

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(4920 Tartan Hill Road)		
11 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Norris L. & Robin L. Riley	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2015-0222-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of the legal owners of the subject property. The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §§ 432A.1.C.1 & 432A.1.C.2 to permit an existing driveway located in the front yard 5 ft. from the side property line to be used as the required parking spot for a proposed Assisted Living Facility (ALF) in lieu of the required rear yard parking at least 10 ft. from all property lines. The subject property and requested relief is more fully depicted on the site plan marked as Petitioners’ Exhibit 1.

Owners Norris & Robin Riley appeared in support of the petition. Several neighbors attended the hearing and opposed the requests. The petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR), the Department of Environmental Protection and Sustainability (DEPS) and the Department of Planning (DOP). None of the reviewing agencies opposed the petition.

The subject property is approximately 6,803 square feet and is zoned DR 5.5. The property is improved with a 3 bedroom single family home. Petitioners have lived at the property since

2010, and propose to care for and house two disabled patients at their home, which is a use known as an assisted-living facility I (ALF) under the B.C.Z.R. Petitioners seek variances to allow use of their current driveway for the ALF.

Neighbors opposed the requests and believe this would constitute an inappropriate commercial enterprise in a residential community. Protestants also testified that the streets in the community are narrow and parking is already at a premium. They believe this ALF use would make current conditions worse. Community members also noted that the covenants governing the Tartan Hill community forbid any commercial uses in the single family dwellings. As explained at the hearing, Baltimore County does not have the authority to enforce private neighborhood covenant restrictions and agreements. *Blakehurst Life Care v. Baltimore County*, 146 Md. App. 509 (2002). These must be enforced by way of a civil action in the Circuit Court for Baltimore County.

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 not met this test. There was no evidence or testimony presented to establish that the subject property is unique in any way. Based on a review of the County's zoning maps, the Petitioners' lot and single family dwelling are similar in size and configuration to those of the other homes and lots in this small community. Maryland courts stress that variances should be seldom granted, and I do not believe Petitioners have sustained their burden of proof under the law. *Cromwell v. Ward*, 102 Md. App. 691, 711 (1995) ("general rule that variances are rarely appropriate").

THEREFORE, IT IS ORDERED, this 5th day of June, 2015, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”) §§ 432A.1.C.1 & 432A.1.C.2 to permit an existing driveway located in the front yard 5 ft. from the side property line to be used as the required parking spot for a proposed Assisted Living Facility (ALF) in lieu of the required rear yard parking at least 10 ft. from all property lines, be and is hereby DENIED.

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

JEB: sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County