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| IN RE: PETITION FOR VARIANCE | * | BEFORE THE OFFICE |
| (1005 Sayward Avenue) | | |
| 9 th Election District | * | OF ADMINISTRATIVE |
| 6 th Council District | | |
| Audrey M. Smith | * | HEARINGS FOR |
| <i>Legal Owner</i> | | |
| | * | BALTIMORE COUNTY |
| | | |
| Petitioner | * | CASE NO. 2021-0134-A |

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Audrey M. Smith, legal owner of the subject property (“Petitioner”) located at 1005 Sayward Avenue. The Petitioner is seeking a variance from §432.A.1.Z of the Baltimore County Zoning Regulations (“BCZR”) to expand an existing Assisted Living Facility (“ALF”) from 7 to 9 beds on a property located 300 feet from a principal arterial street in lieu of being located directly on a principal arterial street.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

A Substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). They did not oppose the requested relief.

The Petitioner, Herbert Salter, Jr. appeared at the hearing on behalf of the legal owner, his mother, Audrey Smith. Timothy M. Kotroco, Esquire represented the Petitioner. There were no protestants or interested citizens that appeared at the hearing. The subject property is 14,039 square feet in size and is zoned DR 5.5.

Mr. Kotroco proffered the following facts. The property is located on Sayward Avenue in Old Hillandale. Mr. Salter has been operating a seven bed Assisted Living Facility (“ALF”) at this location since 2019 when he and his mother obtained a valid Use Permit for this use. They now

wish to expand from seven to nine beds, which requires this variance due to the fact that the property is not located on a principal arterial road. Petitioner's Exhibit 6 is a photo showing the location's proximity to Loch Raven Boulevard, which *is* a principal arterial road. Mr. Kotroco explained that the site is less than 300 feet from Loch Raven Boulevard. He further explained that there are a number of reasons why this location is actually better suited for this ALF than if it were directly located on Loch Raven. Namely, there is no parking on Loch Raven and ample street parking around this site. Further, there are numerous avenues of ingress and egress via the surrounding public streets. In addition, there is a County, career staffed, Fire House a block away with excellent access to this ALF.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

The site in this case is unique in that it is a wedge shaped lot with frontage on two public streets. Petitioner would suffer practical difficulty and hardship if the variance were denied because they would be unable to add the two additional beds in their ALF. I find that the variance is within the spirit and intent of the BCZR and that it will not harm the public health, safety, or welfare. This finding is buttressed by the lack of any agency or community opposition.

THEREFORE, IT IS ORDERED, this **30th** day of **May 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to §432.A.1.Z of the BCZR to expand an existing Assisted Living Facility ("ALF") from 7 to 9 bed, that is located within 300 feet from a principal arterial street in lieu of the required zero feet is hereby **GRANTED**.

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

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

Signed

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm