

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(4024 Carthage Road)	*	OFFICE OF
2 nd Election District		
4 th Council District	*	ADMINISTRATIVE HEARINGS
Demarco & Tanya Hicks	*	FOR BALTIMORE COUNTY
<i>Legal Owners</i>		
Petitioners	*	Case No. 2019-0307-SPHA
* * * * *		

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 Demarco and Tanya Hicks, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to use a 10 ft. wide driveway to access required parking spaces and to calculate density to permit the proposed Assisted Living Facility (“ALF”) I to contain five beds. In addition, a Petition for Variance was filed: (1) to permit an ALF I to be located within ± 204, ±409 and ±415 from other properties with assisted living facilities in lieu of the required 1,000 setback; and (2) to permit an existing shed to remain in the side yard in lieu of the requirement that it be located in the rear yard. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Demarco and Tanya Hicks appeared in support of the requests. Justin Williams, Esq. represented Petitioners. Several community members opposed the request. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”). That agency did not oppose the request.

SPECIAL HEARING

The first aspect of special hearing relief concerns the 10 ft. wide existing driveway shown on the site plan. As an initial matter it is unclear why (or even if) the driveway is deficient under the BCZR. The subject property is a single-family dwelling in a residential (zoned D.R. 5.5) community and the existing driveway is similar in width to those of other properties in the community. Making the driveway any wider would in my opinion tend to make the property appear commercial or institutional, which would be incompatible with the existing conditions in the community.

The petition for special hearing also seeks a determination that five ALF patients/beds would be permitted under the D.R. 5.5 density calculations. The Office of Zoning Review (“OZR”) published a “checklist” showing that a property must have two (2) density units to support five (5) ALF beds. See Exhibit 13. Petitioners disagree and contend the checklist is at odds with the BCZR (which specifies in Section 101.1 density for an ALF is “calculated at 0.25 for each bed”) which should control.

I do not believe the checklist conflicts with the cited BCZR section. The interpretation of the OZR, which is the agency charged with administering the BCZR, should be entitled to deference in this scenario. The court of appeals has held “an administrative agency’s interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts.” *Marzullo v. Kahl*, 366 Md. 158, 172 (2001). As such I believe density exists for only four ALF beds and this aspect of the petition will be denied.

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 property has irregular dimensions and property boundaries. As such the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to operate an ALF I at the property, a use permitted by right in the D.R. 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 agency opposition.

I am sympathetic to the concerns expressed by the community, and agree the Randallstown area has a disproportionate number of ALFs and group homes. In 2017 the county council enacted legislation which was intended to limit “the proximity of assisted-living facilities I and II to other such facilities” See Bill No. 45-2017. Similar provisions enacted by local governments throughout the country have been challenged successfully in court based upon an interpretation of the Fair Housing Act Amendments (“FHAA”) which among other things forbids discrimination against disabled individuals residing in a group setting.

In one such case, the State of Michigan enacted a law prohibiting an adult foster care home from locating within 1,500 feet of a similar institution. The United States Court of Appeals for the Sixth Circuit held the law discriminated against disabled persons in violation of the FHAA. *Larkin v. State of Michigan*, 89 F.3rd 285 (6th Cir. 1996). In light of this and similar cases I am hesitant to deny the variance pertaining to the proximity restrictions added to the BCZR in 2017.

THEREFORE, IT IS ORDERED this 24th day of **June, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to use a 10 ft. wide driveway to access required parking spaces, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit an Assisted Living Facility (“ALF”) I to be located within ± 204, ±409 and ±415 from other properties with assisted living facilities in lieu of the required 1,000 setback; and (2) to permit an existing shed to remain in the side yard in lieu of the requirement that it be located in the rear yard, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking a determination that sufficient density exists for the ALF I to contain five beds, be and is hereby DENIED.

The relief granted herein shall be subject to 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. No signs shall be permitted at the subject property in connection with the ALF.
3. A maximum of four ALF patients/residents may occupy the subject property.
4. Petitioners or any legal entity in which they have an interest may not operate a juvenile group home at the subject property.
5. Petitioners must comply with the ZAC comment submitted by the DOP, a copy of which is attached.

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