

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(9917 Liberty Road)	*	OFFICE OF
2 nd Election District		
4 th Council District	*	ADMINISTRATIVE HEARINGS
The Comforts of Home LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner		Case No. 2020-0255-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of The Comforts of Home LLC, Legal Owner (“Petitioner”) for the property at 9917 Liberty Rd., Randallstown (the “Property”).

The Special Hearing requests:

- (1) To approve the proposed use as shown on the Plan to Accompany Petition for Zoning Hearing as an Assisted Living Facility (“ALF”) II.
- (2) To determine whether the proposed use as shown on the Plan to Accompany Petition for Zoning Hearing is exempt from the requirements of the Baltimore County Zoning Regulations (“BCZR”) § 1B01.1.B.1.A through E by virtue of BCZR § 1B01.1.B.1.f and/or g(15).
- (3) If pursuant to Special Hearing Request No. 2, the Zoning Commissioner determines the proposed use is not exempt, then pursuant to BCZR § 1B01.1.B.1.c(1), to determine that the amount of Residential Transition Area (“RTA”) provided is adequate, as shown on the Plan to Accompany Petition for Zoning Hearing.
- (4) In the alternative to Special Hearing Request No. 3 and Variance Request No. 2, pursuant to BCZR § 1B01.1.B.1.c(2), to modify the RTA required under BCZR § 1B.01.1.B.1.e (3) and (5) to permit the surface parking, drive aisles, and other improvements shown on the Plan to Accompany Petition for Zoning Hearing to be located within the 50-foot RTA Buffer and the 75-ft. RTA setback otherwise required.

(5) To approve one Assisted Living Bed resulting from the density associated with the RC-5 zoned land within the tract boundary, as shown on the Plan to Accompany Petition for Zoning Hearing.

The Variance requests relief:

(1) from the BCZR, §101.1 (definition of “Assisted Living Facility II”) to allow the expansion of an ALF II within the 5 year prior to the date of application by 1,700 sq. ft. (105%) in lieu of 407.5 sq. ft. (25%) otherwise permitted.

(2) In the alternative to Special Hearing Request Nos. 3 and 4, a variance from BCZR § 1B01.1.B.1.e.3 and e.5 to permit an RTA Buffer and an RTA setback, respectively, of zero (0) ft. and in lieu of the 50-ft. buffer and the 75-ft. setback required in order to accommodate surface parking, a driveway, and other improvements (including the addition to the main building), all as shown on the Plan to Accompany Petition for Zoning Hearing.

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. Petitioner Shareba Kerriem of Comforts of Home LLC, appeared in support of the requested relief along with Donald Mitten of Richardson Engineering who prepared and sealed a redlined site plan (the “Redlined Site Plan”). (Pet. Ex. 3). Dino La Fiandra, Esquire represented the Petitioner. There were several Protestants and interested persons in attendance who testified in opposition.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), Department of Environmental Protection and Sustainability (“DEPS”) and Office of Zoning Review (“OZR”) opposed the requested zoning relief.

FACTUAL FINDINGS

The Property is approximately .690 acres and is split zoned DR 3.5 and RC5. It is improved with a 1,620 sf, one-story, brick rancher home and is served by private sewer system but is connected to public water. Ms. Kerriem explained the photos of the Property. (Pet. Ex. 1A-1Q).

On Plat No.2 of Hernwood dated March 25, 1948, the Property was Lot 17 and was planned to sit on a corner lot bound by Liberty Rd. and Staffordshire Road. (Pet. Ex. 5). At some point, Staffordshire Road was not constructed or was closed and as a result, an area of Staffordshire Rd. and/or all of Staffordshire Rd. become part of the Property. (Pet. Ex. 4). Accordingly, the Property is larger than other single lots. (Pet. Exs. 4, 5). While the Property fronts on Liberty Rd. which has commercial uses on the northern side of Liberty Rd, the Property is surrounded by residential dwellings on 3 sides.

The Petitioner purchased the Property for the purpose of operating an Assisted Living Facility I (“ACF I”) which currently houses 5 senior residents. An ALF I is permitted in DR zones with a use permit and is licensed by the State of Maryland. (BCZR, §101.1 and §432A.1). An ACF I is permitted to have up to 7 residents. Ms. Kerriem testified that in December of 2017 she obtained a use permit to operate the ACF I at the Property.

