

IN RE: <b>PETITIONS FOR SPECIAL HEARING AND</b> *	BEFORE THE
<b>SPECIAL EXCEPTION</b>	
W/S Pot Spring Road, 4' S Ivy Church Road @ *	ZONING COMMISSIONER
Pot Spring & Church Roads	
<b>(1904 Pot Spring Road)</b> *	OF
8 <sup>th</sup> Election District *	BALTIMORE COUNTY
3 <sup>rd</sup> Council District *	
Richard P. Auffarth, et ux, <i>Legal Owners</i>	
Dawn M. Auffarth, <i>Contract Purchaser</i> *	<b>Case No. 2009-0157-SPHX</b>
Petitioners	

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by Lawrence M. Hammond, Esquire, on behalf of Dawn Auffarth, the daughter of the legal owners of the subject property, Richard and Delores Auffarth. Special hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to determine whether an Insurance Agency constitutes a “professional occupation” within the definitional Section 101 of the B.C.Z.R. Petitioners are also requesting a special exception pursuant to Section 1B01.1.C.12 of the B.C.Z.R. to permit a professional office in their residential home located at 1904 Pot Spring Road. The subject property and requested relief are more fully particularly described on the site plan, which was accepted into evidence and marked as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the request(s) were Dawn Auffarth, her attorney, Lawrence M. Hammond, Esquire, and Bernadette Moskunas, the consultant with Site Rite Surveying, Inc., who prepared the site plan for this property. Catherine Burke appeared as a concerned neighbor. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is a rectangular shaped parcel (150' wide x 278' deep) and split-zoned with the majority of the lot (0.923 acres zoned D.R.1) and a small sliver (0.027 acres zoned D.R.2) along the rear or western boundary. The property is located in the Lutherville/Timonium area of the County on the west side of Pot Spring Road, just north of Ridgely Road, and across from Ivy Church Road. Petitioners have owned the property since 1983 and submitted several photographs demonstrating the existing conditions, which were marked as Petitioners' Exhibits 2A-D. These evidence that the property is improved with a one-story brick dwelling built in 1960 and located centrally on the lot that is accessible either by a brick walkway in the front of the dwelling or an existing asphalt driveway that leads up to a garage and entranceway on the northern side of the home. The improvements also feature an existing wood deck and in-ground pool in the rear of the yard. The surrounding area is a well-maintained residential neighborhood.

Further evidence demonstrated that while the primary use of the property is residential, Richard Auffarth has maintained, without complaint, his State Farm insurance office on the lower level of the home for over twenty-six (26) years. Dawn Auffarth (hereinafter Mrs. Auffarth or Petitioner) testified at the hearing that her parents, the property owners, are aging and have become ill, so much so that she has recently moved into their home to care for them. Mrs. Auffarth was also over eight (8) months pregnant at the public hearing and explained that she plans to live in her parents' home with her husband and new child. This would allow her to care for her parents and child, but she expressed concern with her ability to continue her career as an insurance consultant and financial planner. Thus, she developed the idea that she would continue to maintain a primary office in downtown Baltimore but would also continue her father's practice of using the lower level of the home as a secondary office. Rather than maintaining a home office without notifying the Department of Permits and Development Management

(DPDM), Mrs. Auffarth filed the instant petitions in an attempt to legitimize the existing historical use of the property.

The Petitioner submitted several photographs of the lower level of the home that has been used and is proposed to continue as a home office. The Photographs, which had previously been submitted to the Office of Planning, were collectively marked as Petitioner's Exhibit 3. Prospective clients would and will enter the home from a side entrance on the north side of the dwelling. This entrance leads directly into the 540 square foot finished basement area of the home that Richard Auffarth has used as a home office for many years. Mrs. Auffarth testified that she would be cleaning the office area and would keep a desk and basic office supplies in the home office. While the majority of her work would continue to be completed in her downtown office, this area would be used to complete paperwork and occasionally to meet with clients.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated December 31, 2008, which indicate that the Office of Planning does not oppose the requested special exception and special hearing for an insurance office to be located in a residential zone. According to the Petitioner, this office has been operating from this location for over 26 years and the community is aware of its presence. There will be no additional paving for parking for the customers and a sign, if any, will as in the past be posted under the mailbox and will not be lighted. As noted on the site plan (Exhibit 1), any sign will be limited in size to 8" x 12" and display the words "Auffarth & Associates". Therefore, given the historical use and evidence presented I find that the special exception and special hearing relief will not be detrimental to the health, safety, or general welfare of surrounding neighbors or the community.

Turning first to the Petition for Special Hearing, I find that an insurance agent is not a professional person within the definition prescribed by the B.C.Z.R. I explain. Section 1B01.1

of the B.C.Z.R. contains the use regulations pertaining to the D.R. zones that govern the request in this case. Section 1B01.1C lists a number of uses that are permitted by special exception in the D.R. zones, and as applies to this case, Section 1B01.1.C.12 states as follows:

“Office or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians **or other professional persons**, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence at the time of application; does not occupy more than 25% of the total floor area of such residence; and does not involve the employment of more than one nonresident professional associate nor two other nonresident employees.” (Emphasis Added)

The Petitioner has questioned whether insurance agents meet the definition of “other professional persons” so that an insurance business could be operated out of a residential dwelling by special exception. This Office has considered whether a number of professions meet the definition of a professional person. *See, e.g.* Case Nos. 96-442-SPHX (an economist is a professional person); 99-370 SPHX (an acupuncturist is a professional person); 99-54 SPHXA (a medical equipment repairman is not a professional person); 01-045-SPHXA (a tax accountant is not a professional person); 03-532-X (a clinical social worker is a professional person); 06-009-XA (a tax preparer is not a professional person). After reviewing the analysis in these prior cases, it is clear that the determination of whether a trade qualifies as “professional” largely turns on licensing and educational qualifications and requirements.

As applies to this case, I do not find that an insurance agent/representative possesses the requisite training, licensing, or educational requirements to be considered a professional person. While the Court of Appeals has never directly ruled on this issue, this decision is consistent with several decisions from courts around the country. *See Reich v. Reading*, 3 Pa. CmwltH 511, 284 A.2d 315 (1971) (holding that the mere fact that an insurance representative is licensed by the state did not qualify him as a professional person); *See also Geaghan v. Bath*, 564 A.2d 393 (1989, Me) (holding that an insurance agency is not a professional office within the meaning of

an ordinance that permits professional offices in a residential zone as conditional uses). The decision is also consistent with the analysis contained in Anderson's American Law on Zoning, Section 13.11 (4th ed.), which states that "an insurance office is a business use which may not be maintained in a dwelling in a residential district unless the regulations list such offices as permitted home occupations." Given the prior analysis of this Commission in related cases, and the rulings expressed by treatises and courts throughout the country, I am convinced that an insurance agent is not a "professional person" within the definition contained in Section 1B01.1.C.12 of the B.C.Z.R.

Turning next to the Petition for Special Exception, I am persuaded that while an insurance agent/representative is generally not a professional person within the meaning prescribed by the zoning regulations, Dawn Auffarth is a professional person that would be entitled to maintain a home office provided she can meet the requirements contained in Section 502.1 of the B.C.Z.R. Unlike a normal insurance agent, Dawn Auffarth has obtained a number of accreditations and licenses that permit her to perform various financial services for her clients. Petitioner submitted copies of a number of her degrees and licenses, which were collectively marked and accepted into evidence as Petitioner's Exhibit 5.<sup>1</sup> The Exhibits collectively reveal that after graduating from Wake Forest University, Mrs. Auffarth underwent a significant amount of additional training such as passing her Series 6 exam, becoming a Life Underwriter Training Council Fellow (LUTCF) through the American College and the Association of Insurance and Financial Advisors, and obtaining additional certifications and graduate degree from the Thunderbird Management School. Mrs. Auffarth testified that she uses her additional licenses to provide professional services above and beyond those performed by a traditional

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<sup>1</sup> Petitioner and her counsel did not present proof of any licenses at the public hearing, but were permitted to submit copies after the close of the hearing. On February 20, Mr. Hammond provided the documents marked as Petitioner's Exhibit 5.

insurance agency. Considering the financial services that her business provides (writing annuities and estate planning, etc.) and the fact that many of the services cannot be performed without certifications beyond those required for an insurance agent, I find that Mrs. Auffarth is an “other professional person” within the definition prescribed by the B.C.Z.R.

