

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
E/S Hamiltowne Circle, 125' S of c/line of *	ZONING COMMISSIONER
Bluegrass Road	
<b>(2219 Hamiltowne Circle)</b> *	OF
14 <sup>th</sup> Election District *	BALTIMORE COUNTY
7 <sup>th</sup> Council District	
	<b>Case No. 2010-0294-SPHA</b>
Sharon Watkins	
<i>Petitioner</i> *	
* * * * *	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owner of the subject property, Sharon Watkins. Within the petition for special hearing, relief is sought to permit use of the subject property as an Assisted Living Facility I pursuant to Section 432A.1.A.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). The Petitioner additionally requests a variance from Section 432.A.C.1 of the B.C.Z.R. to permit parking with a setback of zero (0) feet in lieu of the required ten (10) feet. The property under consideration and requested relief are more particularly described on the revised site plan submitted which was accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Sharon Watkins, Petitioner and legal property owner and William R. Buie, III, Esquire, attorney for Petitioner. The requested approval was not contested and no member of the community or any representatives of the various County reviewing agencies appeared or testified at the hearing.

Testimony and evidence offered disclosed that the subject property is an irregular trapezoidal shaped parcel located on the east side of Hamiltowne Circle, south of Bluegrass Road and north of Philadelphia Road and Pulaski Highway in the Rosedale area of Baltimore County.

The property contains an area of .178 acres (7,752 square feet), more or less, zoned D.R.5.5 and improved with a one-story single-family dwelling with basement that comprises approximately 2,400 square feet. According to the Real Property Data Search contained in the file, the primary structure was built on the subject property in 1965. Petitioner has lived in the home for almost twelve (12) years. The first floor of the dwelling has three (3) bedrooms and one (1) bath, kitchen, dining and living areas. The basement contains additional living quarters for Petitioner. *See* Floor Plan(s) submitted as Petitioner's Exhibit 3. A large open space area lays to the rear of the property comprising of 752 square feet. Access to the property is via an asphalt driveway on the north side of the property. The driveway accommodates three (3) parking spaces with two (2) on-street parking spaces also available.

Petitioner proposes to utilize her single family dwelling as an Assisted Living Facility Class I with three (3) beds known as Sharon's Kozy Haven. The parking calculation requires one (1) space for every three (3) beds. As indicated on Petitioner's Exhibit 1 as revised by Dietz Surveying Company, the property provides the required parking spaces and complies with that requirement sufficiently. Testimony revealed that the driveway could accommodate three (3) vehicles in addition to the many additional parking spots available on the street. Petitioner aims to house three (3) elderly patrons in the three (3) upstairs bedrooms while Petitioner would reside in the basement, which is a full-apartment equipped with kitchen and full bathroom.<sup>1</sup> Ample open space is available in the rear of the property for recreational purposes. Petitioner opined that she had previously used the home as a child-care facility which has since ceased to function due to lingering medical issues. The operation of an assisted living facility would allow the Petitioner to continue working. Petitioner submitted a petition marked and accepted into evidence as Petitioner's Exhibit 2 containing letters and signatures of three (3) neighbors

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<sup>1</sup> Although listed as a joint property owner, Robert Watkins no longer resides at the subject property.

indicating no opposition to Petitioner's zoning requests. These neighbors include Lester Berry, who resides across the street from Petitioner at 2232 Hamiltowne Circle and who would be most affected by parking, Petitioner's adjacent neighbors, Christopher, Akpala, to the south, and Mr. and Mrs. James Williams to the north and most impacted by the parking setback variance. Petitioner opined that the operation of the child-care center had no adverse impact on the surrounding community and does not foresee an assisted living facility being detrimental in any way.

In support of the variance request Petitioner cited to the irregularity of the lot configuration. The trapezoidal shape of the lot does not permit compliance with the zoning regulations. The driveway cannot be moved to any other portion of the property that would meet the setback requirements. Further, the gradual narrowing of the property to the rear constrains such attempts to strictly comply with the zoning regulations. Petitioner further testified that the use would not have adverse effects on the surrounding community and is within the spirit and intent of the Regulations.

