

IN THE MATTER OF
THE APPLICATION OF
OLIVER AND FELECIA WEBB/LEGAL OWNER
FOR A VARIANCE ON THE PROPERTY
LOCATED AT 7205 FAIRBROOK ROAD
SW/SIDE OF FAIRBROOK ROAD, 230' NW
OF THE C/L OF BLUFFDALE ROAD

1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 11-243-A

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OPINION

This matter comes before the Baltimore County Board of Appeals on an appeal of the decision of the Administrative Law Judge ("ALJ") wherein he denied a Petition for Variance filed by the Legal Owners of the subject property, Oliver and Felecia Webb, herein referred to as Petitioners. Petitioners are requesting variance relief from section 432.A.1.C.1 of the Baltimore County Zoning Regulations (BCZR). The Petitioners are requesting a parking setback of 2.5 feet from the property line in lieu of the minimum required 10 feet for a proposed Assisted Living Facility. Joining in the Petition for Variance is the Lessee, namely Leverta Page. Petitioners and Lessee were represented by Lawrence E. Schmidt, Esquire and Smith, Gildea & Schmidt, LLC. Protestant, Nicole Bohanan, who resides at 7207 Fairbrook Road, which is on the left side of the duplex of the subject property, *pro se*, only representing herself. A hearing was held on November 1, 2011. A public deliberation was conducted on November 29, 2011.

Background

Mr. Oliver Webb purchased the subject property at 7205 Fairbrook Road as a result of a bank foreclosure. The property is a three bedroom duplex dwelling which the Applicant wishes to convert to an Assisted Living Facility. The Applicant is interested in housing four elderly

residents within the three bedroom dwelling. In addition to the four residents there would be two full-time workers within the dwelling at all times. These workers would work 12 hour shifts and would be replaced by two new workers who would take the second shift of the 24 hour day. All told, there would be six adults within this duplex dwelling at all times of the day.

The Applicant is in need of a variance to allow two parking spaces to be located on the side of the existing dwelling as shown on the site plan submitted into evidence as Petitioners' Exhibit 1. Because of the narrowness of the lot, the Applicant is requesting a variance to allow these parking spaces to exist 2.5 feet from the side property line in lieu of the required 10 feet. It is possible for the Applicant to provide the two needed parking spaces on the property; however, additional improvements would have to be made to the rear yard to locate those parking spaces in the back. By locating the parking spaces in the rear yard, the parking variance is eliminated.

Petitioner's Argument

Daniel M. Blevins testified that he is employed by Development and Design Solutions, LLC, as a land planner and was hired by Mr. and Mrs. Webb for this Petitioner. He stated he has visited the property and created the Plat to accompany the Petition for zoning variance. He testified that the property is zoned DR 5.5 and that there is an apartment complex to the rear of the property. The homes are all semi-detached (duplex) except for one on Fairbrook Road. There are four other lots that are shaped like the subject property, and all other properties are "squared off". The subject property and four other lots have an angled rear yard. Blevins testified that he had provided for the 10 % open space required for assisted living facilities by Section 432.C.3 of the BCZR. In providing this space he excluded the area of the yard where tree roots protrude above ground. He felt elderly people could be endangered by these roots.

Dennis Wertz of Baltimore County Department of Planning, who is the Area Planner for District 1 testified in this case. He stated that this use is compatible for the area. There would be no building required in this use. He supported the variance on this issue because adding parking would have an added impact on the area, mainly the open space. He stated he personally knew of other properties being approved in the area and remembered the address of 7167 and 7165 Fairbrook Road.

Lawrence Schmidt, Counsel for the Petitioner, in closing argument argued that the property was unique due to the lot being the smallest of the semi-detached homes. Due to the constraints of the Baltimore County Zoning Regulations (BCZR) and the *Baltimore County Code* (BCC), the constraints also cause the uniqueness and practical difficulties.

Protestants' Arguments

Ms. Nicole Bohanan who owns and lives within the other half of the duplex dwelling appeared in staunch opposition to the Petitioners' request. She is opposed and protests the variance and the use of the property for an assisted living facility. She stated that there was a family that lived in the subject property prior to this use. She testified that there are roughly twenty-five (25) assisted living facilities in her neighborhood, for the mentally and psychologically challenged, to include similar brain disorders and, for the elderly. She testified that she feels this is deteriorating her neighborhood due to the saturation in one area of these facilities. She stated she would like to see a mix of more families. She also stated that she felt the area was becoming more of a new business district than a family neighborhood.

Additionally, she testified that in her opinion the property was not unique and it was like all the other properties in the neighborhood. She further testified that she felt the owners only purchased the property to make it an assisted living facility.

Decision

Petitioner is seeking variance relief from section 432.A.1.C.1 of the Baltimore County Zoning Regulations (BCZR). The Petitioners and Lessee are requesting a parking setback of 2.5 feet from the property line in lieu of the minimum required 10 feet for a proposed Assisted Living Facility.

The issue before the Board is not the use of the property as an assisted living facility, but only the Petition for Variance, requesting the parking setback.

The Board specifically finds that under Cromwell v. Ward (supra), the Petitioner does not meet the requirement of "uniqueness." In that case, the Court stated:

"Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects in bearing or parting walls.

The property in question is similar in shape to at least six (6) other properties in the development (see Pet. Exh. 3); therefore it does not meet the "uniqueness" test.

In addition, it is possible to put two (2) parking spaces in the rear yard and still have the 10 % open space required by Section 432.C.3 of the BCZR. Even if the deck is excluded as open space, the area where the trees are on the lot should be considered as part of the open space. The residents of the facility could be made aware of the roots if they chose to walk in the back yard, and could be accompanied by a companion if there was some question of safety. The BCZR does not say anything about possible hazards in the open spaces.

Accordingly, the variance request must be denied.


ORDER

THEREFORE, IT IS, this 1st day of February, 2012, by the Board of Appeals of Baltimore County,

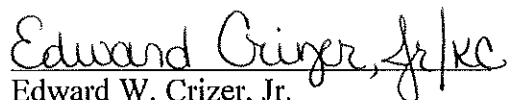
ORDERED that the Petitioners' Variance request from Section 432.A.1.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a parking setback of 2.5 feet from the property line in lieu of the minimum required 10 feet for a proposed Assisted Living Facility, be and is hereby **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence S. Wescott, Panel Chairman


Wendell H. Grier


Edward W. Crizer, Jr.