

RE: PETITION FOR VARIANCE	*	BEFORE THE COUNTY
FOR THE PROPERTY LOCATED AT		
5939 Prince George Street	*	BOARD OF APPEALS
1 st Election District		
1 st Councilman District	*	FOR
Kamilah Shortridge, Legal Owner		
Cynthia Shipley, Petitioner	*	BALTIMORE COUNTY
	*	CASE NO: 13-306-A

* * * * *

OPINION

This matter comes before the Board of Appeals for Baltimore County as a Petition for Variance filed by Cynthia Shipley, Petitioner, on behalf of Kamilah Shortridge, the Legal Owner of the subject property. The Petitioner is requesting Variance relief from Sections 432A.1.C.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit two off street parking spaces for a proposed assisted living facility, one to be located in the side yard as close as 0ft. from the property line and a second in the front yard, in lieu of the required 10 ft. and rear or side yard, respectively. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was Cynthia Shipley. Several neighbors attended the hearing and opposed the petition. Peter Max Zimmerman, Esquire appeared on behalf of People’s Counsel for Baltimore County. There were no substantive Zoning Advisory Committee (ZAC) comments received.

Testimony and evidence revealed that the subject property is approximately 8, 400 square feet and is zoned DR 5.5. The Petitioner proposes to operate an assisted living facility (with three patients) on the site, although all that is sought in the current case is a variance with respect to the parking requirements. A use permit and a compatibility finding by the Department of

Planning (DOP) are required before and assisted living facility can be operated in a residential zone. BCZR section 432A.

DECISION

Baltimore County Zoning Regulations, Section 307.1, in pertinent part, states as follows:

"...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare...."

In *McLean v. Soley*, 270 Md. 216 (1973) the court established the following criteria for determining practical difficulty or unreasonable hardship:

"1) Whether compliance with the strict letter of the restrictions governing various variances would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

"2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

Further, in *North v. St. Mary's County*, 99 Md. App. 502 (1994) the Court held that

"...the 'unique' aspect of a variance requirement does not refer to the extent of improvements on the property, or upon neighboring property. 'Uniqueness' of a property for zoning purposes requires that the subject property have 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 and bearing or party walls." Id at 514

In the Court of Special Appeals in *Cromwell v. Ward*, 102 Md.App. 691 (1995), wherein the Court writes:

...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. **It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...." *Id.* at 698.**

In requiring a pre-requisite finding of "uniqueness", the Court defined the term and stated:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "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.... *Id.* at 710.

Based upon the testimony and evidence presented, the Board will deny the petition for variance.

In this case, no testimony or evidence was presented to show that the property is "unique" for zoning purposes. Testimony from the Petitioners consisted of their assertion that the current driveway in front of the subject property was more than sufficient for the needs of the proposed assisted living facility and failed to provide any argument as to why the parking requirements pursuant to law would create any undue hardship. Additionally testimony was heard from neighbors of the proposed site that described individuals visiting the property at issue and causing problems with street parking in front of other residence's driveways.

In short in being presented no evidence in terms of uniqueness or undue hardship the Petitioner's variance relief requested shall be denied.

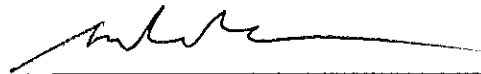
ORDER

THEREFORE, IT IS, this 11th day of June, 2014, by the Board of Appeals for Baltimore County,


ORDERED, that the Petition for Variance seeking relief pursuant to Baltimore County Zoning Regulations ("B.C.Z.R.") to permit two off street parking spaces for a proposed assisted living facility, one to be located in the side yard as close as 0 ft. from the property line and a second in the front yard, in lieu of the required 10 ft. and rear or side yard, respectively, 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**



Andrew M. Belt


Richard A. Wisner

Wendy A. Zerwitz was Panel Chairman on January 15, 2014. She resigned from the Board on May 9, 2014.