

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(40 Summerfield Road)		
1 st Election District	*	OF ADMINISTRATIVE
1 st Council District		
Lukisha Denise Washington	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner	*	CASE NO. 2021-0072-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Lukisha Denise Washington, legal owner of the subject property (“Petitioner”) located at 40 Summerfield Road in Windsor Mill. The Petitioner is seeking a variance from §432.A.1.2 of the Baltimore County Zoning Regulations (“BCZR”) to permit an Assisted Living Facility (“ALF”) property to in a DR Zone for Class I Facility that is 890 feet from the nearest facility, in lieu of the required 1000 feet.

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 Petitioners’ Exhibit 1.

The Petitioner, Lukisha Denise Washington appeared at the hearing. Patrick “Rick” Richardson, from Richardson Engineering also appeared and assisted the Petitioner. Several neighborhood residents also attended to express their opposition to the proposed variance. The subject property is 4,794 square feet in size and is zoned DR 5.5. It is in an established and densely developed neighborhood of single family homes adjacent to mixed commercial uses.

Ms. Washington testified that she purchased this dwelling in 2005 and raised her children there. She explained that it is currently registered as a rental property but that she wishes to convert it to a Class I Assisted Living Facility (“ALF”) that would initially serve three senior citizen residents. Mr. Richardson explained that the variance is needed because there is another ALF 890 feet away.

He opined that the property is unique because it is a corner lot and there is a county right of way easement that runs along the Windsor Mill Road property line.

Adam Allen, a neighborhood resident, testified that this area of the county has become a “dumping ground” for ALFs. He submitted several exhibits showing the high concentration of ALFs in the Woodlawn, Windsor Mill, and Randallstown areas. He noted that BCZR §432.A.1.3 was enacted in 2017 for the purpose of addressing the concentration of ALFs, which typically require a higher volume of 911 responses, parking congestion, and lower property values. In addition, he noted that the Board of Appeals recently denied a similar ALF variance request for a property at 2100 Northland Road, BOA Case No. 2019-481-A.

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 arguably unique because of the county right of way. However, that right of way has nothing to do with the variance requested. The need for the variance arises solely from the proximity of another ALF and this proximity is precisely what BCZR §432.A.1.3 was enacted to prohibit. I do believe that Ms. Washington’s intentions are good, and that she would have provided quality elder care at this location. However, under these circumstances I find that the requested relief is not within the spirit and intent of the BCZR and that it would, in fact, harm the public health, safety and welfare.

THEREFORE, IT IS ORDERED, this **24th** day of **May 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to §432.A.1.2 of the Baltimore BCZR to permit an ALF property to in a DR Zone for Class I Facility that is 890’ from the nearest facility, in lieu of the required 1000’ is hereby **DENIED**.

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

A handwritten signature in black ink, appearing to read "Paul M. Mayhew". The signature is written in a cursive, flowing style.

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm