IN RE: PETITION FOR VARIANCE

NW side of Milton Avenue, 440 feet +/- SW of Milton Avenue 2nd Election District 4th Councilmanic District (3516 Jo Ann Drive)

Lance Deutch

Petitioner

Beatrice V. O'Neal, O'Neal Home Care

Contract Purchaser

- * BEFORE THE
- * DEPUTY ZONING
- * COMMISSIONER
- * FOR BALTIMORE COUNTY

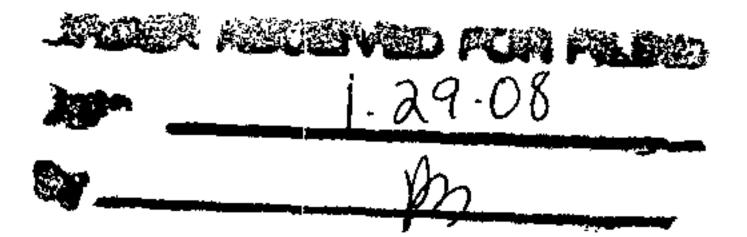
Case No. 08-077-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

*

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Lance Deutch, and the contract purchaser, Beatrice V. O'Neal on behalf of O'Neal Home Care. Variance relief is requested from Section 409.6.A.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit zero parking spaces in lieu of the required two spaces for an assisted living facility. The subject property and the requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

This matter initially came before the undersigned on October 10, 2007 at 11:00 AM in Room 407 of the County Courts Building. However, on that date, there were no appearances made by Petitioners or any other individuals in support of the variance request. Appearing at the hearing as Protestants in opposition to the variance request were nearby neighbors Rita Holmes of 3517 Jo Ann Drive and Ethel Privott of 3512 Jo Ann Drive. There was no testimony or evidence from Petitioners due to their failure to appear at the hearing. Hence, the undersigned considered the Petition as well as the site plan prepared in connection with this matter. Also considered as evidence was the zoning map, which was marked and accepted into evidence as



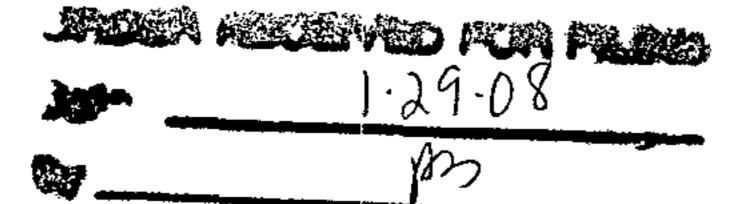
Petitioners' Exhibit 2, showing the location of the subject property. During the hearing, the undersigned also considered the testimony of Ms. Holmes and Ms. Privott.

In addition, the undersigned considered the Zoning Advisory Comment received from the Office of Planning dated August 31, 2007 which indicated that the Office reviewed the variance request and site plan and recommended denial of Petitioners' request. The comment further stated the Planning Office was of the opinion that assisted living facilities should have readily available parking and that Petitioner did not meet this requirement. The Planning Office also indicated that the granting of this variance relief may compromise the character and pattern of the neighborhood. Based on the evidence adduced at that time, the undersigned denied the variance request.

Thereafter, in a letter to the undersigned dated October 16, 2007, Petitioner's engineering consultant, Richard E. Matz, requested a reconsideration of the decision, and requested that the matter be rescheduled to hear additional evidence from Petitioners. On November 2, 2007, the undersigned granted the request for reconsideration and directed this matter to be rescheduled for a public hearing in order to hear any testimony or evidence offered by Petitioners. That hearing was convened on January 8, 2008 at 9:00 AM in Room 407 of the County Courts Building.

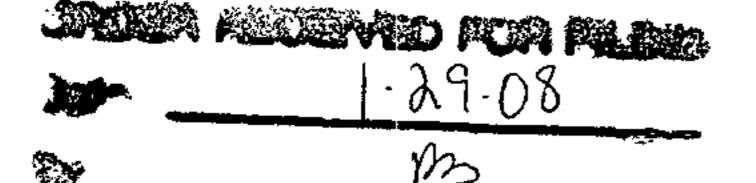
Appearing at the public hearing in support of the variance request was Petitioner Beatrice O'Neal and Lance Deutch, the property owner. Also in attendance in support of the variance request was Richard E. Matz, with Colbert Matz Rosenfelt, Inc., the professional engineer who prepared the site plan. Appearing as interested citizens were Ethel Privott of 3512 Jo Ann Drive and Bettie Thornton of 3505 Jo Ann Drive.

Testimony and evidence offered revealed that the subject property is a rectangular-shaped parcel containing 0.158 acres and zoned D.R.5.5. It is improved with an existing one-story single-family dwelling located in the Randallstown area of Baltimore County. Petitioner



proposes to operate a Class 1 assisted living facility with four beds. The off-street parking calculation requires one space for every three beds, therefore the total required is two spaces. Petitioners are in need of variance relief because they propose zero spaces in lieu of the required two spaces. Petitioner explained that some of the homes in the neighborhood have driveways and some do not, relying on on-street parking. The subject property does not have on-site parking. In support of the variance request, Petitioner indicated that residents typically do not have vehicles in an assisted living facility, and that her residents would not have vehicles. She also believes there will be very few visitors and/or deliveries. Petitioner's plan is to have four residents and one employee, as well as Petitioner, to provide care for the residents. The facility will not be a group home, as feared by interested neighbor Ethel Privott, but will cater mostly to elderly -- 50 and above -- or younger clients who are disabled.

