

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
NW side of Milton Avenue,		
440 feet +/- SW of Milton Avenue	*	DEPUTY ZONING
2 nd Election District		
4 th Councilmanic District	*	COMMISSIONER
(3516 Jo Ann Drive)		
	*	FOR BALTIMORE COUNTY
Lance Deutch		
<i>Petitioner</i>	*	
Beatrice V. O'Neal, O'Neal Home Care		
<i>Contract Purchaser</i>	*	Case No. 08-077-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Lance Deutch, and the contract purchaser, Beatrice V. O’Neal on behalf of O’Neal Home Care. Variance relief is requested from Section 409.6.A.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit zero parking spaces in lieu of the required two spaces for an assisted living facility. The subject property and the requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit 1.

This matter initially came before the undersigned on October 10, 2007 at 11:00 AM in Room 407 of the County Courts Building. However, on that date, there were no appearances made by Petitioners or any other individuals in support of the variance request. Appearing at the hearing as Protestants in opposition to the variance request were nearby neighbors Rita Holmes of 3517 Jo Ann Drive and Ethel Privott of 3512 Jo Ann Drive. There was no testimony or evidence from Petitioners due to their failure to appear at the hearing. Hence, the undersigned considered the Petition as well as the site plan prepared in connection with this matter. Also considered as evidence was the zoning map, which was marked and accepted into evidence as

Petitioners' Exhibit 2, showing the location of the subject property. During the hearing, the undersigned also considered the testimony of Ms. Holmes and Ms. Privott.

In addition, the undersigned considered the Zoning Advisory Comment received from the Office of Planning dated August 31, 2007 which indicated that the Office reviewed the variance request and site plan and recommended denial of Petitioners' request. The comment further stated the Planning Office was of the opinion that assisted living facilities should have readily available parking and that Petitioner did not meet this requirement. The Planning Office also indicated that the granting of this variance relief may compromise the character and pattern of the neighborhood. Based on the evidence adduced at that time, the undersigned denied the variance request.

Thereafter, in a letter to the undersigned dated October 16, 2007, Petitioner's engineering consultant, Richard E. Matz, requested a reconsideration of the decision, and requested that the matter be rescheduled to hear additional evidence from Petitioners. On November 2, 2007, the undersigned granted the request for reconsideration and directed this matter to be rescheduled for a public hearing in order to hear any testimony or evidence offered by Petitioners. That hearing was convened on January 8, 2008 at 9:00 AM in Room 407 of the County Courts Building.

Appearing at the public hearing in support of the variance request was Petitioner Beatrice O'Neal and Lance Deutch, the property owner. Also in attendance in support of the variance request was Richard E. Matz, with Colbert Matz Rosenfelt, Inc., the professional engineer who prepared the site plan. Appearing as interested citizens were Ethel Privott of 3512 Jo Ann Drive and Bettie Thornton of 3505 Jo Ann Drive.

Testimony and evidence offered revealed that the subject property is a rectangular-shaped parcel containing 0.158 acres and zoned D.R.5.5. It is improved with an existing one-story single-family dwelling located in the Randallstown area of Baltimore County. Petitioner

proposes to operate a Class 1 assisted living facility with four beds. The off-street parking calculation requires one space for every three beds, therefore the total required is two spaces. Petitioners are in need of variance relief because they propose zero spaces in lieu of the required two spaces. Petitioner explained that some of the homes in the neighborhood have driveways and some do not, relying on on-street parking. The subject property does not have on-site parking. In support of the variance request, Petitioner indicated that residents typically do not have vehicles in an assisted living facility, and that her residents would not have vehicles. She also believes there will be very few visitors and/or deliveries. Petitioner's plan is to have four residents and one employee, as well as Petitioner, to provide care for the residents. The facility will not be a group home, as feared by interested neighbor Ethel Privott, but will cater mostly to elderly -- 50 and above -- or younger clients who are disabled.

Appearing at the first hearing in opposition to the requested relief were neighbors Rita Holmes and Ms. Privott. Both voiced objection to the assisted living facility at the location in general, and also voiced opposition to the granting of variance relief to allow zero parking spaces. They also indicated that the area is a residential neighborhood, mostly made up of homeowners, and should not be used for commercial purposes. Among other things, they were concerned with increased traffic stemming from occupants and visitors to the location, as well as the possible constant turnover from occupants moving into and out of the location. Ms. Holmes also introduced a Petition signed by nearby neighbors voicing opposition to the variance relief. The Petition was marked and accepted into evidence as Protestant's Exhibit 1 and consisted of 15 signatures. Appearing at the second hearing on January 8, 2008 was Ms. Privott and Ms. Thornton. After hearing more about the details of Petitioner's plan, Ms. Privott and Ms. Thornton were more understanding of the proposal. Ms. Holmes indicated she was no longer opposed to the plan, however, Ms. Thornton maintained her opposition to the plan.

In response to the ZAC comment from the Office of Planning opposing the parking variance on the ground that assisted living facilities should have readily available parking, and that the granting of this variance relief may compromise the character and pattern of the neighborhood, Mr. Matz indicated that these facilities are situated in many areas of the County, including residential neighborhoods. These facilities are necessary in order to give families options for caring for their loved ones. He also indicated that the earlier trend in the 1990's to have the bigger, 60-plus bed facilities has now given way to a trend to have smaller facilities in neighborhoods. Finally, Mr. Matz indicated there is sufficient parking on the street for visitors.

Consideration of variance requests from the zoning regulations is governed by Section 307 of the B.C.Z.R. That Section has been construed by the Court of Special Appeals in *Cromwell v. Ward*, 102 Md. App. 691 (1995). Therein, the Court noted a two-part test to be applied in considering any variance. First, the Zoning Commissioner must find that the property is unique and unusual in a manner different from the nature of the surrounding properties and that such uniqueness drives the need for the variance. If this finding is not made, the process stops and the variance must be denied. However, if the first step results in a finding of uniqueness, then the second step of the process is taken. The second step is to determine whether an unreasonable hardship or practical difficulty resulting from the ordinance would be caused if strict adherence to the regulations were required. Moreover, the Court indicated that self-inflicted or self-created hardship is never considered proper grounds for a variance. A variance cannot be granted merely for the convenience of the property owner.

Considering all the testimony and evidence presented at both hearings, I am not persuaded to grant the requested variance relief. I do not find any special circumstances or conditions to exist that are peculiar to the land or structure which is the subject of the variance request, nor do I find the property unique in a zoning sense.

Finally, based on the concerns raised by the interested neighbors, as well as the negative ZAC comment from the Office of Planning, I find that granting this variance may be detrimental to the public health, safety and general welfare of the locale.

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

THEREFORE, IT IS ORDERED this 29th day of January, 2008 by this Deputy Zoning Commissioner, that Petitioners' variance request from Section 409.6.A.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit zero parking spaces in lieu of the required two spaces for an assisted living facility is hereby DENIED.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz