

IN THE MATTER OF  
WILLIAM J. TURNER  
3219 E. Joppa Road  
Baltimore, Maryland 21234

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No.: 12-138-XA

11<sup>th</sup> Election District  
6<sup>th</sup> Councilmanic District

\* \* \* \* \*

**OPINION**

This matter comes before the Board of Appeals for Baltimore County (the "Board") as an Appeal from Administrative Law Judge's February 29, 2012 decision which granted a Petition for Special Exception and granted a Petition for Variance for the address of 3219 East Joppa Road.

The Petition for Special Exception was requested pursuant to Section 1B01.1C.12 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a real estate office inside a residential home (under 25% of the total floor area) located in a DR 3.5 zone. Petitioner has also requested Variance relief from Sections 409.8A.4 and 409.8B.2 of the B.C.Z.R. to permit a surface parking facility with a zero foot set back in lieu of the 10 foot setback required by the regulations.

**BACKGROUND**

The subject property consists of a single family house situated on a 9,295 square foot lot. The residence is zoned DR 3.5. The Petitioner has been a real estate broker for over 30 years and desired to open a real estate office in his home. The Petitioner formerly rented office space in an appropriately zoned location in Baltimore County. The proposed office will occupy less than 25 per cent of the available square footage of the residence.

The Administrative Law Judge below granted the Request for Special Exception concluding that the proposed use of the property will not be detrimental to the health, safety, or general welfare of the locality, nor would it tend to create congestion in roads, streets or alleys therein. The administrative judge cited the letters of support for the Petitioner from his neighbors submitted into evidence in this matter.

The Petition for Variance was granted by the administrative law judge based upon his finding that “special conditions exist that are peculiar to the land or structure which is the subject of the variance request.” The foregoing is based upon the judge’s finding that the State Highway Administration (SHA) took a large (18 foot) strip of Petitioner’s property when it widened the nearby Joppa Road intersection and that this taking prevented the Petitioner from complying with the B.C.Z.R. setback requirements. The judge therefore concluded that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship to the Petitioner if zoning compliance was required for his proposed property use.

#### OPINION

The Board conducted a de novo hearing at which the Petitioner and counsel appeared on his behalf and the Office of Peoples’ Counsel for Baltimore County appeared in opposition to the requested relief.

The purpose of the requests in this matter, as stated above, are to allow and facilitate the use of the subject property as a real estate office occupying less than 25 per cent of the square footage of the subject residence. The Petitioner testified that the proposed use will require that a sign be placed on the property in accord with the state rules regarding real estate offices. The findings of fact from the Administrative Law Judge were confirmed by the evidence presented.

However, the Board differed in its conclusion of law based upon those facts. The requirements for a special exception such as that requested by the Petitioner are found in Section 1B01.1C.12 of the BCZR:

“Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons, providing that any such office or studio is established within the same building as that serving as the professional person’s primary residence: and does not involve the employment of more than one (1) nonresident professional associate, nor two other non-resident employees.”

The threshold question presented in this case is whether the occupation of real estate broker fits within the definition of “other professional persons” as contemplated in Section 1B01.12 of the BCZR. This issue has previously been addressed in the case of Jorge Escalante v. County Board of Appeals for Baltimore County, Case No. 03-C-02-001391 (2002). In that case the presiding judge in the Circuit Court for Baltimore County cited the following definition of “profession”.

“4a: a calling requiring specialized knowledge and often long and intensive preparation including instruction in skills and methods as well as in the scientific, historical, or scholarly principals underlying such skills and methods, maintaining by force of organization or concerted opinion high standards of achievement and conduct, and committing its members to continued study and to a kind of work which has for its primary purpose the rendering of public service.”

The Court in Escalante went on in its opinion to determine that the profession of real estate broker was a business rather than a profession and therefore not eligible for relief under the requested special exception. The Board is of the same opinion based upon the foregoing.

Having determined that the Petitioner’s business enterprise is not one that can be a considered for a special exception we need not consider the tests for the issuance of such an exception. Likewise, as we have determined that relief cannot be granted to the Petitioner by way of a special exception we need not consider the request for a variance because the request has been rendered moot.

**ORDER**

**THEREFORE, IT IS THIS** 28<sup>th</sup> day of September, 2012 by the Board of Appeals of Baltimore County,

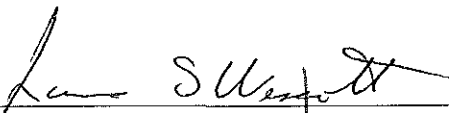
**ORDERED** that the Petition for Special Exception from Section 1B01.1C.12 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a real estate office inside a residential home (under 25% of the total floor area) located in a D.R. 3.5 zone, be and is hereby **DENIED**; and it is further

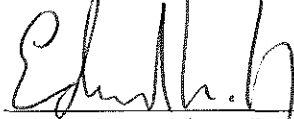
**ORDERED** that the Petition for Variance from Section 409.8A.4 and 409.8B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a surface parking facility with a zero-foot setback in lieu of the required 10 feet setback, and to confirm the existing parking shown on Petitioner's Exhibit 1, be and is hereby **DENIED** since the issue is rendered moot.

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*.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
Wendell Grier, Chairman

  
Lawrence S. Wescott

  
Edward W. Crizer, Jr.