Ms. Kerriem has owned The Comforts of Home, LLC for 11 years. In addition to the ALF I at the Property, Ms. Kerriem owns and operates two (2) other ALF I: 9101 Bengle Rd. and 5 Marble Dale Ct. She does not live in any of the 3 facilities and she has a staff of 5 people who rotate between them. Based on research Ms. Kerriem reviewed, as well as the number of requests she receives for senior care, she testified that there is a need for facilities in Randallstown. However, the larger facilities are often not affordable. Ms. Kerriem believes the personal care her facilities provide to the resident clients is a service to the community.

The proposal here is to expand the Property by constructing a 1,700 sf addition onto the rear of the home, to widen and lengthen the existing paved driveway, and to add a new parking lot in the rear for 6 spaces. Ms. Kerriem desires for the Property to become an ALF II to house 5 additional residents for a total of 10 residents. She believes that the Property has a large lot size

and wants to grow her business to accommodate 5 additional residents. She also presented letters of support. (Pet. Exs. 6, 7, 8, 9, 10 and 12).

Ms. Kerriem responded to questions from Cathy Wolfson of the Greater Patapsco Community Association as to her intent to expand the Property at the time of filing for the use permit in December of 2017. Ms. Wolfson characterized the instant proposal as “development by variance” and highlighted that this is a for-profit business. Ms. Wolfson emphasized that the other 2 facilities owned by the Petitioner could not be expanded which resulted in the purchase of this Property. Ms. Wolfson added that there is no practical difficulty here as the Petitioner is operating a successful ALF I with 5 beds. Ms. Kerriem responded that the practical difficulty was not being able to provide the community with 5 additional beds.

Testifying for the Petitioner was Donald Mitten, PE who was admitted as an expert in civil engineering, as a land planner, in the BCZR and in the development regulations of the BCC. (Pet. Ex. 2). Mr. Mitten testified that he prepared and sealed the Redlined Site Plan. (Pet. Ex. 3). Mr. Mitten described the Property as 150 ft. wide and 185 ft. deep which slopes from the back toward Liberty Rd. He testified that the Property is predominantly zoned DR 3.5 with a strip of RC5 in the rear.

Mr. Mitten testified that the proposed addition in the rear will be 1,700 sf, one-story building. Removal of mature trees in the rear will be required to build the addition and parking lot. There will be a new driveway on the south east side where cars could park along with parking in the rear. The Redlined Site Plan indicates that 4 total parking spaces are required (1 space per 3 beds; 10 beds = 4 spaces); the proposed parking is 6 spaces in the rear. Mr. Mitten acknowledged that both the addition and rear parking would be located within the 50 ft. buffer area and 75 ft. setback of the Residential Transition Area (“RTA”). Accordingly, Mr. Mitten requests either an

exemption from the RTA under BCZR, §1B01.1.B.1.g(15) as an Assisted Living Facility Class A, or a variance from the RTA 50 ft. buffer and 75 ft. setback.

Mr. Mitten opined that the proposed ALF II meets the Compatibility Findings in BCC, §32-4-402 because the addition and the parking are in the rear of the Property and that otherwise, he stated that the Compatibility factors are not relevant to the Petitions here. Mr. Mitten testified that the proposal meets the DR building setbacks.

In regard to the DEPS Comments dated October 29, 2020 that the proposed expansion of the building and increase in sewage flows requires a connection to the public sewer system and an abandonment of the septic system, Mr. Mitten testified that the connection to the public sewer system is not economically feasible and that he would discuss other options with DEPS. Mr. Mitten responded to questions from Cathy Wolfson regarding the similarity between a septic system for a fast-food restaurant and this commercial use; in regard to lighting spilling onto neighborhood homes; and accessibility for fire and rescue vehicles into the driveway and rear parking lot.

Also testifying for the Petitioner was Sean Owojuyigbe, a principal in the architecture firm of Proactive Design & Building Systems, Inc. who was admitted as an expert architect, licensed in the State of Maryland. Mr. Owojuyigbe prepared a Concept Plan for the interior of the addition. (Pet. Ex. 11). In the new addition, 4 bedrooms will be added (3 singles and 1 double), a staff room, office, waiting room, utility room and a storage room. Because it is conceptual, no room measurements were shown on the Concept Plan. Mr. Owojuyigbe opined that while the house has a basement, it could not be renovated to add bedrooms or other rooms. Cathy Wolfson inquired as to the use of the existing kitchen to prepare meals for 10 residents and/or whether meals would be delivered. Ms. Wolfson noted that only 1 bathroom was proposed for 5 additional residents.