Pursuant to Section 1B01.1.C.12 of the B.C.Z.R., Mrs. Auffarth is only permitted to operate a home office by special exception. At the public hearing, Bernadette Moskunas, the consultant who prepared the site plan for the Petitioner and familiar with the County Zoning Regulations, testified to the special exception criteria contained in Section 502.1 of the B.C.Z.R. Ms. Moskunas testified that in her professional opinion, the request to maintain a secondary office in the basement of the Auffarth residence would not be detrimental to the health, safety or general welfare of the locality involved. As the Office of Planning also noted, Richard Auffarth has already used the dwelling for this purpose for over twenty-six (26) years without incident. Ms. Moskunas also testified that the request will not tend to create congestion in roads, streets or alleys therein, particularly in light of the fact that Mrs. Auffarth intends to primarily handle on-line computer research and paperwork in the home office while hosting the occasional client. Since this request has no effect on the density of the subject property, there was no evidence that the request would create a potential hazard from fire, panic or other danger, or tend to overcrowd land and cause undue concentration of population. For these same reasons, the request would have no effect on provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements, and would not interfere with adequate light and air. The request is consistent with the purposes of the property's zoning classification, as a professional home office is specifically enumerated as a use permitted by special exception in the D.R. zones. The request will have no effect on impermeable surface and vegetative retention provisions of these regulations; nor would it be detrimental to the environmental and natural

resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains, since the Petitioner is not proposing any additional construction and will simply maintain the premises as they exist today. Considering all of the evidence and testimony presented at the public hearing, I am convinced that the request meets the special exception criteria contained within Section 502.1 of the B.C.Z.R. and the Courts recent interpretation of those standards in *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54 (2008).

There are several additional requirements that the Petitioner must meet in order to maintain the proposed home office. Under Section 1B01.1.C.12 of the B.C.Z.R., the dwelling must be the primary residence of Dawn Auffarth, must not occupy more than 25% of the total floor area of the residence, and must not involve the employment of more than one nonresident professional associate or two (2) other nonresident employees. The request meets these requirements as the proposed home office will occupy 540 feet of the 2,228 square foot dwelling, which is 24% of the total floor area of the residence. Of this space, approximately 270 feet will be used for office operations, and the other 270 will be used for storage. This is within the 25% limit prescribed by the B.C.Z.R. Additionally, Mrs. Auffarth explained that she did not intend to have any nonresident employees, and the only person that will occasionally help her with her paperwork is her husband. Thus, I am convinced that the Petitioner's request to maintain a home office meets all requirements mandated by the B.C.Z.R.

Catherine Burke, who appeared at the public hearing as a neighbor and interested citizen, expressed concern with the potential effect of the Petitioner's request on the residential character of the surrounding neighborhood. Ms. Burke testified that permitting a home office on Pot Spring Road could start a domino effect where Pot Spring would eventually resemble the type of business district seen on nearby York Road. Ms. Burke also explained that she opposed the placement of the permitted size – a twenty five (25) square foot sign placed on the property, as

she did not want the request to cause distraction to drivers or negatively affect the residential character of the neighborhood. It should be noted that petitions for zoning relief are considered on a case-by-case basis, and the approval in this case is based on a number of individual characteristics that would likely not be present in the majority of situations on nearby properties. That being said, the special exception will be granted and conditioned to meet the concerns of Ms. Burke and neighbors in this upscale community.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and for the reasons set forth above, I find that Petitioner's request for special hearing is answered in the negative, and the request for special exception will be granted subject to a number of limiting restrictions.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 5<sup>th</sup> day of March, 2009 that Petitioner's request for Special Hearing relief filed pursuant to Section 500.7 B.C.Z.R. seeking a determination as to whether an insurance agency is an "other professional person" within the intent and meaning prescribed by the B.C.Z.R. is hereby answered in the negative; and

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a professional office to be used by Dawn Auffarth, LUTCF, MBA, in her residential home located at 1904 Pot Spring Road, is hereby GRANTED subject to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioner(s) is hereby made aware that proceeding at this time is at her own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. Petitioner may not change or expand the home office beyond the 24% of the home currently used without an additional public hearing before the Zoning Commissioner.
3. The Petitioner may hang a single sign from either the mailbox or the northern side of the dwelling. The sign must not exceed the dimensions of 8" x 12" and must not be lighted at

4. The special exception for a professional office is granted only to the Petitioner, Dawn Auffarth personally and does attach to the real property. The special exception granted in this case is not transferable to any other person. If and when the Petitioner ceases to practice as an insurance consultant from the subject property, the special exception shall become null and void.
5. No employees, except persons who use the dwelling as their bonafide residence, shall be involved in the home occupation on the property.

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

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SIGNED  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County