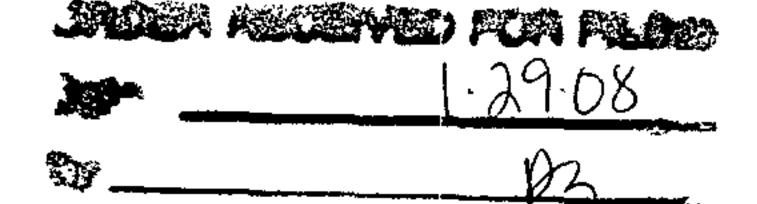
Appearing at the first hearing in opposition to the requested relief were neighbors Rita Holmes and Ms. Privott. Both voiced objection to the assisted living facility at the location in general, and also voiced opposition to the granting of variance relief to allow zero parking spaces. They also indicated that the area is a residential neighborhood, mostly made up of homeowners, and should not be used for commercial purposes. Among other things, they were concerned with increased traffic stemming from occupants and visitors to the location, as well as the possible constant turnover from occupants moving into and out of the location. Ms. Holmes also introduced a Petition signed by nearby neighbors voicing opposition to the variance relief. The Petition was marked and accepted into evidence as Protestant's Exhibit 1 and consisted of 15 signatures. Appearing at the second hearing on January 8, 2008 was Ms. Privott and Ms. Thornton. After hearing more about the details of Petitioner's plan, Ms. Privott and Ms. Thornton were more understanding of the proposal. Ms. Holmes indicated she was no longer opposed to the plan, however, Ms. Thornton maintained her opposition to the plan.



In response to the ZAC comment from the Office of Planning opposing the parking variance on the ground that assisted living facilities should have readily available parking, and that the granting of this variance relief may compromise the character and pattern of the neighborhood, Mr. Matz indicated that these facilities are situated in many areas of the County, including residential neighborhoods. These facilities are necessary in order to give families options for caring for their loved ones. He also indicated that the earlier trend in the 1990's to have the bigger, 60-plus bed facilities has now given way to a trend to have smaller facilities in neighborhoods. Finally, Mr. Matz indicated there is sufficient parking on the street for visitors.

Consideration of variance requests from the zoning regulations is governed by Section 307 of the B.C.Z.R. That Section has been construed by the Court of Special Appeals in Cromwell v. Ward, 102 Md. App. 691 (1995). Therein, the Court noted a two-part test to be applied in considering any variance. First, the Zoning Commissioner must find that the property is unique and unusual in a manner different from the nature of the surrounding properties and that such uniqueness drives the need for the variance. If this finding is not made, the process stops and the variance must be denied. However, if the first step results in a finding of uniqueness, then the second step of the process is taken. The second step is to determine whether an unreasonable hardship or practical difficulty resulting from the ordinance would be caused if strict adherence to the regulations were required. Moreover, the Court indicated that self-inflicted or self-created hardship is never considered proper grounds for a variance. A variance cannot be granted merely for the convenience of the property owner.

Considering all the testimony and evidence presented at both hearings, I am not persuaded to grant the requested variance relief. I do not find any special circumstances or conditions to exist that are peculiar to the land or structure which is the subject of the variance request, nor do I find the property unique in a zoning sense.



Finally, based on the concerns raised by the interested neighbors, as well as the negative ZAC comment from the Office of Planning, I find that granting this variance may be detrimental to the public health, safety and general welfare of the locale.

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

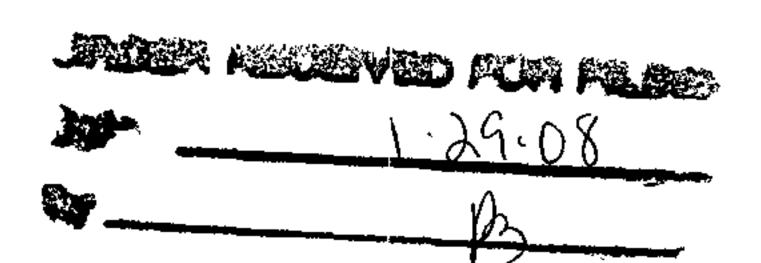
THEREFORE, IT IS ORDERED this _______ day of January, 2008 by this Deputy Zoning Commissioner, that Petitioners' variance request from Section 409.6.A.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit zero parking spaces in lieu of the required two spaces for an assisted living facility is hereby DENIED.

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

THOMAS H. BOSTWICK Deputy Zoning Commissioner

for Baltimore County

THB:pz





Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at <u>3516 Jo Ann Drive</u>

which is presently zoned <u>DR 5.5</u>

I/We do solemnly declare and affirm, under the penalties of

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part of thereof, hereby petition for a Variance from Section(s)

See attached.

Of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

To be presented at hearing.

Property to be posted and advertised as prescribed by the zoning regulations.

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I, or we, agree to pay expenses of above Variance, advertising, posting, etc and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

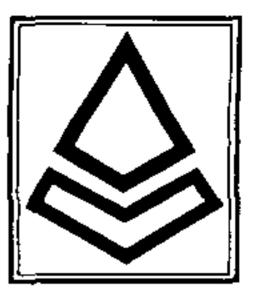
perjury, that I/we are the legal owner(s) of the property which Is the subject of this Petition. Contract Purchaser/Lessee: <u>Legal Owner(s):</u> Beatrice V. O'Neal, O'Neal Home Care Lance Deutch, Name - Type of Print Name 7 Type or Print Signature 6814 Windsor Mill Road 410-281-6020 Name - Type or Print Telephone No. Address. Baltimore 21207 MD City State Zip Code Signature 6503 Deer Park Road 410-526-7603 **Attorney For Petitioner:** Address. Telephone No. Reisterstown MD 21136 Name - Type or Print City State Zip Code Representative to be Contacted: Signature Richard E. Matz, P.E. Company COLBERT MATZ ROSENFELT, INC. 2835 Smith Avenue, Suite G 410-653-3838 Address Telephone No. Telephone No. Address 21209 Baltimore MD City Zip Code Zip Code State City State OFFICE USE ONLY ESTIMATED LENGTH OF HEARING Case No. UNAVAILABLE FOR HEARING Date 8.9.07 Reviewed By _

Variance Petition Attachment: 3516 Jo Ann Drive

Variance from Section 409.6 (A) (1), BCZR, to permit 0 parking spaces in lieu of the required 2 spaces, for an assisted living facility.

Colbert Matz Rosenfelt, Inc.

Civil Engineers • Surveyors • Planners

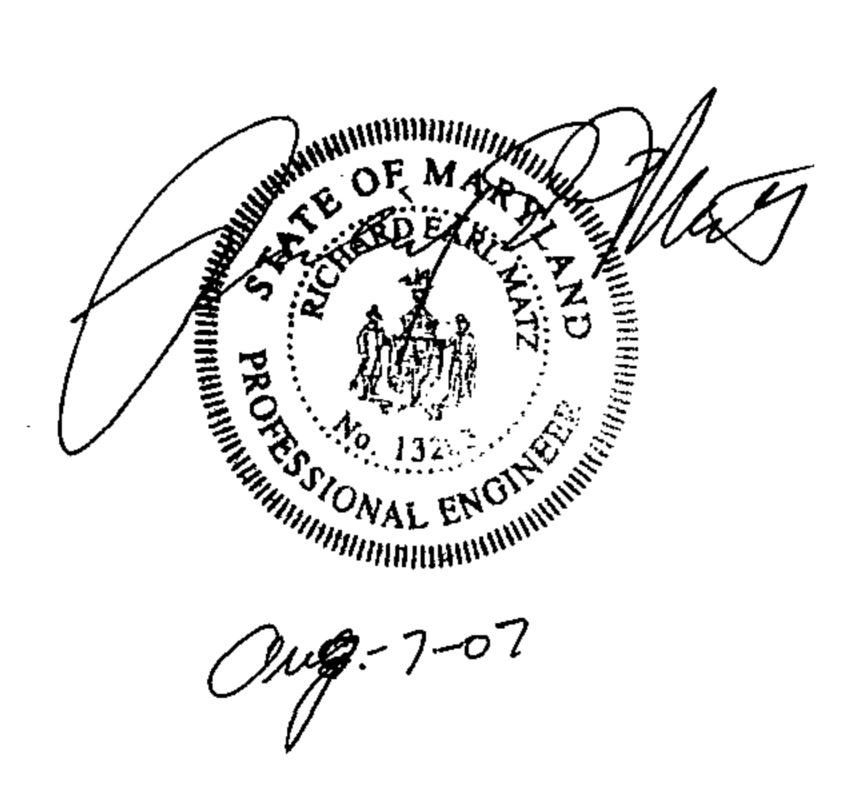


ZONING DESCRIPTION 3516 JO ANN DRIVE

Beginning at a point on the northwest side of Jo Ann Drive, which is 50 feet wide, at a distance of 440 feet+ southwest of Milton Avenue, which is 50 feet wide.

Being Lot 1, in Block A, in the subdivision of Rockdale Manor (Section 3), as recorded in the Baltimore County Land Records in Book 19, Folio 123.

As recorded in Deed Liber 25205, folio 267, and containing 0.158 acre. Also known as #3516 Jo Ann Drive and located in the 2nd Election District, 4th Councilmanic District.



NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Cass: #08-077-A
3516 Jo Ann Drive
N/west side of Milton Avenue, 440 feet +/- s/west of Milton Avenue

Cass: #08-077-A
3516 Jo Ann Drive

N/west side of Milton Avenue, 440 feet +/- s/west of Milton Avenue

Cand Election District - 4th Councilmanic District

Legal Owner(s): Lance Deutch

Legal Owner(s): Lance Deutch

Contract Purchaser: Beatrice V. O'Neal Home Care

Contract Purchaser: Beatrice V. O'Neal Home Care

Variance: to permit 0-parking spaces in lieu of the required 2 spaces, for an assisted living facility.

Hearing: Tuesday, January B, 2008 at 9:00 a.m. in

Hearing: Tuesday, January Building, 401 Bosley Avenue, Towson 21204.

