

IN RE: PETITION FOR VARIANCE

N/side of Betlou James Place, 470' W
from c/line of Essex Road
2nd Election District
4th Council District
(16 Betlou James Place)

Sylvia Price, *Legal Owner*
Donzella Burton, *Contract Purchaser/*
Lessee
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2012-0305-A**
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ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by the legal owner, Sylvia Price, and Donzella Burton, the contract purchaser/lessee (the “Petitioners”). The Petitioners are requesting Variance relief from §§ 432A.1.C.1 and 2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to allow the required parking for an Assisted Living Facility I (ALF) to be located in the front yard, as it exists, in lieu of the side or rear yard, and to allow that parking to be setback 0' from the property line in lieu of the required 10'. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support for this case were Petitioners Sylvia Price and Donzella Burton, and Joseph Larson with Bogart Technical Consultants, who prepared the site plan and is assisting the Petitioners through the permitting process. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

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

Testimony and evidence revealed that the subject property is 7,884 square feet and zoned DR 5.5. The property is improved with a single family dwelling, which Ms. Prices has owned since it was constructed in 1987. Petitioners propose to operate an ALF I program on the premises, and require variance relief with respect to the parking requirements imposed by B.C.Z.R. § 432A. Ms. Burton testified that the first step in the process is to obtain zoning relief, and thereafter she will need to obtain licensure from the State of Maryland and further approvals from other County agencies. Ms. Price indicated that two or three years ago an ALF began operating in the home next door to hers, at 14 Betlow James Place. As shown on the aerial photograph (Exhibit 2), the parking pad on the subject premises is situated in the same manner and location as the parking pad serving the neighboring property.

Based upon the testimony and evidence presented, I will grant the request for variance relief. 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).

Petitioners have met this test.

The Petitioners would experience a practical difficulty if the regulations were strictly enforced, since they would be unable to use their home as an ALF, which is permitted in the DR 5.5 zone. Finally, I do not believe the zoning relief will be detrimental to the community's health, safety and welfare. The existing parking pad has been in place for 25 years, and its location will not change, nor will there be any exterior improvements or construction at the site.

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence, I find that Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED, this 26 day of July, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance from §§ 432A.1.C.1 and 2 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to allow the required parking for an Assisted Living Facility to be located in the front yard in lieu of the side or rear yard, and to allow that parking to be setback 0' from the property line in lieu of the required 10', be and is hereby GRANTED.

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

1. The Petitioners may apply for appropriate permits and may be granted same upon receipt of this Order. However the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.
2. The variance relief granted herein is expressly contingent upon Petitioners obtaining a use permit from the Department of Permits, Approvals and Inspections, and a favorable compatibility finding from the Department of Planning.

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