

IN THE MATTER OF
MELISSA MCKENZIE
4026 Silvage Road
(Application for Use Permit)

11th Election District
5th Council District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: UP-23-005-AL

* * * * *

OPINION

This case comes before the Board of Appeals for Baltimore County (“Board”) as an appeal of the issuance of a Use Permit to allow an existing one-story brick single family dwelling to be used for an Assisted Living Facility I with a maximum of four (4) beds. Said Use Permit was issued by the Baltimore County Director of the Department of Permits, Approvals and Inspections on March 12, 2024. An appeal was filed by Appellants, Bill Molyneaux, Denny Yarbrough, William and Amy Wheeler, Eric and Tammy Dye, The Reverend Chris McCloud, Janet Hager, Laurie Jones as POA for Charles McKelvey, Rodney and Sharon Johnson, Arthur and Judy Pulket, Michael Chirico, Andrew Barrows, Lisa Ellis, Grace Ellis, Liam Dugan, Caroline Bomgardner, Vinkrant and Alexandra Puri, Mark Regala, Carla Dean, June Chlan, Leah Warble, Amy and Jeff Blizzard, Carolyn Moss, Dominic Mosley, Adam Schindler, TaAndra Skipwith, and Marie Head, (“Appellants”) on April 3, 2024.

A *de novo* hearing was held before this Board on September 25, 2024. Petitioner, Melissa McKenzie was represented by Traci R. Scudder, Esquire. The Appellants were represented by Diana Khan, Esquire. After receiving closing memoranda from counsel, the public deliberation was held remotely on November 13, 2024.

MOTION TO DISMISS

Prior to the scheduled hearing on this matter, Petitioner filed a Motion to Dismiss Appeal. At the beginning of the hearing, Petitioner and Appellant made oral arguments in support of their petitions. The Board held ruling on the Motion *Sub Curia*.

The Petitioner argued that the appeal should be dismissed for three main reasons:

Ripeness – The appeal is premature because no formal decision regarding the use permit was issued by the Director of the Department of Permits, Approvals, and Inspections (“PAI”). The Appellants are challenging a planner’s review, which does not constitute an appealable decision.

Lack of Standing – The Appellants were not parties to the original use permit application and, under the Baltimore County Code, non-applicants do not have the right to appeal the issuance of a use permit. Prior Board decisions have consistently upheld this interpretation.

Failure to Demonstrate Aggrievement – To have standing, Appellants must show they are personally and specially affected in a way distinct from the general public. The Petitioners argue that the Appellants have not demonstrated any specific harm resulting from the permit approval and that generalized concerns about the assisted living facility do not meet the legal standard for aggrievement.

Section 500.4 of the Baltimore County Zoning Regulations states as follows:

Issuance of use permits.

In cases in which no building permit is required, any person desiring to use any land for any purpose other than that for which said land is being used at the time of adoption of this Order and Resolution shall make application to the Director of Permits, Approvals and Inspections for a use permit, upon such form as the Director may prescribe. If such use is permissible the Director may issue a use permit, conditioned by other provisions contained in the regulations which shall indicate that it authorizes the particular use applied for.

In this case, a Use Permit was issued on March 13, 2024. Said permit was signed by the Director of Permits, Approvals and Inspections. This is what is prescribed in Baltimore County Zoning Regulations (“BCZR”) §500.4. Additionally, Baltimore County Code (“BCC”) §32-3-401 states in pertinent part:

APPEALS TO THE BOARD OF APPEALS.

(a) In general. A person aggrieved or feeling aggrieved by a decision of the Zoning Commissioner or the Director of Permits, Approvals and Inspections may appeal the decision or order to the Board of Appeals.