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that the annexed advertisement was published

THIS IS TO CERTIFY,

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in the following weekly newspaper published in Baltimore County, Md.,

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County
Xoning Commissioner for Baltimore County
NOTES: (1) Hearings are Handicapped Accessible; for
special accommodations Please Contact the Zonlng Commissioner's Office at (410) 887-3868.

(2) For information concerning the File and/or Hearing,
Contact the Zoning Review Office at (410) 887-3391.

12/220 Dec. 20

successive weeks, the first publication appearing once in each of

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The Jeffersonian

Times Catonsville

Arbutus Times

- Towson Times
- ls Times Owings Mill
- NE Booster/Reporter North County News

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LEGAL ADVERTISING

NOTICE OF ZONING HEARING

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Case: #08-077-A

3516 Jo Anii Drive

N/west side of Milton Avenue, 440 faet +/- s/west of Milton Avenue

2nd Election District - 4th Councilmanic District
Legal Owner(s): Lance Deutch
Contract Purchaser: Beatrice V. O'Neal, O'Neal Home Care
Variance: to permit 0 parking spaces in lieu of the required 2 spaces, for an assisted living facility.

Hearing: Wednesday, October 10, 2007 at 11:00 a.m.
In Room 467, County Courts Building, 401 Bosley
Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Battimore County
NOTES: (1) Hearings are Handicapped Accessible, for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For Information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT/9/732 Sept. 18

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, 2007

hat the annexed advertisement was published successive weeks, the first publication appearing in the following weekly newspaper published in Baltimore County, Md., THIS IS TO CERTIFY, each of once in

The Jeffersonian

- **Fimes** Arbutus Times Catonsville 1
- Owings Mills Times es Towson Tim
- /Reporter NE Booster,

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CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATTHEWS

DATE: 09/24/07

Case Number: <u>08-077-A</u>

Petitioner / Developer: COLBERT, MATZ & ROSENFELT INC.~

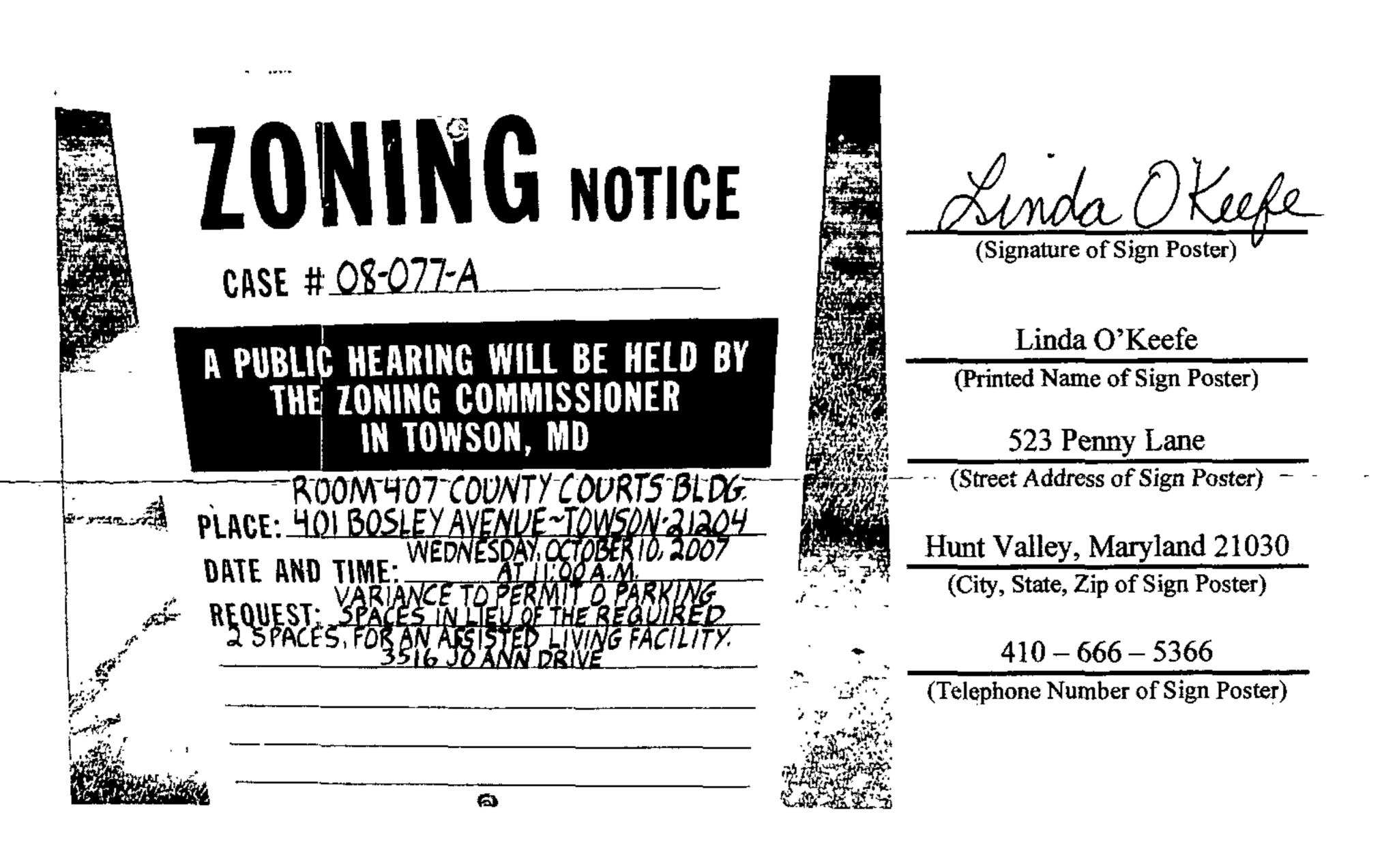
BEATRICE O'NEAL~LANCE DEUTCH

Date of Hearing (Closing): OCTOBER 10, 2007

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:

