

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
S/S Lochearn Drive, 62' W of Carol Road *	ZONING COMMISSIONER
<b>(3629 Lochearn Drive)</b>	
4 <sup>th</sup> Election District *	OF
3 <sup>rd</sup> Council District	
	BALTIMORE COUNTY
John R. Dozier, Jr., et ux	
<i>Petitioners</i> *	<b>Case No. 2009-0061-SPHA</b>

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owners of the subject property, John R. Dozier, Jr., and his wife, Lea Maire Dozier. The Petitioners seek variance relief from Section 432A.C.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit parking and delivery areas in the front yard in lieu of the required side or rear yards only, and special hearing relief to approve a Use Permit for an Assisted Living Facility I (ALF) with a maximum of four (4) beds. The subject property and requested relief are more particularly described on the site plan, which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requests were the Petitioner, John Robert Dozier, Jr., along with his friend and colleague Sherman Braxton, who has experience in the operation of assisted living facilities. The Petitioner also submitted three (3) supportive letters from nearby neighbors, which were marked and accepted into evidence as Petitioners' Exhibits 2A-2C. A number of residents from the surrounding community appeared in opposition to the request, including Christine Cypress, a 31-year resident of the community and President of the Lochearn Improvement Association, Inc., and nearby property owners Martha LeBarre and Benjamin and Carole McCall.

As a preliminary matter, it should be noted that there was apparently some confusion on behalf of the Petitioner and Protestants concerning the nature and scope of the request. The Petitioner is not proposing to construct any additional parking areas, but is asking for permission to operate an ALF with parking and delivery in the front of the subject property rather than the side or rear yards. The ALF legislation enacted under Council Bills 19-04 and 32-06 was written by and for the Office of Planning and the Department of Aging. These agencies are responsible for reviewing and approving the general layout and compatibility standards of any proposed ALF and making recommendations to the Zoning Commissioner. An ALF is permitted in the D.R.5.5 zone by Use Permit, which can be issued by representatives of the Department of Permits and Development Management pursuant to Council Bill 19-04. That section was amended to require that such facilities be:

- (1) located in a structure which was built at least five (5) years before the date of the application;
- (2) was not enlarged by 25% or more of ground area within the five (5) years before the date of application, and
- (3) which accommodates fewer than eight (8) resident clients.

However, in this case, the Petitioner first requires a variance to permit parking and delivery in the front yard of the subject property. Only if a variance is obtained can a zoning Use Permit be issued for the proposed ALF.

Testimony and evidence offered revealed that the subject property is a rectangular shaped parcel containing approximately 7,740 square feet of land zoned D.R.5.5. The property is located on Lochearn Drive near the intersection of Carol Road in the Lochearn community in Baltimore County. The property is improved with a 2-story single-family dwelling, which is described on a floor plan that was marked and accepted into evidence as Petitioners' Exhibit 3.

The floor plan revealed that the home has three (3) bedrooms (one large enough to accommodate two beds) on the second floor and bathrooms on the first and second floors. There is a kitchen, sitting room and living room on the first floor and an office that would be converted to assist with patient care. The exterior of the home can be seen in a photograph, which was marked and accepted into evidence as the Protestants' Exhibit 3. The home is primarily constructed of frame siding, but also has an addition that is made out of brick.

Mr. Dozier, along with his wife and mother, has received certifications to own and operate an ALF in Baltimore County. Mr. Dozier indicated that he first became interested in starting an ALF after talking to his friend and colleague, Sherman Braxton, who has experience operating two (2) similar ALFs in Baltimore City. According to the Petitioner, Mr. Braxton has used his experience to guide the Dozers in their quest to open an ALF on the subject property. In this case, the Dozier family would operate the facility, which would house up to four (4) patients at a time. In order to make room for the patients, Mr. Dozier would move into a nearby apartment with his wife and two children, but would make sure that at least one of the certified members of the family was onsite at all times for patient care. Mr. Dozier eventually learned that he needed a variance before he could operate an ALF, due to the fact that the only available parking would be in the front of the existing home.

On behalf of the Protestants, Ms. Cypress, President of the Lochearn Improvement Association, Inc., testified that the surrounding community strongly opposed the use of the property as an ALF. Ms. Cypress submitted the minutes from the September 30, 2008 Board of Directors meeting for the Lochearn Improvement Association, which indicated that the Association voted unanimously against the proposal. The meeting minutes were marked and accepted into evidence as Protestants' Exhibit 1. Ms. Cypress also submitted a letter drafted on

behalf of the Lochearn Improvement Association, Inc., which similarly indicated a strong opposition to the Petitioners proposal. The letter was marked and accepted into evidence as Protestants' Exhibit 2. Martha LeBarre and Benjamin and Carole McCall, nearby neighbors, all testified against the Petitioners proposal and expressed their concerns with the potential negative effects of permitting a commercial operation to exist in their currently close knit residential community.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated September 24, 2008, which indicate that the subject site is located in a Master Plan designated Community Conservation Area. The Office of Planning indicated that it reviewed the Petitioners request and site plan. After visiting the site, the Community Planner stated, "it does not appear that the requested use is appropriate for this location. The Office of Planning sees no hardship or practical difficulty and recommends the Petitioners request be denied".

Consideration of variance requests from the zoning regulations is governed by Section 307 of the B.C.Z.R. That Section was interpreted by the Court of Special Appeals in *Cromwell v. Ward*, 102 Md. App. 691 (1995). Therein, the Court noted a two-part test to be applied in considering any variance. First, the Zoning Commissioner must find that the property is unique and unusual in a manner different from the nature of the surrounding properties and that such uniqueness drives the need for the variance. If this finding is not made, the process stops and the variance must be denied. However, if the first step results in a finding of uniqueness, then the second step of the process is taken. The second step is to determine whether an unreasonable hardship or practical difficulty resulting from the ordinance would be caused if strict adherence to the regulations were required. Moreover, the Court indicated that self-inflicted or self-created

hardship is never considered proper grounds for a variance. A variance cannot be granted merely for the convenience of the property owner.

Based upon the testimony and evidence presented, I am persuaded to deny the request. There was no evidence that the subject property is peculiar, unusual or unique. Moreover, I am appreciative of the Protestants' concerns that the proposed use is not in keeping with the character of the surrounding community and could adversely affect the health, safety and general welfare of the neighborhood. The Petitioner should be commended for the professional manner in which he presented his case, and he appears to be a standup citizen who has dedicated his career to public service. However, the Zoning Commissioner is a creature of statute charged with carrying out the spirit and intent of the B.C.Z.R. For all of the previously mentioned reasons, I find that the proposed use is inappropriate for this site and thus, the requested relief shall be denied.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 23<sup>rd</sup> day of October 2008, that the Petition for Variance seeking relief from Section 432A.C.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit parking and delivery areas in the front yard in lieu of the required side or rear yards only, be and is hereby DENIED; and

IT IS FURTHER ORDERED that the Petition for Special Hearing to approve a Use Permit for an Assisted Living Facility I (ALF) for a maximum of four (4) beds, be and is hereby DENIED.

IT IS FURTHER ORDERED that any appeal of this decision must be entered within thirty (30) days of the date hereof.

WJW:dlw

\_\_\_\_SIGNED\_\_\_\_\_  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County