This Code section clearly allows a “person aggrieved” or “feeling aggrieved” by a decision of the Director of Permits, Approvals and Inspections to file an appeal to the Board of Appeals. Petitioner has cited a prior Board of Appeals decision wherein the Board granted a Motion to Dismiss Appeal for lack of standing. This case is distinguishable from the instant case. The case cited by Petitioner, Smyth Property; Odessa Development – Ruling of Motion to Dismiss, Case No. CBA-04-143 (2004) dealt with a building permit that was issued. The Baltimore County Code has a separate section dealing with appeals of building permits. Section 35-2-302 (e) expressly deals with building permits. It states, in pertinent part: “An applicant for a building permit may appeal to the County Board of Appeals for review of the denial, revocation, suspension, annulment, or modification of a permit by the Building Engineer by:...” The only person permitted to file an appeal is the applicant for the building permit itself. As stated above, in this case, the statute permits any person “aggrieved” or “feeling aggrieved” to file an appeal. Therefore, the Petitioner’s Motion to Dismiss is hereby denied.

BACKGROUND

The property at issue in this case is located at 4026 Silvage Road, Nottingham, Maryland 21236 (the “Property”). The Property is a single-story brick dwelling built in 1977. It is located

on the corner of Silvage Road and Trepid Road. Silvage Road is a dead-end road with a cul-de-sac. The house is approximately 1,441 square feet and sits on a lot that is approximately 9,825 square feet. There is an existing concrete driveway extending from the street to approximately the beginning of the house. The zoning of the property is D.R. 3.5.

Ms. McKenzie purchased the property in 2023. She subsequently submitted an application for a Use Permit for an Assisted Living Facility I with a maximum of four (4) beds. After submitting all the required documentation and information, and after some modifications, she was ultimately granted the Use Permit. Appellants subsequently filed this appeal.

During the hearing before the Board in this matter, testimony was given by Ms. McKenzie, Mr. Brett Williams, Mr. Jeffrey Perlow and Mr. Michael Chirico.

Ms. McKenzie testified that she purchased her home in 2023. Following the passing of her father in an assisted living facility, she was inspired to open an assisted living facility of her own. To prepare for this endeavor, she completed a six-month course in assisted living management.

The property she owns is zoned D.R. 3.5, which permits an assisted living facility with up to four beds. She intends to operate the facility for residents aged 65 and older.

Ms. McKenzie testified that she reviewed the requirements necessary to establish the facility. According to regulations, she would need one parking space per three beds, rounded up to two parking spaces. These spaces must be located in the side or rear yard of the property. Initially, Ms. McKenzie applied for a variance due to the lack of an existing driveway leading to the side or rear yard. However, after further consideration, she withdrew her variance application and committed to installing a driveway to comply with the parking requirements.

Ms. McKenzie also described the process of applying for the use permit. She collaborated with the County to meet all checklist requirements for an Assisted Living Facility use permit. (Petitioner's Exhibit 1). After ensuring compliance with all items on the checklist, the use permit was granted.

Before submitting her application, Ms. McKenzie engaged in neighborhood outreach to clarify her intentions. She distributed flyers and hosted a question-and-answer session. Despite her efforts, some community members expressed concerns, fearing that the facility might attract undesirable individuals such as drug addicts or pedophiles.

Ms. McKenzie further testified that, even after obtaining county approval for the use permit, she must secure approval from the State of Maryland. Additionally, she will need to apply for a change of occupancy permit with the County.

At the facility, Ms. McKenzie plans to provide daily activities, prepare meals, accompany residents to appointments, and organize excursions. She confirmed that there would be no signage on the property indicating its use as an assisted living facility.

Brett Williams, a Planner II with the Department of Planning for eleven years, testified regarding his review of Ms. McKenzie's application. He explained that his role involved ensuring that the application met the requirements outlined in the Baltimore County Code for an Assisted Living Facility I. One of the first requirements he reviewed was the 1,000-foot restriction, which prohibits an Assisted Living Facility I or II from being located within 1,000 feet of another property with a similar facility. He confirmed that Ms. McKenzie's application complied with this restriction.