3516 JO ANN DRIVE

The sign(s) were posted on: 09/19/07



CERTIFICATE OF POSTING

'ATTENTION: KRISTEN MATTHEWS

DATE: 12/27/07

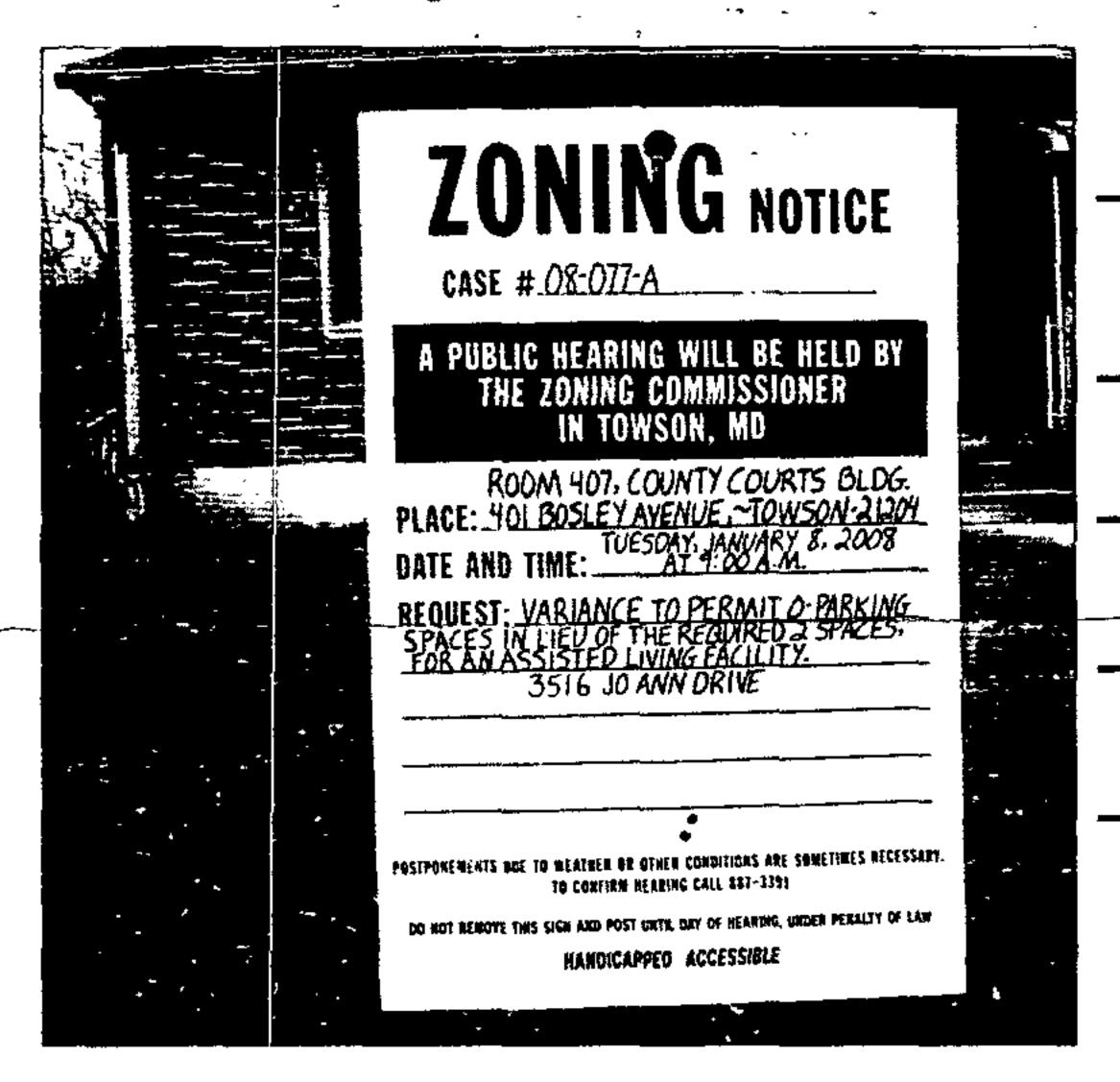
Case Number: <u>08-077-A</u>

Petitioner / Developer: COLBERT, MATZ & ROSENFELT INC.

