

IN THE MATTER OF	*	BEFORE THE
PATRICE BULLOCK – LEGAL OWNER	*	BOARD OF APPEALS
AND PETITIONER FOR VARIANCE	*	
ON THE PROPERTY LOCATED AT	*	OF
4 GEIER COURT	*	
2 nd ELECTION DISTRICT	*	BALTIMORE COUNTY
4 th COUNCILMANIC DISTRICT	*	
	*	Case No.: 18-086-A

* * * * *

OPINION AND ORDER

This case comes before the Board of Appeals on appeal from the Opinion and Order, dated November 3, 2017, and entered by the Honorable John E. Beverungen, Administrative Law Judge for Baltimore County (“ALJ”).

At the ALJ hearing, Petitioner, *pro se* at the time, had requested variance relief from Section 432A.1.C.2 of the Baltimore County Zoning Regulations, and in particular, a variance: (1) to permit parking in the front yard with zero side yard setback and two parking spaces, rather than the required 10 ft. side yard setback and four parking spaces; and (2) if necessary, to permit an Assisted Living Facility (ALF) I to be closer than 1,000 ft. to another property with an ALF I or II. The ALJ denied Petitioner’s variance requests as Petitioner failed to “provide any evidence, exhibits and/or argument regarding the uniqueness of the property.”

This matter originally had been scheduled on January 24, 2018 for a hearing on the merits in front of the Board of Appeals. A postponement was requested prior to the hearing and the matter was rescheduled to March 29, 2018.

On March 28, 2018, the Board received from new counsel for Petitioner, Samuel Spurling, Esq., email correspondence providing advance notice of counsel’s intended request to remand the case to the Administrative Law Judge, foregoing the scheduled hearing on the merits

at the Board. Counsel for Petitioner represented to the Board via the March 28, 2018 correspondence that it was Petitioner's intent to submit a revised site plan requiring no variances. Moreover, Petitioner announced her desire to proceed via special hearing, not via variance request, to obtain the relief needed for their proposed ALF I. The Board did not act upon the correspondence request submitted by Mr. Sperling.

On March 29, 2018, the Board held a hearing on this case, particularly with respect to the request made the day before. Mr. Sperling and his client were present, as were numerous neighbors in opposition. Peter Max Zimmerman, Esq. appeared on behalf of the Office of People's Counsel.

Mr. Sperling reiterated his request to remand this case to ALJ to permit Petitioner to proceed via special hearing rather than continue with the request for variance relief. Mr. Sperling also alleged, for the first time, the possibility of claims arising under the Fair Housing Act and the Americans with Disabilities Act.

As part of the request, Mr. Sperling affirmatively represented that Petitioner is no longer pursuing the requests for variance relief from BCZR, § 432A.1.C.2. More particularly, Mr. Sperling expressly represented to the Board and admitted that the property at issue was not unique for purposes of a variance analysis pursuant to BCZR, §307.1. Petitioner acknowledged that there was no evidence that could sustain such a finding in connection with any relief within the scope of the Petition. Petitioner also represented that she would not seek relief from any applicable parking or related setback regulation.

Therefore, Petitioner withdrew her appeal, as to any variance issues, with prejudice. Petitioner's representations, admissions, and withdrawal of the appeal of variance issues renders the ALJ's November 3, 2017 Opinion and Order as final.

The ALJ Opinion and Order addressed the uniqueness issue (per *Cromwell v. Ward*, 102 Md. App. 691 (1995)). As that issue was dispositive, the ALJ did not analyze the case-specific relief sought in the ALJ Opinion and Order. Further, in light of the contemplated change in process, claims and/or relief, there had not been any public notice and/or hearing regarding the changes to come. The circumstances of this case dictate that this case be remanded as the Board cannot exercise original jurisdiction over a petition for relief pursuant to §500.7, as the BCZR empowers the ALJ alone, as the court of original jurisdiction, for these types of hearing and specifics that the Board of Appeals has appellate jurisdiction.¹

Even if the Board could do so, it is this Board's opinion that amendments that result in substantive changes in claims and/or zoning relief, as in this case, require sufficient public notice in advance in order to facilitate public awareness and participation. See, e.g., In the Matter of Carol Lynn Morris/C.G. Homes, CBA Case No. 015-302-SPHA (2015) (“there is a process for the new, alternative plan...requested to be reviewed, a process in which the public is required to have specific notice of and ability to participate in a public hearing”).

With the above in mind (and specifically relying on Petitioner's representations, admissions, and withdrawal of the appeal for any variance relief), and because the ALJ had ruled only upon the variance relief requests, the Board hereby remands this case to the ALJ to allow Petitioner to amend her Petition to proceed via special hearing pursuant to BCZR §500.7 for the remaining claims, with specific identification of the claims and relief sought, and Petitioner shall

¹ “The said [ALJ] shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the [ALJ] for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.” BCZR §500.7.

In the matter of: Patrice Bullock

Case No.: 18-086-A

be required to comply with the public notice and hearing requirements therein. As indicated on the record before this Board, the Petitioner shall not include a request for variance relief, nor file a separate claim for variance relief with regard to the facts of this case.

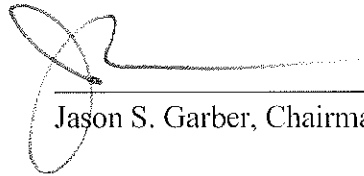
ORDER

THEREFORE, IT IS THIS 16th day of May, 2018, by the Board of Appeals of Baltimore County,

ORDERED that Petitioner's appeal as to any variance issues is hereby withdrawn with prejudice by Petitioner and the appeal regarding any variance issues are hereby **DISMISSED WITH PREJUDICE**. Petitioner's Petition is hereby **REMANDED**, on other issues, with leave to proceed via special hearing pursuant to BCZR §500.7. It is further **ORDERED** that Petitioner shall comply with the public notice and hearing requirements therein.

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**



Jason S. Garber, Chairman



Maureen E. Murphy



Andrew M. Belt



Board of Appeals of Baltimore County

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May 16, 2018

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RE: In the Matter of: *Patrice Bullock – Legal Owner*
Case No.: 18-086-A

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington Haz".

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Patrice Bullock
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

Columbus and Mazola Goode
M.L. and Dorothy Hull
Carlton and Kimberly Williams
Vivian Salters
Margaret Beard
Michelle Fields-Hall