Danny Blount, 30 Millstone Rd, Randallstown, the Vice President of Hernwood Heights Community Association, asked questions and also testified. Mr. Blount testified that he lives in a rancher and that he renovated his basement to add bedrooms. He mentioned that rather than spend money on an addition, the basement could be renovated to comply with all building codes. Mr. Blount stated that Hernwood Heights Community Association did not vote in favor or against this Petition. While he sees the nature of the business as a positive, the proposed expansion will have a detrimental effect on the residential neighborhood and will set a dangerous precedent for other homeowners to operate businesses in their homes.

Also testifying was Carla Nelson Chambers, 23 Sheridan Rd. in Randallstown, who is the President of Hernwood Heights Community Association. Ms. Chambers confirmed Mr. Blount's testimony that Hernwood Heights Community Association did not take a position in support of or in opposition to the Petition. Ms. Chambers agreed that while there is a need in Randallstown for affordable assisted living facilities, there are other group homes in the area and that granting this proposal sets a bad precedent for businesses within residences. A variance granted here will run with the land and will change the character of the neighborhood. Ms. Chambers added that this expansion will increase traffic and that traffic is already a problem on Liberty Rd.

David Green, 3 Burr Oak Ct. in Randallstown is a retired Baltimore County Planner. Mr. Green questioned Mr. Mitten on the expansion of the ALF by 105% and emphasized that the expansion is out of character with the neighborhood. Mr. Mitten responded that there is no major effect on the neighboring properties. Mr. Mitten added that there is no additional traffic generated even with 5 additional residents, their guests, medical deliveries, food deliveries and staff. When questioned about the RTA buffer and setbacks, Mr. Mitten opined that while the RTA is intended to protect surrounding properties, in his opinion it applies to larger developments. Mr. Mitten

stated that the use is compatible because the size of the development is compatible with the lot size. Additionally, Mr. Mitten testified that this Property should not have RC5 zoning and he believes it is in error.

Mr. Green testified that he is opposed to the requested relief as it is motivated by financial reasons and therefore no practical difficulty exists. He is concerned with the precedent it sets for the residential neighborhood. He finds that this Property is too small for the proposed ALF II with its addition and parking lot. Mr. Green testified that the Petitioner needs to purchase a location which is large enough and compatible for an ALF II.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005).

1. Request for Approval of ALF II.

Under BCZR, §432A.1.A.2, an ALF II is permitted by use permit if it has frontage on a principal arterial street. To become an ALF II, BCZR, §101.1 requires that it meets 3 prerequisites:

(1) is located in a structure which was built at least five years before the date of the application;

- (2) was not enlarged by 25 % or more of ground floor area within the five years before the date of the application; and
- (3) accommodates between eight and 15 resident clients.

In this case, the Petitioner seeks to construct a 1,700 sf addition which is larger than the existing 1,620 sf single family home and will more than double the existing building footprint to 3,320 sf. This is an expansion of 105% within five (5) years prior to filing the application for a use permit for the requested ALF II. Therefore, it fails to meet the above mandatory prerequisites and Special Hearing Request No. 1 will be denied. Notably, both the DOP and OZR objected to the requested zoning relief for this reason. Anticipating the County agencies objection, Petitioner filed for Variance relief from the BCZR, §101.1 which will be address below.

2. RTA Requirements.

The Residential Transition Area requirements under BCZR, §1B01.1.B.1.b are generated in this case because the Property to be developed is zoned DR and lies adjacent to land zoned DR 3.5 (both sides) and RC5 (rear). In addition, as the Court of Special Appeals in *Lucy Ware v. People's Counsel of Baltimore County*, 223 Md. App. 669, 683 (2015) held that a change in use from residential to commercial requires compliance with the RTA. As such, the Property would be subject to the 100 ft. RTA area which includes the 75 ft. setback for the parking lot and the addition as well as a 50 ft. landscape buffer. (BCZR, §1B01.1.B.1.e(3) and (5).