Date of Hearing (Closing): JANUARY 8, 2007

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: 3516 JO ANN DRIVE

The sign(s) were posted on: 12/24/07



(Signature of Sign Poster)

Linda O'Keefe

(Printed Name of Sign Poster)

523 Penny Lane

(Street Address of Sign Poster)

Hunt Valley, Maryland 21030

(City, State, Zip of Sign Poster)

410 - 666 - 5366

(Telephone Number of Sign Poster)



JAMES T. SMITH, JR. County Executive

TIMOTS PREMISER OF Permits and Development Management

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 08-077-A

3516 Jo Ann Drive

N/west side of Milton Avenue, 440 feet +/- s/west of Milton Avenue

2nd Election District – 4th Councilmanic District

Legal Owners: Lance Deutch

Contract Purchaser: Beatrice V. O'Neal, O'Neal Home Care

Variance to permit 0 parking spaces in lieu of the required 2 spaces, for an assisted living facility.

Hearing: Wednesday, October 10, 2007 at 11:00 a.m. in Room 407, County Courts Building,

401 Posley Avenue, Towson 21204

Timothy Kotroco Director

TK:klm

C: Beatrice O'Neal, 6814 Windsor Mill Road, Baltimore 21207
Lance Deutch, 6503 Deer Park Road, Reisterstown 21136
Richard Matz, Colbert, Matz, Rosenfelt, 2835 Smith Avenue, Ste. G., Baltimore 21209

- NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, SEPTEMBER 25, 2007.
 - (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
 - (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY

Tuesday, September 25, 2007 Issue - Jeffersonian

Please forward billing to:

Lance Deutch 6503 Deer Park Road Reisterstown, MD 21136 410-526-7603

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 08-077-A

3516 Jo Ann Drive

N/west side of Milton Avenue, 440 feet +/- s/west of Milton Avenue

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WILLIAM J. WISEMAN III

ZONING COMMISSIONER FOR BALTIMORE COUNTY

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(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The <u>Baltimore County Zoning Regulations</u> (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:
Item Number or Case Number:077
Petitioner: O'Neal Home Care (Beatrice V. 0/Neal)
Address or Location: 3516 Jo Aun Drive
PLEASE FORWARD ADVERTISING BILL TO:
Name: Mr. Lauce Deuteh
Address: 6503 Deer Park Rd. Reistenstocon, Md 21136
Reistenstocon, Md 21136
Telephone Number: <u>410~526-7603</u>
, ————————————————————————————————————



JAMES T. SMITH, JR. County Executive

TIMOTHY M. KOTROCO, Director

Department of Permits and

Development Management

October 2, 2007

Beatrice V. O'Neal O'Neal Home Care 6814 Windsor Mill Road Baltimore, MD 21207

Dear Ms. O'Neal:

RE: Case Number: 08-077-A, 3516 Jo Ann Drive

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on August 9, 2007. This letter is not an approval, but only a **NOTIFICATION**.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

U. Carl Richall D

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:amf Enclosures

c: People's Counsel

Lance Deutch 6503 Deer Park Road Reisterstown 21136

Richard E. Matz, P.E. Colbert Matz Rosenfelt, Inc. 2835 Smith Avenue, Suite G Baltimore 21209



700 East Joppa Road Towson, Maryland 21286-5500 410-887-4500

County Office Building, Room 111 Mail Stop #1105 111 West Chesapeake Avenue Towson, Maryland 21204 August 23, 2007

77

ATTENTION: Zoning Review Planners

Distribution Meeting Of: August 20, 2007

Item Number: Item Number 76 through 079 and 81, 83, 84, 85, 86, 88

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

1. The Fire Marshal's Office has no comments at this time.

Lieutenant Roland P Bosley Jr. Fire Marshal's Office 410-887-4881 (C)443-829-2946 MS-1102F

cc: File



Martin O'Malley, Governor Anthony G. Brown, Lt. Governor

John D. Porcari, Secretary Neil J. Pedersen, Administrator

Maryland Department of Transportation

Date: August 20, 2007

Ms. Kristen Matthews Baltimore County Office Of Permits and Development Management County Office Building, Room 109 Towson, Maryland 21204

RE:

Baltimore County

Item No. 8-77-A

3516 JO ANN DRIVE DELITCH PROPERTY

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 8-77-A.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-2803 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,

A Steven D. Foster, Chief

FOL Engineering Access Permits

Division

SDF/MB

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

Department of Permits and Development Management

DATE: August 31, 2007

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT:

3516 Jo Ann Drive

INFORMATION:

Item Number:

8-077

Petitioner:

Lance Deutch

Zoning:

DR 5.5

Requested Action:

Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning has reviewed the petitioner's request and accompanying site plan. This office is of the opinion that assisted living facilities should have readily available parking. In the subject petition the petitioners do not. The Office of Planning recommends denial of this request. Such relief may compromise the character and pattern of the neighborhood.

For further information concerning the matters stated here in, please contact Dave Green at 410-887-3480.

Reviewed by:

Division Chief: AFK/LL: CM

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

DATE: October 29, 2007

Department of Permits & Development

Management

FROM:

Dennis A. Kennedy, Supervisor

Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

For August 27, 2007

Item Nos. 08-076, 077, 078, 079, 081,

083, 084, 086, and 088

The Bureau of Development Plans Review has reviewed the subject zoning items and we have no comments.

DAK:CEN:clw

cc: File

ZAC-NO COMMENTS-10292007.doc

Colbert Matz Rosenfelt, Inc.

