

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
NS Kirkwood Road, 385' E of c/l		
of Harwell Avenue	*	OFFICE OF
1 <sup>st</sup> Election District		
1 <sup>st</sup> Council District	*	ADMINISTRATIVE HEARINGS
<b>(1518 Kirkwood Road)</b>		
	*	FOR BALTIMORE COUNTY
Nicole Brown		
Petitioner	*	<b>CASE NO. 2012-0222-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by the legal owner, Nicole Brown. The Petitioner is requesting Variance relief from Section 432.A.1.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a 0' side yard setback for parking in lieu of the required 10' setbacks. 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 variance request was Petitioner Nicole Brown. Appearing in opposition was Belinda and Donald Banks of 1520 Kirkwood Road. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. There were no adverse ZAC comments received from any of the County reviewing agencies.

Testimony and evidence revealed that the subject property is 2,200 square feet and zoned DR 10.5. The Petitioner would like to establish a four-bed assisted living facility on the premises, and to do so requires variance relief with respect to the parking setbacks. It must be

stressed that this is not a decision concerning the appropriateness of an assisted living facility at this location. This property is a row home/townhouse, and it would appear to thus have different impacts than would be the case if located in a detached single family dwelling. In a handout from the Department of Permits, Approvals and Inspections, (“Zoning Use Permit Checklist”) that agency states that assisted living facilities can be operated “in townhouse units with difficulty.” As such, I am confident the Department of Planning and Zoning Review Office will carefully consider whether or not establishment of an assisted living facility at this location is appropriate and compatible with the neighborhood.

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Specifically, the site has a two car concrete parking pad in the rear of the home, accessed by way of a 16' wide alley. This arrangement has existed for many years – the home was constructed in 1954 – and thus the variance relief in a sense merely legitimizes existing conditions; i.e., no setbacks from adjoining properties. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner.

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People’s Counsel*, 407 Md 53, 80 (2008).

Petitioner has met this test.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and

general welfare. In fact, as concerns the parking, nothing will change on the site, and two cars will continue to park in the spaces at the rear of the home. Again, this is viewing the matter solely as a zoning variance for parking setbacks, and should in no way be construed as a finding, one way or another, on the proposed assisted living facility.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and after considering the testimony and evidence offered by the Petitioner, I find that Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED, this 4 day of June, 2012, by this Administrative Law Judge, that Petitioner's Variance request from Section 432.A.1.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a 0' side yard setback for parking in lieu of the required 10' setbacks, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may not operate an assisted living facility on the subject property unless she has first obtained the requisite approvals from the State of Maryland and Baltimore County, including a compatibility finding under Section 32-4-402 of the Baltimore County Code.

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

Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:pz