Mr. Williams also reviewed Ms. McKenzie's submission of photo montages of the neighborhood. Additionally, he reviewed the Compatibility Study submitted by Petitioner, which

In the matter of: Melissa McKenzie
Case No.: UP-23-005-AL

is required to evaluate compatibility under BCC §32-4-402. He testified that Ms. McKenzie's compatibility finding satisfied the objectives listed in the statute. Additionally, he examined the parking requirements outlined in BCZR §432A.1. He confirmed that Ms. McKenzie met these requirements by proposing to install a driveway that would provide the necessary parking spaces in the side or rear yard. He also confirmed that Ms. McKenzie was not erecting any signage on the property.

In his testimony, Mr. Williams affirmed that Ms. McKenzie met all the requirements to obtain the use permit. On cross-examination, he stated that he did not speak directly to members of the community about the approval of the use permit. However, he reviewed the application to ensure that the compatibility objectives were met. Regarding traffic concerns, he opined that the proposed facility would have a minimal impact on neighborhood traffic.

Jeffrey Perlow, the Zoning Supervisor for the Department of Permits, Approvals, and Inspections, testified about his department's role in reviewing Ms. McKenzie's use permit application. Mr. Perlow has served as the zoning supervisor for four years and is responsible for overseeing the review process for use permits.

Mr. Perlow explained that a traffic study is not required for an Assisted Living Facility I under current regulations. However, he noted that traffic concerns could arise at a later stage when Ms. McKenzie applies for a change of occupancy permit. His department also reviewed the application to ensure compliance with the 1,000-foot proximity restriction, confirming that the proposed facility meets this requirement. Additionally, he testified that the parking plan, which includes the installation of a driveway to provide the required spaces in the side or rear yard, was consistent with the statute.

Mr. Perlow's testimony emphasized that all necessary criteria for the use permit were satisfied, and he confirmed that his department's review process found no violations or issues with the application.

Mr. Michael Chirico, a neighborhood resident, testified in opposition to the application. He expressed concerns about the number of individuals living in a small house and stated that Ms. McKenzie did not approach him directly to discuss her plans.

Mr. Chirico also noted the presence of a large assisted living facility located just outside the 1,000-foot radius and expressed concerns that the use permit approval process was rushed. He advocated for a mechanism allowing the community to relay concerns before such approvals are granted.

After Mr. Chirico's testimony, Counsel for Appellants made a proffer that all of the other listed Appellants would essentially testify to the same issues as Mr. Chirico. Without objection from counsel for the Petitioner, the Board accepted the proffer.

DISCUSSION

The Baltimore County Zoning Regulations ("BCZR") §101.1 defines an Assisted Living Facility I as follows:

ASSISTED-LIVING FACILITY — A building, or section of a building, that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination thereof, to meet the needs of individuals who are unable to perform or who need assistance in performing the activities of daily living and which is licensed as an assisted-living program as defined under Title 19, Subtitle 18 of the Health-General Article, Annotated Code of Maryland. For the purposes of this definition, if a resident lives in a room or apartment providing complete kitchen facilities intended for the daily preparation of meals by or for that resident, the unit shall not be considered an assisted-living facility. Density for such facilities shall be calculated at 0.25 for each bed.

A. ASSISTED-LIVING FACILITY I — An assisted-living program which:

1. Is located in a structure which was built at least five years before the date of application;
2. Was not enlarged by 25 percent or more of ground floor area within the five years before the date of application; and
3. Which accommodates fewer than eight resident clients.

BCZR §432A.1 deals with the permitted zones and conditions for use of an Assisted Living Facility. It states as follows:

§432A.1. - Permitted zones; conditions for use.

- A. An assisted-living facility is permitted in the D.R., R.O., R.O.A., R.A.E., B.R., B.M. and OR-2 Zones as follows:
 1. An assisted-living facility I is permitted by use permit.
 2. An assisted-living facility II is permitted by use permit if it has frontage on a principal arterial street.
 3. In a D.R. Zone, an assisted-living facility I or II is not permitted within 1,000 feet of another property with an existing assisted-living facility I or II or another property for which an application for a use permit has been filed for an assisted-living facility I or II.
 4. An assisted-living facility III is permitted in a D.R.16, R.A.E., R.O., R.O.A., B.L. Zone in the Pikesville Commercial Revitalization District, or B.M. Zone by use permit. An assisted-living facility III is permitted in the OR-2 Zone by special exception and is limited by the use, area and bulk regulations of the D.R.10.5 Zone. A facility located in an R.O. Zone is also subject to review by the design review panel for compatibility with surrounding uses.
 5. Housing for the elderly is permitted by right in R.A.E. Zones.
- B. Except for the signs permitted by Section 450, no other signs or displays of any kind visible from the outside are permitted.
- C. Off-street parking shall be provided in accordance with Section 409 and subject to the following conditions, but no parking structure is permitted except for a residential garage as defined in Section 101.1.
 1. Parking shall be set back at least ten feet from the property line, except that if the property line abuts an alley, no setback is required if the alley does not abut the front or rear yard of a residentially used property.
 2. Parking and delivery areas shall be located in the side or rear only.
 3. At least ten percent of the lot shall be used to provide useable, contiguous and private open space.

- D. An assisted-living facility is subject to a compatibility finding pursuant to Section 32-4-402 of the Baltimore County Code in accordance with this paragraph. A compatibility study is required for all assisted-living facility projects located in the D.R., R.O., R.O.A., O.R.-2, or R.A.E. Zone. For assisted-living facility projects located in the B.L., B.M., or B.R. Zone, a compatibility study is required only for projects that are not otherwise subject to review by the design review panel.
- E. An assisted-living facility located in a County historic district is also subject to review by the Landmarks Preservation Commission in the same manner as other buildings located in a historic district.
- F. Assisted-living facilities and housing for the elderly are permitted by right within the boundaries of a state-designated transit-oriented development in the C.T. District of Owings Mills and not subject to any of the requirements contained in this section.

Based on the evidence presented and the applicable Baltimore County Zoning Regulations, the Board finds that the Petitioner has satisfied all requirements for the issuance of a Use Permit for an Assisted Living Facility I at the subject property.

Pursuant to BCZR §101.1, an Assisted Living Facility I must be located in a structure built at least five years before the date of application, must not have been enlarged by 25 percent or more of its ground floor area within the five years preceding the application, and must accommodate fewer than eight residents. The subject property, a single-story brick dwelling built in 1977, meets these requirements, as it has not undergone substantial enlargement and is proposed to accommodate only four residents. (*See* Petitioner's Revised Site Plan).

Further, BCZR §432A.1(A) provides that an Assisted Living Facility I is permitted in a D.R. Zone by use permit, subject to compliance with specific conditions, including the 1,000-foot proximity restriction in §432A.1(A)(3). Testimony from Planner, Brett Williams, and Zoning Supervisor, Jeffrey Perlow, confirmed that there are no existing assisted living facilities within 1,000 feet of the subject property. This ensures compliance with the statutory distance

requirement, which aims to prevent an excessive concentration of such facilities in residential neighborhoods.

Compatibility with the surrounding area is a key consideration under BCC §32-4-402, which requires a compatibility study for Assisted Living Facilities in residential zones. The purpose of this provision is to assess the potential impact of the proposed use on the character of the neighborhood, property values, and overall community welfare. Petitioner submitted a compatibility study, which was reviewed and approved by the Department of Planning. (Petitioner's Exhibit 1). Mr. Williams testified that the study demonstrated compliance with the compatibility objectives, finding that the small-scale nature of the facility aligns with the residential character of the area.

Parking and signage regulations further ensure that the facility integrates appropriately into the neighborhood. BCZR §432A.1(C) mandates one off-street parking space per three beds, rounded up, and requires that parking be located in the side or rear yard. Initially, Petitioner sought a variance due to existing driveway limitations but later withdrew the request, opting instead to construct a compliant parking area. Mr. Williams and Mr. Perlow testified that the revised plan satisfies all applicable parking requirements. Additionally, BCZR §432A.1(B) restricts signage for Assisted Living Facilities, prohibiting displays visible from the exterior. Petitioner has confirmed that no signage will be installed, ensuring compliance with this requirement.

Although Appellants expressed concerns regarding traffic impact and potential changes to neighborhood dynamics, the Board finds that such concerns are speculative and not supported by the evidence. Traffic studies are not required for an Assisted Living Facility I, as confirmed by Mr. Perlow. The small scale of the facility, with a maximum of four residents, is unlikely to

generate significant traffic volume. Additionally, the use of the property for assisted living, as defined in the BCZR, does not introduce an inherently disruptive element inconsistent with existing residential uses.

Appellants also argued that the lot does not have the required density. They argue that density for an Assisted Living Facility I requires a density calculation using a factor of 0.25 for each bed. This is a misreading of BCZR §101.1. This section requires a density of 0.25 for each bed for a facility in which residents have their own personal kitchen intended for the daily preparation of meals by or for that resident. This is not the case here. The residents in the proposed Assisted Living Facility I will not have their own kitchen. In the checklist provided by Baltimore County for Assisted Living Facility Class I, the required density calculations are provided. In a D.R. 3.5 zone, there is no minimum density requirement for a facility with 4 or less beds. (Petitioner's Exhibit 1).

The Board acknowledges Appellants' concerns regarding the approval process but finds that the Petitioner has fully complied with all procedural and substantive requirements under the BCZR. The issuance of the Use Permit by the Department of Permits, Approvals, and Inspections was appropriate, as the application met all zoning and land use criteria. Further, Petitioner must still obtain state licensure and a change of occupancy permit, providing additional layers of regulatory oversight.

CONCLUSION

The Board concludes that Petitioner has satisfied all statutory and regulatory conditions for the issuance of a Use Permit for an Assisted Living Facility I at the subject property. Therefore, the requested Use Permit is **GRANTED**.

ORDER


THEREFORE, IT IS THIS 13th day of February, 2025, by the Board of Appeals of Baltimore County, it is:

ORDERED that the Petitioner's Motion to Dismiss, be and is hereby **DENIED**; and it is further

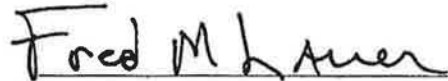
ORDERED that the Application for Use Permit to allow an Assisted Living Facility I with a maximum of four (4) beds, be and is hereby **GRANTED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through 7-210 of the *Maryland Rules*.

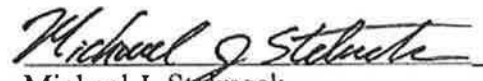
**BOARD OF APPEALS OF
BALTIMORE COUNTY**



Bryan T. Pennington, Panel Chair



Fred M. Lauer



Michael J. Stelmack



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

February 13, 2025

Traci R. Scudder, Esquire
Law Office of Traci R. Scudder, LLC
4200 Parliament Place, Suite 220
Lanham, Maryland 20706

Diana Khan, Esquire
DK Law Group
10451 Mill Run Circle #755
Owings Mills, Maryland 21117

RE: In the Matter of: *Melissa McKenzie*
Case No.: UP-23-005-AL

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington Hem".

Krysundra "Sunny" Cannington
Executive Secretary

KLC/taz
Duplicate Original Cover Letter
Enclosure

c: See Distribution List following

In the matter of: Melissa McKenzie

Case No.: UP-23-005-AL

February 13, 2025

Distribution List

Melissa McKenzie
Bill Molyneaux
Denny Yarbrough
William and Amy Wheeler
Eric and Tammy Dye
The Rev. Chris McCloud and Janet Hager
Laurie Jones, POA for Charles McKelvey
Rodney and Sharon Johnson
Arthur and Judy Pulket
Michael Chirico
Andrew Barrows
Lisa Ellis
Grace Ellis
Liam Dugan
Caroline Bomgardner
Vinkrant and Alexandra Puri
Mark Regala
Carla Dean
June Chlan
Leah Warble
Amy and Jeff Blizzard
Carolyn Moss
Dominic Mosley
Adam Schindler
TaAndrea Skipwith
Marie Hand
Office of People's Counsel
Jeffrey Perlow, Supervisor, Office of Zoning Review
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law