Civil Engineers • Surveyors • Planners

October 16, 2007



Thomas H. Bostwick
Deputy Zoning Commissioner
401 Bosley Avenue, Suite 405
County Courts Building
Towson MD 21204

Re: Case Number 08-077-A CMR Job No. 2007-080

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MECEIVEN

Dear Deputy Commissioner Bostwick:

This is to acknowledge receipt of your Findings of Fact and Conclusions of Law, and Order rendered in the above matter on October 10, 2007. Pursuant to Appendix G and Rule K within the Rules of Practice and Procedure before the Zoning Commissioner of Baltimore County, kindly accept this letter as a Motion for Reconsideration of that Order.

As your written Opinion indicates, no one appeared at the requisite Public Hearing on behalf of the Petitioner. The testimony and evidence presented in open hearing was limited to that offered by two opponents of the Petition, namely Rita Holmes and Ethel Privott. The only evidence considered on behalf of the Petition were those documents submitted at the time the Petition was filed.

Due to an internal error within my office, the hearing date for this case was not placed on my calendar. Additionally, the Petitioners were not directed by me to attend the hearing and did not therefore appear. Moreover, as the Zoning Advisory Comments issued in this case were not received in the mail by me until the day of the hearing, I did not realize that this matter had been scheduled for hearing.

There is substantial and compelling testimony and evidence to be offered in support of the Petitions. I respectfully submit that under the principles of fundamental fairness and due process, that all of the evidence from both sides should be considered before a final decision is issued on the merits.

As the failure to appear was the result of my error, I would be pleased to reschedule this matter at a date and time of your convenience and of the opponents. Additionally, my office will pay for the necessary costs to repost and advertise a new hearing date. We can also notify Ms. Holmes and Ms. Privott by mail. In fact, I am copying them on this correspondence.

Thomas H. Bostwick October 16, 2007 Page 2

I again apologize for the error and inconvenience that my non-appearance may have caused. My clients would very much like to move forward and have this case decided upon the full presentation of all of the evidence presented. I would therefore respectfully request your favorable consideration upon this Motion for Reconsideration and ask that another hearing date, before you, be assigned.

Please do not hesitate to contact me should you have any further questions regarding this matter.

Very truly yours,

Richard E. Matz, P.E.

Vice President

Colbert Matz Rosenfelt, Inc.

Enclosure

CC: Etl

Ethel Privott
Rita Holmes
Lance Deutch
Beatrice O'Neal

J:\2007\2007-080.doc



JAMES T. SMITH, JR. County Executive

November 2, 2007

THOMAS H. BOSTWICK Deputy Zoning Commissioner

RICHARD E. MATZ COLBERT, MATZ & ROSENFELT 2835 SMITH AVENUE, SUITE G BALTIMORE, MD 21209

> RE: Petition for Variance 3516 JoAnn Drive Case No. 08-077-A

Dear Mr. Matz:

I am in receipt of your letter dated October 16, 2007 requesting that I reconsider my Findings of Fact and Conclusions of Law dated October 10, 2007 in the above-referenced matter.

Briefly, this matter came before me on October 10, 2007 at 11:00 AM in Room 407 of the County Courts Building wherein Petitioners -- the owner of the property, Lance Deutch, and the contract purchaser, Beatrice V. O'Neal on behalf of O'Neal Home Care -- requested variance relief from Section 409.6.A.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit zero parking spaces in lieu of the required two spaces for an assisted living facility.

However, as you are aware, there were no appearances made by Petitioners or any other individuals in support of the variance request. Petitioners were given an additional 25 minutes to appear before the hearing was re-convened, still with no appearance by Petitioners. Appearing at the hearing as Protestants in opposition to the variance request were nearby neighbors Rita Holmes of 3517 Jo Ann Drive and Ethel Privott of 3512 Jo Ann Drive. There was no testimony or evidence from Petitioners due to their failure to appear at the hearing. Hence, considered with the Petition as evidence was the site plan prepared by you. Also considered as evidence was the zoning map, which was marked and accepted into evidence as Petitioners' Exhibit 2, and shows the location of the subject property. During the hearing, I also considered the testimony of Ms. Holmes and Ms. Privott.

In addition, I considered the Zoning Advisory Comment received from the Office of Planning dated August 31, 2007 which indicated that the Office reviewed the variance request and site plan and recommended denial of Petitioners' request. The comment further stated the Planning Office was of the opinion that assisted living facilities should have readily available parking and that Petitioner did not meet this requirement. The Planning Office also indicated

RICHARD E. MATZ November 2, 2007 Page 2

that the granting of this variance relief may compromise the character and pattern of the neighborhood. Based on the evidence adduced at that time, I denied the variance request.

You are now requesting that I reconsider my decision and that I reschedule this matter to hear additional evidence from Petitioners. In support of this request, you indicate that the reason for your and your clients' absence on the hearing date was an internal scheduling error within your office, which did not place the matter on your calendar and did not notify your clients to be present at the hearing. Obviously, you have appeared before this Commission numerous times and this is the first time this situation has occurred, so I have no difficulty accepting your explanation. As such, I will also grant your Motion for Reconsideration and will reschedule this matter in order to hear any testimony or evidence offered by Petitioners.