It is worth establishing the origin of the legislation and definition of an Assisted Living Facility for purposes of resolving the zoning requests at hand. The assisted living facility legislation enacted under Council Bills 19-04 and 32-06 were written by and for the Office of Planning and the Department of Aging. These agencies are responsible for reviewing and approving the general layout and compatibility standards of any proposed assisted living facility and make recommendation to this Zoning Commissioner. Bill No. 19-04 composed site requirement changes, including a minimum required 10-foot setback from an adjoining property line. It is this required setback that is at issue before me, as an assisted living facility is permitted in the D.R.5.5 zoning classification by Use Permit which can be issued by

representatives of the Department of Permits and Development Management (DEPRM) pursuant to Council Bill 19-04. Section 101.1 defines an assisted living facility, in general, and also enumerates the requirements for classification as an Assisted Living Facility I, requiring such facilities be:

- “(1) located in a structure which was built at least five (5) years before the date of the application;
- (2) was not enlarged by 25% or more of ground area within the five (5) years before the date of the application; and
- (3) which accommodates fewer than eight (8) resident clients.”

Thus, if the requested variance relief is granted, a zoning Use Permit could be issued following receipt of comments from the Office of Planning for the proposed living facility.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments received from the Office of Planning on May 24, 2010, indicated some recommendations for the proposed assisted living facility and zoning requests. Specifically, the Office of Planning requested amendments of the site plan to show the property to the rear of the subject property and delineate parking. Further, the comments requested improved fencing and landscaping for screening in the rear yard and inquired as to whether the property owner would live in the proposed facility. In response, the Petitioner indicated that the site plan had been revised to reflect the recommendations of the Office of Planning. Moreover, that improved fencing had been implemented in 2009 and that existing evergreen and honeysuckle trees provided screening in the rear yard. No negative comments were received in opposition to the proposed plan. The Zoning Commissioner indicated that if variance relief were granted it would be personal or *in gross* to the Petitioner due to the uncertainty that follows from relief running appurtenant with the land.

The consideration of the variance request from the zoning regulations is governed by Section 307.1 of the B.C.Z.R. as interpreted by *Cromwell v. Ward*, 102 Md. App. 691 (1995). The two-part variance test involves finding that a property is unique and unusual and that if strict adherence to the regulations were required absent relief, an unreasonable hardship or practical difficulty would result. Self-inflicted or created hardship is not considered proper grounds for a variance.

After due consideration of all the evidence presented, I am persuaded to grant the variance request to allow parking with a setback of zero (0) feet in lieu of the required ten (10) feet and the special hearing request to approve a Use Permit for an Assisted Living Facility I for a maximum of three (3) beds. It is clear that strict compliance with the regulations would result in a practical difficulty and unreasonable hardship for the Petitioner. The unique lot configuration places significant constraints on the Petitioner's ability to comply with the Regulations. Given the unique circumstances, I find the current driveway's location appropriate in this instance, not out of character nor susceptible to creating adverse consequences in the surrounding community. Further, the support of the adjacent neighbors provides compelling evidence of the appropriateness of the zoning relief. Therefore, I find that the relief requested will not be detrimental to adjoining properties or the surrounding locale. Moreover, a grant of the requested variances would be in harmony with the intent of the zoning regulations and would not create injury to the public health safety and welfare. Testimony and evidence reveal that the special hearing request is similarly appropriate and should be granted.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 24<sup>th</sup> day of June 2010 that the Petition for Special Hearing to approve a Use Permit for an Assisted Living Facility (ALF) I for a maximum of three (3) beds, pursuant to Section 432A.1.A.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance relief from Section 432.A.C.1 of the B.C.Z.R. to permit parking with a setback of zero feet in lieu of the required ten feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1. The requested relief to use the property as an Assisted Living Facility shall be personal and *in gross* to the Petitioner only and is not to run with the land or be transferable upon sale, lease or devise, of the subject property.
2. The Petitioner may apply for her building permit 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 the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

Any appeal of this Order shall be taken in accordance with Baltimore County Code (B.C.C.) Section 32-3-401.

WJW:esl

\_\_\_\_SIGNED\_\_\_\_\_  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County