In Special Hearing Request No. 2, the Petitioner seeks an exception from the RTA requirements under BCZR, §1B01.1.B.1.f (“Exception f”), or g(15) (“Exception g”). Although a Plat of Hernwood dated March 25, 1948 was presented, this Plat does not satisfy any or all of the components of Exception f, particularly without any legislative history and/or other information which explains that it applies to the facts here. Accordingly, I am not convinced that Exception f is applicable.

With regard to Exception g entitled ‘Assisted Living Facility Class A,’ the Assisted Living Facility Class A was eliminated in Bill 19-2004 (although apparently not removed from the RTA regulations). By virtue of Bill 19-2004, Assisted Living Facilities are now categorized under BCZR, §101.1 into 3 groups: ALF I, ALF II and ALF III. Previously, Bill 188-1993 created ‘Class A’ and ‘Class B’ Assisted Living Facilities. Yet, even under the previous definition of ‘ALF, Class A,’ the Petition is not entitled to Exception g because it fails to meet that definition which read:

Section 101.1 – Definitions.

Assisted Living Facility:

* * * *

(A) Where such services are located in a converted dwelling or other building that has not been enlarged to accommodate the facility by more than 25% of ground floor area within a period of five years prior to the date of application, it shall be referred to in these regulations as Assisted Living Facilities Class A.

For these reasons, Special Hearing No. 2 will be denied.

Special Hearing Request No. 3 is duplicative of, and/or as alternative to, Variance Request No. 2 and requests a determination that the proposed RTA setback and buffer on the Redlined Site Plan are ‘adequate’. There is no provision in the RTA regulations which permits a finding that proposed reductions to the 75 ft. setback or 50 ft. buffer are ‘adequate.’ Under BCZR, §1B01.1.B.c, either a variance [c(1)] or a modification [c(2)] can be requested. As such, Special Hearing Request No. 3 will be denied.

In regard to Special Hearing Request No. 4, Petitioner seeks a ‘modification’ under BCZR, §1B01.1.B.c(2) which requires a finding of Compatibility under BCC, §32-4-402(d) and a finding that any reduction will not adversely impact the residential community or development on the land

adjacent to the property to be developed. Under the facts here, I find that the proposed 1,700 sf addition which is larger than the existing home, and the proposed parking lot in the rear will adversely impact not only the adjacent properties but the larger residential community. Both the proposed addition and parking lot are located within the 75 ft. setback and the parking lot consumes the 50 ft. landscape buffer which buffer is required to be upgraded, uncleared and landscaped. The single family homes behind the Property are zoned RC5 and will be negatively impacted by the expanded operation of this business, particularly without the 75 ft. setback and 50 ft. landscaped buffer to shield them from this expanded commercial business. The proposal eviscerates the purpose of the RTA which is to provide both distance and a landscape buffer between different uses. The house and lot on this Property are too small for expansion of this business.

Applying the Compatibility factors to the facts here, Mr. Mitten opined that those factors were met because the lot size is large enough to build the addition and parking lot. He added that most of those factors do not apply in this case. In my review of those factors, I find that those factors do apply and that the Petition fails to meet them. Specifically, Subsection (d)(2) has not been met because the large addition and rear parking lot will have an adverse impact on the homes in the RC5 zone to the rear. The open space and landscape factors in Subsections (d)(4) and (6) have not been met because the proposal eliminates the rear yard, removes mature trees, and provides no landscape RTA buffer. Lastly, Subsection (d)(8) has not been met because the scale, proportion, and massing of the addition are out of proportion with the existing homes in the neighborhood. Thus, the request for a modification has not been met under BCZR, §1B01.1.B.1.c(2) and the Special Hearing Request No. 4 will be denied.

Lastly, Special Hearing Request No. 5, seeking approval of one bed from the density associated with the RC5 zoned land was stricken on the Redlined Site Plan and that Request was

withdrawn by the Petitioner. This deletion was the result of OZR's comment that the RC 5 zone does not permit Assisted Living Facilities. Accordingly, Special Hearing Request No. 5 is moot.

Variance

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).

Variance Request No. 1 requests a variance from the BCZR, §101.1 Definition of ALF II and specifically from both the 5 year time restriction and from the 25% limit on the size of the addition. OZR provided a comment that this request is not an appropriate Variance request but should be resolved by Special Hearing. In short, this 'Variance' seeks to ignore the definition of ALF II. Petitioner wants the choice to enlarge the existing 1,620 sf home by 105% (which permitted for an ALF III) but is seeking an ALF II because, even with the 1,700 sf addition, the home is too small to accommodate more than 10 resident clients.

