

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(6602 Ridgeborne Drive)	*	OFFICE OF
14 th Election District		
6 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
Joyce Hartley		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2013-0191-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Joyce Hartley, legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to allow an ALF 1 on a property that does not meet the minimum requirements of BCZR section 432. The variance petition seeks relief from B.C.Z.R. § 432.C.2, to allow 0 parking spaces on the property in lieu of the minimum required 2 spaces. 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 requests was Joyce Hartley, legal owner. 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 included in the file. The Department of Planning (DOP) recommended denial, stating that the proposal was at odds with the spirit and intent of B.C.Z.R. §432A.

The subject property is 2,222 square feet in size and is zoned DR 16. The property is improved with a townhouse with approximately 2,000 square feet of living space. The home has

3 bedrooms upstairs, and a large, finished walk out basement. The Petitioner would like to establish an Assisted Living Facility (ALF I) at the property, but needs zoning relief (and State of Maryland licensure) to do so.

Under the B.C.Z.R., an ALF I is permitted by use permit. B.C.Z.R. §432A.1.A.1. The petition for Special Hearing filed in this case did not specifically request such a permit, but sought “to allow an ALF I on a property that does not meet the minimum requirements of B.C.Z.R. 432,” which I will construe as a request under B.C.Z.R. § 432A. An ALF I refers to a facility that “accommodates fewer than eight resident clients.” B.C.Z.R. § 101.1. Here, the subject property is modest in size, and I do not believe the structure is capable of accommodating more than two residents. As noted in a previous Order, the zoning office believes that ALF’s can be operated in “townhouse units with difficulty.” See case no.: 2012-222-A. To reduce the potential for adverse impacts upon the community the subject property shall be restricted to no more than two (2) ALF beds.

The only substantive ZAC comment was from Department of Planning (DOP), which initially noted that a townhouse is not intended to accommodate an ALF. While I am inclined to agree with that sentiment, the County Council did not restrict ALF’s to single family dwellings, as is the case (for example) with boarding houses. B.C.Z.R. § 408B.1. The other shortcoming identified by the DOP pertains to the parking requirements, but I believe that concern is ameliorated by the restricted number of ALF residents permitted.

Based upon the testimony and evidence presented, I will also grant the request for variance relief, although different from that requested in the petition. 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).

The Petitioner has met this test. The property is unique for zoning purposes, and the Petitioner would experience a practical difficulty if the regulations were strictly enforced. 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. The ALF, as noted above, shall be restricted to only two (2) beds and, as such, only one (1) parking space is required per B.C.Z.R. § 409.6.A.1 which requires "at least 1 usable off street parking space. . . for each 3 beds."

Pursuant to the advertisement, posting of the property, and the public hearing, and after considering the testimony and evidence offered, I find that Petitioner's Special Hearing and Variance requests should be granted.

THEREFORE, IT IS ORDERED this 3rd day of April 2013, by this Administrative Law Judge, that Petitioner's request for Special Hearing to allow an ALF I (with a maximum of two (2) resident clients) on a property that does not meet the minimum requirements of BCZR section 432A, filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's Variance request from B.C.Z.R. §§409.6 and 432A to allow 0 parking spaces on the property in lieu of the minimum required 1 space, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for appropriate permits 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 such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Prior to issuance of a use permit for the ALF I, the Petitioner must obtain all requisite approvals and licenses from the State of Maryland, and must also obtain a compatibility finding from the DOP per Baltimore County Code (BCC) §32-4-402.

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/sln