

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
NW side of Belair Road; 128' NE	*	OFFICE OF
of the c/line of Pinehall Road		
11 <sup>th</sup> Election District	*	ADMINISTRATIVE HEARINGS
5 <sup>th</sup> Council District		
<b>(9402 Belair Road)</b>	*	FOR BALTIMORE COUNTY
Khashayar and Nicole Varzandeh	*	<b>CASE NO. 2012-0062-SPHA</b>
<i>Petitioners</i>		

\* \* \* \* \*

**ORDER AND OPINION**

This matter comes before the Administrative Law Judge as Petitions for Special Hearing and Variance filed by the legal owners of the property, Khashayar and Nicole Varzandeh. The Petitioners are requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- To permit utilization of off-street parking spaces for residential uses and lodging uses on 9402 Belair Road off-site on the adjoining property known as 9404 Belair Road, which is within 300 feet walking distance of a building entrance to the use that such spaces serve in accordance with B.C.Z.R. Section 409.7.A; and
- For such other and further relief as may be determined necessary by the Administrative Law Judge.

Petitioners are also requesting Variance relief as follows:

- From Sections 432A.1.C.1, 1B02.3.B and 1B02.3.C of the B.C.Z.R. to allow an existing side yard setback of 6.5 feet to be retained in lieu of the minimum required side yard setback of 10 feet; and

- From Section 432A.1.C.1 of the B.C.Z.R. to allow the existing parking and delivery areas in the front yard to remain where presently located in lieu of moving the parking to the required side or rear yard; and
- From Sections 202.4.A, 1B02.3.B, 1B02.3.C and 504 of the B.C.Z.R. to allow an existing Class II Assisted Living Facility with 1,737 square feet net lot area per resident in lieu of the minimum 2,500 square feet net lot area required; and
- For such other and further relief as may be determined necessary by the Administrative Law Judge for Baltimore County.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing held for this case was Khashayar Varzandeh and Kenneth J. Wells with kj Wells, Inc., the property line surveyor who prepared the site plan for the Petitioners. The Petitioners were represented by Lawrence E. Schmidt, Esquire. There were no Protestants or other persons present; however, Mr. Varzandeh's parents were in attendance at the hearing.

The ZAC comments were received and made a part of the file. Comments were received from the Bureau of Development Plans Review dated September 15, 2011 which indicate that per Section 409 the travelway connecting the two properties should be 20 feet wide and be paved with a durable, dustless surface. However, given the occasional use, the flat grades and the clear sight distance, they recommend that the travelway shown as gravel and 12-13 feet wide should be allowed.

Testimony and evidence revealed that the subject property is located at 9402 Belair Road in the Perry Hall area of Baltimore County and is zoned R-O-A. The subject property is

approximately ½ acre in size and is improved with a one-story stucco building which originally served as a single-family dwelling. Approximately ten years ago, the Petitioners herein petitioned Baltimore County to utilize the property as an Assisted Living Facility (ALF). That Use Permit was approved and the Petitioners, Khashayar and Nicole Varzandeh, have been utilizing the subject property as an ALF since that time. As the site plan of the property demonstrates and the photographs submitted into evidence depict, the property is served by a circular driveway and several parking spaces. The property is well kept and maintained. It has easy access to Belair Road and has functioned very well as an ALF for the past 10+ years.

Testimony offered at the hearing demonstrated that the Petitioners herein also owns the ALF located immediately adjacent to the site to the north; said property being known as 9404 Belair Road. In fact, the subject property has a shared parking arrangement with the property next door where there exists a small parking lot area to the rear of that property. In addition to these two properties, the Petitioners herein also own a third ALF located at 9412 Belair Road. The Petitioners operate under the business name of Ma Maison Senior Assisted Living. As the photographs submitted into evidence depict, the Petitioners maintain their properties in an impeccable condition with an abundance of vegetation and amenities for the residents. Ma Maison also provides a shuttle bus which is used to provide transportation for their residents. A photograph of that shuttle bus is depicted in Petitioners' Exhibit 2A; a photograph of the subject property.

At this time, the Petitioners propose to increase the number of residents living within the ALF at 9402 Belair Road to 15 residents. The operation will remain as a Class II Assisted Living Facility under the current law. In order to proceed with the proposal to add some additional residents, the special hearing relief, filed pursuant to Section 409 of the B.C.Z.R., is

necessary in that the parking requirements for 9402 Belair Road increases to five parking spaces. Only three parking spaces are provided on site so a special hearing has been filed to allow the Petitioners to utilize two parking spaces on the adjacent property, which they own, and will be used to service 9402 Belair Road. The zoning regulation imposes a requirement that these spaces be located within 300 feet of the front door of the ALF operating at 9402 Belair Road. These spaces are actually situated 180 feet from the front door of 9402 Belair Road, and, therefore, the special hearing relief shall be approved for the purpose as stated within the petition.

In order to add these additional residents and to clean up the use of the property, the Petitioners have filed several variances which are basically housekeeping in nature.

The first two of the variances are for existing conditions on the property. The first being a 6.5 foot setback to the side property line in lieu of the required 10 feet. This single-family dwelling, which now serves as an ALF, was constructed originally 6.5 feet from the property line and nothing is being changed at this time. This approval shall be granted. In addition, the regulations pertaining to ALF's require the parking spaces to be situated to the rear of the site and the three parking spaces provided at 9402 Belair Road have existed there for many years and are not in the rear yard. In fact, the rear yard provides a nice open space area with natural vegetation and grass for the residents. To move the parking spaces to the rear would take away that nice amenity. Furthermore, these parking spaces have always existed in the front of the property for many years and have functioned very well. Therefore, that variance shall be granted to allow this existing condition to continue to remain as it has for many years.

Finally, the last variance requests relief from an area requirement based on the number of residents of the ALF as compared to the lot size of the property. In this application, the

requirement is to provide a 2,500 square foot area per resident, which is a requirement of the B.C.Z.R. At this time, however, the Petitioners are providing 1,739 square feet per resident and are requesting a variance from this provision.

As to all of the variance requests, I am persuaded to grant the requested relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners.

I further find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety, and general welfare. Thus, I find that the variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R, as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Furthermore, and as stated previously, I find that the Special Hearing relief shall be granted in that the evidence presented shows the parking spaces associated with this request are well within the 300 foot requirement and the use of the parking from the adjacent property will not cause a shortage of parking for that property.

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

THEREFORE, IT IS ORDERED, this 31<sup>st</sup> day of October, 2011 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) seeking relief as follows:

- To permit utilization of off-street parking spaces for residential uses and lodging uses on 9402 Belair Road off-site on the adjoining property known as 9404 Belair Road, which is

within 300 feet walking distance of a building entrance to the use that such spaces serve in accordance with B.C.Z.R. Section 409.7.A,

be and is hereby GRANTED;

IT IS FURTHER ORDERED that the Petition for Variance as follows:

- From Sections 432A.1.C.1, 1B02.3.B and 1B02.3.C of the B.C.Z.R. to allow an existing side yard setback of 6.5 feet to be retained in lieu of the minimum required side yard setback of 10 feet; and
- From Section 432A.1.C.1 of the B.C.Z.R. to allow the existing parking and delivery areas in the front yard to remain where presently located in lieu of moving the parking to the required side or rear yard, and
- From Sections 202.4.A, 1B02.3.B, 1B02.3.C and 504 of the B.C.Z.R. to allow an existing Class II Assisted Living Facility with 1,737 square feet net lot area per resident in lieu of the minimum 2,500 square feet net lot area required,

be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Use Permit granted herein for an Assisted Living Facility shall continue in full force and effect and shall be considered as a Class II Assisted Living Facility under current law and that the number of residents is between 8 to 15. There is no need to file any new request for a Use Permit at this time.

The relief granted herein shall be subject to the following:

1. The Petitioners may apply for their building permit and may be granted same upon receipt of this Order, however the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.

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Signed  
TIMOTHY M. KOTROCO  
Administrative Law Judge for  
Baltimore County

TMK:dlw