

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
W/S Scotts Hill Drive, 365' S c/line of		
Bittersweet Road	*	ZONING COMMISSIONER
<b>(1008 Scotts Hill Drive)</b>		
	*	OF
2 <sup>nd</sup> Election District		
2 <sup>nd</sup> Council District	*	BALTIMORE COUNTY
Nechama Goldman, <i>Legal Owner</i>	*	<b>Case No. 2010-0170-A</b>
Sarah C. Manning, <i>Lessee</i>		
Petitioner	*	

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by Petitioner and contract lessee, Sarah C. Manning. The Petition was also signed by the legal owner of the property, Nechama Goldman. The Petitioner requests variance relief from Sections 432.A.1.C.1 and 432.A.1.C.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit parking for a Class I Assisted Living Facility with a maximum of three (3) beds to be located partially in the front yard in lieu of the required side and rear yards, and a side yard setback for said parking spaces of zero (0) feet in lieu of the required 10 feet from the property line. The subject property and requested relief are more particularly described on the site plan submitted, which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the request were Sarah Manning, d/b/a S&S Senior Care, her daughter, Sharon Manning, and David Billingsley, of Central Drafting and Design, Inc., who prepared the site plan and is assisting the Petitioner in the permitting process. A number of residents and community leaders representing the Scotts Hill Improvement Association, consisting of 260 homes, appeared as concerned neighbors, namely; Bernardo Rozenywaig, Robert H. Kontoff, Marcia Litov, Deanna L. Haspett, and Les Weinberg.

It became apparent at the onset of the hearing that a great deal of confusion existed as to the nature and scope of the request. As explained, Mr. Rosencwaig, the Association's Vice President, indicated that the zoning sign posted on the property had given the impression that the property's features would be changing. He presented correspondence received from 16 families who oppose the creation of additional paved parking spaces, changes to the existing structure, parking to be allowed in the front yard, changes in the zoning classification, etc. (*See Protestants Exhibit 1*). Mr. Billingsley explained that nothing is being removed. No new construction is taking place. The Petitioner is not proposing to construct any additional parking areas, but is asking for permission to operate an Assisted Living Facility with parking and delivery in the existing driveway of the subject property rather than the rear yard. Ms. Manning only wishes to legitimize those conditions set forth above that have existed since 1959.

Testimony and evidence offered revealed that the subject property is a rectangular-shaped parcel located on the west side of Scotts Hill Drive, just west of Bittersweet Road in the Scotts Hill subdivision of Pikesville. The property contains a lot area of 8,750 square feet (0.20 acres), more or less, zoned D.R.5.5 and improved with a split-level single-family dwelling with a rear yard patio and large yard. Ms. Goldman has owned the property since December 2005 and has been leasing it to Ms. Manning since February 2007. *See Lease Agreement* received as Petitioner's Exhibit 7. Ms. Manning has applied for a State license and would like to receive zoning approval in order to accredit the house as a three (3) bed Assisted Living Facility for senior citizens in need of assistance. She stated the home is adequate for this purpose and that the parking on the side and front would be sufficient since there's room for two (2) vehicles on the existing concrete parking pad and room on Scotts Hill Drive in front of the house for deliveries and additional parking. This testimony is corroborated by Stephen E. Weber, Chief of

Traffic Engineering, in his e-mail dated January 14, 2010, sent to the Office of People's Counsel, following his review of the proposal. Ms. Manning points out that no assisted living patient would drive a vehicle so that there would be no additional parking required. Finally, she indicated that since the existing parking pad on the east side of the house does not meet the set back requirements for assisted living facilities (Sections 432.A.C.1 and 2), she had initially planned to extend the driveway and create a turn-around area in the rear yard. The Office of Planning, however, opposed creating an additional impervious surface and stated in its Zoning Advisory Committee (ZAC) comment, dated December 23, 2009, as follows:

“The additional impervious surface and the turnaround would diminish the usability of the rear yard and would not be compatible with the neighborhood. The lessee, Sarah Manning and representative, Dave Billingsley, were made aware of this issue. The site plan was revised and the parking is now shown in the existing driveway”.

This is in accord with the community's strong desire not to allow changes in the appearance of houses that affect the beauty of the neighborhood and impact the values of adjacent properties. Therefore, the Petitioner agreed to compromise and file the instant Petition. If not for the Office of Planning's request, no variances would be necessary or required as the Petitioner could have met all B.C.Z.R. requirements.

In this regard, the assisted living facility legislation enacted under Council Bills 19-04 and 32-06 were 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 assisted living facility and make recommendations to the Department of Permits and Development Management (DPDM) and the undersigned Zoning Commissioner. Bill No. 19-04 composed site requirement changes, including a minimum required 10-foot setback from an adjoining property line for parking – and that the parking and delivery areas be

located in side or rear yards. It is this required location that is at issue before me, as an assisted living facility is permitted in the D.R.5.5 zoning classification by Use Permit which can be issued by representatives of the DPDM 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”.

Thus, if the requested variance relief is granted, a zoning Use Permit could be issued following receipt of comments from the Offices of Planning and Community Conservation for the proposed assisted living facility.<sup>1</sup>

After due consideration of all of the testimony and evidence presented, I am persuaded to grant the variance. It is clear that strict compliance with the regulations would result in a practical difficulty and unreasonable hardship for the Petitioner and prevent her use of the property for a permitted purpose. Moreover, testimony and evidence demonstrates that this property is on the main street that all residents of Scotts Hill Drive use to access and exit the area and they do not want any changes to the community’s appearance, a position also advocated by the Office of Planning. There were no adverse ZAC comments submitted by any County reviewing agency and the proposal appears compatible with the pattern of development in the area. Thus, I find that the relief requested is appropriate in this instance and will not be detrimental to adjacent properties or the surrounding locale.

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<sup>1</sup> As evidenced by the December 23, 2009 ZAC comment from the Office of Planning, they recommend the granting of the variance and approval of the Use Permit.

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 granted with limitations.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 3rd day of February 2010 that the Petition for Variance seeking relief from Sections 432.A.1.C.1 and 432.A.1.C.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit parking to be located partially in the front yard in lieu of the required side and rear yards, and a side yard setback for said parking spaces of zero (0) feet in lieu of the required 10 feet from the property line, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, and

IT IS FURTHER ORDERED that a Use Permit for an Assisted Living Facility I for a maximum of three (3) beds, be and is hereby GRANTED, subject to the following conditions which are restrictions precedent to the limited approval granted herein:

1. The Petitioner may apply for her Use Permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. The variance relief granted to the Petitioner(s) herein is personal in nature, limited in duration, and shall not run with the land so as to insure to the benefit of any subsequent property lessee or owner. The Assisted Living Facility use shall terminate at such time as Sarah C. Manning ceases to operate the facility or no longer leases the property, whichever occurs first rendering the variance relief granted hereunder to be null and void and of no further force and effect.
3. The Petitioner(s) shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management reasonable access to the property and dwelling to insure compliance with this Order.
4. The decision in this case is not a legal precedent that may be cited as such in any other zoning case.
5. There shall be no signage erected on the home or permitted on the property.

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