

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
N/Side of Tapscott Road, 150' E of c/line of	*	OFFICE OF
Scotts Level Road		
2 <sup>nd</sup> Election District	*	ADMINISTRATIVE HEARINGS
2 <sup>nd</sup> Councilmanic District		
<b>(4530 Tapscott Road)</b>	*	FOR BALTIMORE COUNTY
Shirley W. and James H. Potter, Sr., <i>Legal Owner</i>	*	
James Potter, <i>Contract Purchaser</i>		
Petitioners	*	<b>Case No. 2011-0289-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Variance filed by Shirley W. Potter and James H. Potter, Sr. (deceased), the legal property owners, and James Potter, the contract purchaser. Petitioners are requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a Use Permit for an Assisted Living Facility I with a maximum of four beds. Petitioners are also requesting Variance relief from B.C.Z.R. Sections 432A.1.C.1, 432A.1.C.2, and 409.3 to permit the two required parking spaces for a proposed Assisted Living Facility I to be located in the front of the dwelling with a side yard setback of 5 feet in lieu of the required side or rear and a side yard setback of 10 feet; and to have parking space dimensions of 10' x 30' for both space in lieu of the required 8'-1/2" x 18' (8'-1/2" x 36' for both spaces). The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the public hearing in support of the requested relief was Cara Potter and her brother James Potter, contract purchaser. Numerous members of the community attended and

voiced strong opposition to the proposal including: Charles Smith, Rosalyn Burns, Michael and Belinda Smith, Thomas E. Otto, Karen A. Aiken, Duane Carr, and Melvin Aiken.

Testimony and evidence offered revealed that the subject property is located in the Old Court Estates neighborhood, is zoned DR 3.5 and is improved by a one story dwelling (rancher style) approximately 1,493 square feet in size.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated April 27, 2011 (and received in the Office of Administrative Hearings on May 2, 2011) indicating that office does not oppose the request for variance relief to use the existing driveway for the required parking spaces for an assisted living facility. However, the Office of Planning indicated that it could not make a finding that the proposed 4 bed assisted living facility is compatible with the neighborhood (as it is obliged to do per B.C.Z.R. § 432A) and that the conversion of this single family dwelling to a 4 bed assisted living facility may lead to overcrowding.

As such, with respect to the special hearing request for a use permit to operate an Assisted Living Facility, I am unable to grant the relief requested given that – as of today’s date – the Office of Planning has not made a positive compatibility finding. I hasten to add that at the hearing testimony indicated there may be up to 15 assisted or collaborative living facilities within this neighborhood, and I would imagine that would figure prominently in any compatibility study. Should the Office of Planning subsequently issue a positive compatibility finding, Petitioners would be entitled to seek reconsideration of this Order within 30 days, pursuant to Rule 4K of the Zoning Commissioner’s Rules of Practice.

Petitioners seek variance relief with respect to the off-street parking requirements, which provide that “parking...shall be located in the side or rear only.” BCZR § 432.A.1.C.2. Given

the above disposition with respect to the use permit, I find that this request for variance is moot, and can only be considered if and when Petitioners obtain the requisite permit from Baltimore County.

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

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County this   11   day of May, 2011 that Petitioners' Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a Use Permit for an Assisted Living Facility I with a maximum of four beds, be and is hereby DENIED, and

IT IS FURTHER ORDERED that Petitioners' Variance request from Sections 432A.1.C.1, 432A.1.C.2, and 409.3 to permit the two required parking spaces for a proposed Assisted Living Facility I to be located in the front of the dwelling with a side yard setback of 5 feet in lieu of the required side or rear and a side yard setback of 10 feet; and to have parking space dimensions of 10' x 30' for both spaces in lieu of the required 8'-1/2" x 18' (8'-1/2" x 36' for both spaces), be and is hereby DENIED AS MOOT.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:pz