like to operate an ALF at the property to provide care for

a maximum of four elderly and/or disabled patients. While an ALF is permitted in all DR zones by use permit, Petitioner required zoning relief to operate the facility, which necessitated the filing of the Petition.

SPECIAL HEARING

The BCZR provides that an ALF in a DR zone cannot be located within 1,000 feet of another ALF. BCZR §432A.1.A.3. Petitioner stated there is an existing ALF at 4744 Byron Road, which is seven houses away from the subject property. While the exact distance was not noted on the petition or site plan, the Office of Zoning Review advised Petitioner it was less than 1,000 feet. Petitioner indicated she visited that other property and that it does not have any signage (or other external features other than a handicap ramp) indicating it is an ALF. Petitioner's property is well-maintained and I do not believe granting the special hearing request would in any way be injurious to 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 boundary lines which are not perpendicular. As such I believe the property is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because she would be unable to operate the ALF, which is a permitted use in the DR 5.5 zone. Finally, I find that the variance 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 this 8th day of **March, 2019** by this Administrative Law Judge, that the Petition for Special Hearing to approve a use permit for an Assisted Living Facility (“ALF”) I for a maximum of four (4) beds and to approve an ALF I within 1,000 ft. of another property with an existing ALF I, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to BCZR §432A.1.C.1 to permit parking for the Assisted Living Facility (“ALF”) to be located less than 10 feet from the property boundary, 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.

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:sln