

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(4010 Buckingham Road)		
3 rd Election District	*	OFFICE OF
2 nd Council District		
	*	ADMINISTRATIVE HEARINGS
Villa Nova Community Association		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2016-0156-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Villa Nova Community Association. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to determine whether an existing free standing sign 6 ft. high and 24 sq. ft. for an assisted living facility is lawful under the B.C.Z.R.

Sheila Lewis, President of Villa Nova Community Association, appeared in support of the petition. Thomas M. Meachum, Esq. represented Petitioner. Donzella Burton, who operates the assisted living facility at 4010 Buckingham Road, attended the hearing and was represented by N. Scott Phillips, Esq. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. There were no substantive Zoning Advisory Committee (ZAC) comments received.

The subject property is 29,370 square feet and zoned DR 3.5. Ms. Burton operates at the subject property an assisted living facility (ALF) with 12 residents. She wanted to erect a sign that would identify the facility for the benefit of visitors or emergency providers. The sign was erected in April 2015 and shortly thereafter Ms. Burton received a zoning violation notice from Baltimore County. Ms. Burton obtained a sign use permit on or about July 30, 2015, and the zoning violation

case was dismissed. The community association attempted to have the County reconsider its decision to issue the permit, and when those efforts failed this petition for special hearing was filed.

Counsel for Ms. Burton sought to have the petition dismissed, contending the community association did not have standing to file the case. This argument does not have merit. As explained in a letter dated March 7, 2016 from the Office of People’s Counsel, B.C.Z.R. §500.7 is akin to a declaratory judgment proceeding, and “interested” parties are permitted to file such petitions to challenge the legality of a use or zoning issue. Antwerpen v. Balto. Co., 163 Md. App. 194 (2005); Marzullo v. Kahl, 366 Md. 158 (2001). As such, I believe the petition was filed properly.

As far as the sign is concerned, photos and testimony revealed it is 4’ x 6’, or 24 sq. ft. It reads: “Assisted Living at Buckingham Manor” followed by the phone number. The permit (Petitioner’s Exhibit 7) indicates it is a “community ID sign,” which I believe is erroneous. An “identification” sign is one that is accessory to a multifamily building, institutional structure or community building. B.C.Z.R. §450.

Ms. Burton operates an ALF, which is a specific use defined under the B.C.Z.R. An ALF, in my opinion, cannot be classified as a “multifamily building” (i.e., apartment) or “institutional structure,” which the B.C.Z.R. defines as a “hospital, school, volunteer fire company, church, house of worship or religious assembly.” B.C.Z.R. §450.3. A “community building” is one used for “recreational, social, educational or cultural activities,” which would obviously not encompass an ALF. Instead, I believe the sign is an “enterprise sign,” which is one “which displays the identity . . . and may advertise the products or services associated with the individual organization.” Such signs are not permitted in a DR 3.5 zone.

At the conclusion of the hearing the parties were asked to provide a short memorandum concerning whether or not the doctrine of equitable estoppel would be applicable given the facts in this case. I agree with Petitioner's counsel that the County is not estopped from denying the validity of the sign permit in this case, since the sign was erected *before* a permit was obtained. As such, Ms. Burton cannot have relied upon the County's issuance of the permit, as was the case in Permanent Financial Corp. v. Montgomery County, 308 Md. 239 (1986).

THEREFORE, IT IS ORDERED this 23rd day of March, **2016** by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7 to approve an already constructed free standing sign 6 ft. high and 24 sq. ft. for the assisted living facility, be and is hereby DENIED.

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

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln