

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S Side of Painted Post Circle, 558 feet E		
of the c/l of Smoke Tree Road	*	OFFICE OF
2 nd Election District		
2 nd Councilmanic District	*	ADMINISTRATIVE HEARINGS
(807 Painted Post Court)		
	*	FOR BALTIMORE COUNTY
Grace Ekpenyong		
<i>Petitioner</i>	*	CASE NO. 2011-0266-A

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Variance filed by the legal owner of the subject property, Grace Ekpenyong. The Petitioner is requesting 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 spaces to be located partially in the front yard and a side yard setback for parking spaces of 5 feet in lieu of the required side and rear yards and 10 feet respectively for a Class I Assisted Living Facility. The subject property and requested relief are more fully described 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 variance request were Grace Ekpenyong, property owner and David Billingsley, with Central Drafting & Design, Inc., who prepared the site plan and is assisting the Petitioner with the permitting process. Appearing in opposition to the Petitioner’s request were many residents residing along Painted Post Court and one living on Smoke Tree Road. The names of these homeowners are all listed on the Citizen Sign-In Sheets contained in the file.

Testimony and evidence offered at the hearing demonstrated that the property which is the subject of this variance request consists of 0.431 acre more or less zoned DR 5.5. The subject

property is located at 807 Painted Post Court in the Scott's Hill subdivision of Baltimore County. The property is improved with an existing single family split foyer dwelling wherein the Applicant is proposing to locate an Class I Assisted Living Facility. The Petitioner proposes to utilize an existing driveway for vehicular parking associated with the Class I Assisted Living Facility. In order to utilize the existing driveway, the variance request to allow those parking spaces to be located partially in the front yard and with a side yard setback of 5 feet in lieu of the rear yard with a side yard setback of 10 feet is necessary.

Mr. Billingsley, who assisted the Applicant in filing the Petition and who prepared the site plan, testified that the parking spaces could be located in the rear yard of the subject property. However, so as to not disturb the rear area of the property which for the most part is a wooded area, the Applicant wishes to utilize the driveway that exists on the property for parking for residents and/or workers associated with this assisted living facility. Mr. Billingsley stated that Ms. Diane Itter, a representative from the Office of Planning of Baltimore County, suggested that he file for the variance to allow the parking to remain on the existing driveway in lieu of disturbing the rear yard. At her suggestion, Mr. Billingsley filed the Petition for Variance. He was willing and prepared to provide the needed parking spaces in the rear yard so as to obviate the need for the hearing before this Administrative Law Judge. However, apparently Ms. Itter from the Planning Office believed that the use would be more compatible with the surrounding neighborhood if the parking remained on the existing driveway and that no disturbance to the rear yard occur. Accordingly, Mr. Billingsley filed the instant Petition before this Court.

As stated previously, many residents appeared at the hearing in strong opposition to the Petitioner's request. These residents are vehemently opposed to another assisted living facility being located within their neighborhood. The Protestants' testimony could be summarized as

follows. They are opposed to another commercial venture being located within their Scott's Hill community. Testimony demonstrated that there are 12 to 13 assisted living facilities already existing within their neighborhood. These neighbors are concerned that this type of venture adversely impacts the parking situation within the neighborhood, drives down property values, and impacts the surrounding neighbors on a 24 hour 7 day a week basis. The property whereupon this assisted living facility is proposed to be located is near the cul-de-sac dead end of Painted Post Court. These residents experience an unusual amount of traffic associated with these uses such as deliveries, ambulance visits, and employees coming and going to the property. One resident testified that the residents of the assisted living facility often sit outside the properties smoking cigarettes and playing loud music thereby making it difficult for the surrounding neighbors to enjoy their properties. Additionally, many residents question how this particular split foyer design of home could be utilized by individuals in need of daily living assistance. The testimony indicated that the stairways are narrow and difficult to traverse, the doorways are not accommodating to people with disabilities, the bathrooms are small, and the access to and from the properties is limited. In summary, the residents request that I deny the use of the property from becoming an assisted living facility.

I explained at the hearing that the request before me is to allow parking to occur on the side of the property 5 feet from the side property line. The request before me is not to approve the use of this property as an assisted living facility as that type of activity is permitted by a Baltimore County Use Permit. This assisted living facility is permitted by Use Permit in the DR 5.5 zone. However, pursuant to Section 432.A of the B.C.Z.R. specifically subsection 432.A.1.D the proposed assisted living facility is subject to a compatibility finding pursuant to Section 32-4-402 of the Baltimore County Code. There was no testimony or evidence offered at the hearing relating

to compatibility of this assisted living facility with the surrounding neighborhood. That particular finding is to be made by the Director of Planning with a recommendation to this Administrative Law Judge as to the Director's findings. Mr. Billingsley testified that he met with Ms. Diane Itter from the Office of Planning and discussed the issue of compatibility with her. However, as of the time of the hearing before me, there was no recommendation or finding as to compatibility by the Office of Planning. That particular finding of compatibility will have to be made after this hearing.

As to the request to allow the parking to be on the side of this dwelling only 5 feet from the side property line, that request is hereby denied. There was no practical difficulty or unreasonable hardship proven at the hearing before me. In fact, the testimony revealed that the Applicant could in fact locate these parking spaces in the rear yard of the subject property. Given this, I am compelled to deny the variance request as the Applicant has failed to meet the requisite burden of proof for the granting of a variance.

It should also be noted that, in the opinion of this Administrative Law Judge providing parking in the rear of the subject property for this assisted living facility would make this use incompatible with the surrounding neighborhood. I saw no evidence of others providing commercial parking in the rear of their properties along Painted Post Court or anywhere else in this neighborhood for that matter. However, as stated previously, the issue of compatibility is one reserved to the Office of Planning. I trust they will take into consideration the denial of this variance and the need to provide paved parking in the rear yard when considering the issue of compatibility of this use on the surrounding neighborhood.

For the reasons previously stated, I find that the Petition for Variance should be denied.

THEREFORE, IT IS ORDERED this 25 day of April, 2011, by this Administrative Law Judge that Petitioners' request for Variance 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 spaces to be located partially in the front yard and a side yard setback for parking spaces of 5 feet in lieu of the required side and rear yards and 10 feet respectively for a Class I Assisted Living Facility be and is hereby **DENIED**.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed _____
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz