

**IN RE: PETITIONS FOR SPECIAL  
EXCEPTION AND VARIANCE  
(9730 Conmar Road)  
15<sup>th</sup> Election District  
6<sup>th</sup> Councilmanic District  
Patricia Buck Miller, *Legal Owner*  
Megan Miller, *Lessee*  
Petitioners**

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BEFORE THE  
OFFICE OF  
ADMINISTRATIVE HEARINGS  
FOR BALTIMORE COUNTY  
**Case No. 2014-0136-XA**

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 9730 Conmar Road. The Petitions were filed by Deborah C. Dopkin, Esq., on behalf of the legal owner, Patricia Buck Miller and contract purchaser, Megan Miller (“Petitioners”). The Special Exception Petition seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) to permit a professional office pursuant to B.C.Z.R. § 1B01.1.C.12. The Petition for Variance seeks relief under B.C.Z.R. § 400.1: (1) to permit an existing swimming pool in the side yard in lieu of the required rear yard; and (2) to permit an existing shed with a 0 ft. setback in lieu of the required 2.5 ft. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the hearing in support of the Petitions were Patricia and Megan Miller, Louise Nelson and Bernadette Moskunas of Site Rite Surveying, Inc., the firm that prepared the site plan. Deborah C. Dopkin, Esq. represented the Petitioners. There were no Protestants in attendance at the hearing. The Petition was advertised and posted as required by the B.C.Z.R.

No adverse Zoning Advisory Committee (ZAC) comments were received from any of the county reviewing agencies.

Testimony and evidence offered at the hearing revealed that the subject property is approximately 5,368 square feet, and is zoned DR 10.5. The property is improved with an end of group townhouse, constructed in 1959. The Petitioners propose to use a portion of the basement (accessible by a separate stairway) for the practice of clinical social work, which requires a special exception. The only “employee” of the practice would be Megan Miller--daughter of the legal owner--who is a Licensed Certified Social Worker-Clinical (LCSW-C) (Ex. No. 4), with a Master’s degree in Social Work from the University of Maryland School of Social Work. Ex. No. 5. Ms. Miller’s primary residence is the subject premises.

#### SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People’s Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

In this case, there was no evidence presented that would rebut the presumption. In fact, the adjoining neighbors submitted letters (included in the case file) expressing support for the petition. Finally, Ms. Moskunas testified, via proffer, that the Petitioners satisfied the factors set forth in B.C.Z.R. §502.1.

Ms. Dopkin indicated she was contacted by the Office of People’s Counsel, which expressed concern regarding whether the petitioner qualified as a “professional” as that term is used in B.C.Z.R. §1B01.1.C.12. That regulation permits, by special exception, “offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professional

persons.” (Emphasis added). The B.C.Z.R. sheds no further light on what constitutes “other professional persons,” although the Zoning Commissioner Policy Manual (ZCPM) provides some guidance. The ZCPM indicates that, for example, a “real estate agent” is a “professional person,” while a “pastoral counsel[or]” is not. Perhaps the distinction is that a real estate agent is licensed by the State of Maryland, while a pastoral counselor is not. Indeed, pastoral counseling has been defined as a “form of one-on-one counseling or training which is a central” to the teachings of a religious organization. Miller v. IRS, 829 F.2d 500, 501 (4<sup>th</sup> Cir. 1987).

Here, the Petitioner is licensed by the Maryland Department of Health and Mental Hygiene, and has passed a rigorous licensure examination. See Ex. Nos. 4 & 5. In addition, Maryland law provides that “the profession of social work profoundly affects the lives, health, safety and welfare of the people of this State.” Md. Health-Occ. Prof. Code Ann §19-102 (emphasis added). In these circumstances, I find that the petitioner qualifies as a “professional person.”

#### VARIANCE

To obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People’s Counsel*, 407 Md. 53, 80 (2008).

Petitioners have met this test. The property is pie-shaped, and is therefore unique.

If the B.C.Z.R. were strictly interpreted Petitioners would suffer a practical difficulty, in that they would need to dismantle or move these accessory structures that have been in place for many years without complaint. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the

public health, safety, and general welfare. This is demonstrated by the lack of County and/or community opposition.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 20th day of February, 2014, that Petitioners' request for Special Exception under the B.C.Z.R. to permit a professional office pursuant to B.C.Z.R. § 1B01.1.C.12, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioners' request for Variance relief from B.C.Z.R. § 400.1: (1) to permit an existing swimming pool in the side yard in lieu of the required rear yard; and (2) to permit an existing shed with a 0 ft. setback in lieu of the required 2.5 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners may apply for appropriate permits and/or licenses and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. There shall be no signs on the premises.

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/sln