THERFORE, IT IS HEREBY ORDERED that the Motion for Reconsideration is GRANTED. This matter shall be rescheduled on a date before me where at such time, Petitioners will have the opportunity to present their case -- in particular, any additional testimony or evidence in support of their Petition for Variance.

IT IS FURTHER ORDERED that upon the scheduling of a new hearing date, the property shall be re-posted and re-published at Petitioner's expense.

By copy of this letter, I am notifying the Protestants who were present at the last hearing, Ms. Holmes and Ms. Privott, of this action and shall also direct that they be notified by mail of the next hearing date in the event they desire to participate further at the next hearing. I am also notifying Kristen Mathews with the Zoning Review Office of this action so this matter can be reset on a date I am scheduled to hear cases.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

THOMAS H. BOSTWICK

Deputy Zoning Commissioner

for Baltimore County

c: Lance Deutch, 6503 Deer Park Road, Reisterstown MD 21136 Beatrice V. O'Neal, O'Neal Home Care, 6814 Windsor Mill Road, Baltimore MD 21207 Rita Holmes, 3517 Jo Ann Drive, Baltimore MD 21244 Ethel Privott, 3512 Jo Ann Drive, Baltimore MD 21244 Kristen Matthews, Zoning Review Office, Permits & Development Management

PETITION

Petition of neighbors regarding the hearing to be held by Zoning Commissioner on October 10, 2007 at 11am, 401 Bosley Avenue, Room 407 re: 3516 Joann Drive

Request to allow two parking permits for an Assisted Living Facility – Case # 08-077-A

The following citizens object to this request due to the limited parking available in the residential neighborhood:

NAME	ADDRESS	SIGNATURE	DATE
1 alicy of my James	3419 Joann Dr	alice to Imp for	ney 9/26/07
2 / South Out	5419 Joann Dr 3418 Golem-Wr/	1 Rent Dog	75 9/26/67
3 month Durky	3417 Juan Dr. 6 3517 June Dr.	1 i Bla	g/27/07
4 anie C. Spanl	3417 Joann Dr. C	brine C. 19th	0/20/07
5 Keta Holmes	2517 Frank Dr	futh Hour	res 4/2/10
6 Chaples E. SM	11 3519 DOAN	JDR 9/29/	
7 Evaggelia Z	ervos 3515 Joa	nn DR. 9-2	9-07
8 CARLA Ellerbe	CRNOS 3515 JOANNDR 3520 JOANNT	Carly Ellerte	10/1/07
9 James Ellerbe	3520 JOANNT	PRIVE Games Cll	ube 16/1/07
10 Ethel PRIVOTT	35/2 JOANN D.	R. Eddel Fri	voll 10/1/01
11 Stew ld Hours	3213 20 bus ov.	Stew W. How	10/6/07
12 Sondra Hamer	3513 JO Ann Dr	Juga	10/4/07
13 Deane Jary	3514 Joan Dr 3514 Joan Dr	Darlen Ser	et 10/6/07 wl 10/6/07
14 Jenny Jack	3574 JOUMN	gam.	w 10/6/00
15 Enno	3506 John D	n Oct 9,	200)
-		PROTESTA	NT'S
		EXHIBIT NO	. <u> </u>

CASE NAME & 3516 JO AWN PRIVE CASE NUMBER 08-077 A. DATE JAN 8,2008

CITIZEN'S SIGN-IN SHEET

E- MAIL				
BAL, AND 21244 Balto MD 21244				
ADDRESS 3512 JOHNN DRIVE 3505 JOHN DRIVE				
F. WAME 6. Morntan (BETTE				

PLEASE PRINT CLEARLY

4NN JRIVE. CASE NAME OB-

2008 Ø

PETITIONER'S SIGN-

dnata@conrensencescon. brateiceV9@Acl. Com. Iance O MRIS.com				
CITY, STATE, ZIP BAUTINDAE, MO 21209 GLUYAN OZIE, WID 211207 (Teistorstawn MP 21130				
2035 SMITH AVE, SUITE G 6814 Winder Millikd 65-05 DUREN MAILEN				
KICHARO E. MATE BEHHELO 11. 01102L LANCE DEVIET				

PLEASE PRINT CLEARLY

CASE NAME CASE NUMBER 08-017-A DATE

CITIZEN'S SIGN-IN SHEET

E- MAIL			
Batto, MD DIZZE			
25/7 JOHNA DR. 3512 TO ANN DR.			
MAME MAME Halmes Ethe Halmes			

RE: PETITION FOR VARIANCE

3516 Jo Ann Drive; NW/S Milton Avenue,

440' SW Milton Avenue

2nd Election & 4th Councilmanic Districts

Legal Owner(s): Lance Deutch

Contract Purchaser(s): O'Neal Home Care

Petitioner(s)

BEFORE THE

ZONING COMMISSIONER

* FOR

* BALTIMORE COUNTY

* 08-077-A

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

CAROLE S. DEMILIO Deputy People's Counsel Old Courthouse, Room 47

400 Washington Avenue Towson, MD 21204

(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of August, 2007, a copy of the foregoing Entry of Appearance was mailed to, Richard E. Matz, PE, Colbert Matz Rosenfelt, Inc, 2835 Smith Avenue, Suite G, Baltimore, MD 21209, Representative for Petitioner(s).

RECEIVED

AUG 2 2 2007

Per.....

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