Even assuming the Property is 'unique' for zoning purposes due to the lot size, I find that the Petitioner will not suffer an unreasonable hardship or practical difficulty if the variance relief were denied. The Petitioner's testimony in this regard was that a practical difficulty existed because the community would not be served if her business was not able to provide 5 more beds. First, the Petitioner currently operates an ALF I and is permitted under BCZR, §101.1, to have up to 7 resident clients without filing for any relief here. However, the Petitioner concedes that the existing home is even too small to accommodate those 2 additional residents. There is a basement

in the home which is not being utilized and could be modified and/or remodeled for the ALF I business.

Second, the ‘practical difficulty’ factor does not belong to the ‘community’ as Petitioner suggests but to the Property as it must be shown that the uniqueness of the Property creates a practical difficulty or unreasonable hardship which prevents compliance with the BCZR. In this case, there is a successful business within the existing footprint of the home and practical difficulty and unreasonable hardship cannot be driven by economic reasons. Accordingly, no practical difficulty or unreasonable hardship exists. Additionally, as DEPS highlighted, the addition of 5 residents, plus staff and visitors on the private septic system is not insubstantial, and a connection to the public sewer system is necessary.

Variance Request No. 2 requests a Variance from the RTA Regulations which was addressed in the Special Hearing relief above and, for those reasons and the lack of practical difficulty, lack of harmony with the spirit and intent of the RTA regulations which is to separate and buffer different uses and dissimilar housing types, as well as the injury to public health, safety and general welfare, the Variance Request No. 2 will be denied.

ORDER

THEREFORE, IT IS ORDERED this **18th** day of **March 2021**, by this Administrative

Law Judge that the Petition for Special Hearing requests:

(1) To approve the proposed use as shown on the Plan to Accompany Petition for Zoning Hearing as an Assisted Living Facility (“ALF”) II be and it is hereby **DENIED**.

(2) To determine whether the proposed use as shown on the Plan to Accompany Petition for Zoning Hearing is exempt from the requirements of the Baltimore County Zoning Regulations (“BCZR”) § 1B01.1.B.1.A through E by virtue of BCZR § 1B01.1.B.1.f and/or g(15) be and it is hereby **DENIED**.

(3) If pursuant to Special Hearing Request No. 2, the Zoning Commissioner determines the proposed use is not exempt, then pursuant to BCZR § 1B01.1.B.1.c(1), to determine that the amount of Residential Transition Area (“RTA”) provided is adequate, as shown on the Plan to Accompany Petition for Zoning Hearing, be and it is hereby **DENIED**.

(4) In the alternative to Special Hearing Request No. 3 and Variance Request No. 2, pursuant to BCZR § 1B01.1.B.1.c(2), to modify the RTA required under BCZR § 1B.01.1.B.1.e (3) and (5) to permit the surface parking, drive aisles, and other improvements shown on the Plan to Accompany Petition for Zoning Hearing to be located within the 50-foot RTA Buffer and the 75-ft. RTA setback otherwise required be and it is hereby **DENIED**.

(5) To approve one Assisted Living Bed resulting from the density associated with the RC-5 zoned land within the tract boundary, as shown on the Plan to Accompany Petition for Zoning Hearing, be and it is hereby **MOOT**.

IT IS FURTHER ORDERED the Variance relief requests:

(1) from the BCZR, §101.1 (definition of “Assisted Living Facility II”) to allow the expansion of an ALF II within the 5 year prior to the date of application by 1,700 sq. ft. (105%) in lieu of 407.5 sq. ft. (25%) otherwise permitted, be and it is hereby **DENIED**.

(2) In the alternative to Special Hearing Request Nos. 3 and 4, a variance from BCZR § 1B01.1.B.1.e.3 and e.5 to permit an RTA Buffer and an RTA setback, respectively, of zero (0) ft. and in lieu of the 50-ft. buffer and the 75-ft. setback required in order to accommodate surface parking, a driveway, and other improvements (including the addition to the main building), all as shown on the Plan to Accompany Petition for Zoning Hearing, be and it is hereby **DENIED**.

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



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm