

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION AND VARIANCE		
N/side of Sudbrook Lane, 40' W of c/line of	*	ZONING COMMISSIONER
DeRisio Lane		
(4 Sudbrook Lane)	*	OF
3 rd Election District		
2 nd Council District	*	BALTIMORE COUNTY
4 Sudbrook, LLC	*	Case No. 2009-0209-SPHXA
<i>Petitioner</i>		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception and Variance filed by 4 Sudbrook, LLC, by and through his attorney, Mark D. Dopkin, Esquire. The Petitioner requests a special hearing to amend the site plan and Order approved in Case No. 2009-0072-SPHA and to affirm the relief granted in that Order as it relates to a modified parking plan pursuant to Section 409.12 of the Baltimore County Zoning Regulations (B.C.Z.R.).¹ Petitioner also requests special exception relief in order to allow a Class B Office Building in an R-O zone, pursuant to B.C.Z.R. Section 204.3.B.2. Finally, Petitioner seeks additional variance relief as follows: From B.C.Z.R. Section 409.6.A.2, for 13 parking spaces in lieu of the 16 parking spaces required; from Section 204.3.B.2.a, to permit a Class B Office Building with 39% of the total adjusted gross floor area occupied by medical offices in lieu of 25% permitted; from Section 204.4.C.1, to permit a Class B Office Building with a floor area ratio of 0.48 in lieu of 0.33 permitted, and from Section 204.4.C.9.c(2), to permit a 0 foot landscape buffer along property lines which abut a non-residentially zoned property in lieu of 10 feet required. The subject property and requested relief

¹ Variance relief was also granted in Case No. 2009-0072-SPHA as follows: From B.C.Z.R. Section 204.3, to permit 43% of the total adjusted gross floor area to be occupied by medical offices in lieu of 25% allowed; from Section 409.4, to permit a two-way driveway 10 feet in width in lieu of 20 feet required; from Section 409.8.A.4, to permit a parking space in a surface parking facility for a nonresidential use to be 0 feet from the right-of-way line of a public street in lieu of 10 feet required, and from Section 409.8.A.1 and the Baltimore County Landscape Manual, to permit a landscape strip of 0 feet between an existing paved surface and a lot line in a commercial zone in lieu of six (6) feet required.

are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Howard Rothschild, D.D.S., on behalf of the property owner; Richard E. Matz, the professional engineer who prepared the site plan; Jay Brown, architect with Levin/Brown & Associates, who presented for review the building elevation drawings approved by the Design Review Panel (DRP), and Mark D. Dopkin, Esquire, attorney for the Petitioner. Appearing as interested citizens from the Ralston Community Association were Sara J. Glik and Lorna R. Diaz, the association president. It should also be noted that Pierce Macgill, representative of the Baltimore County Department of Economic Development, and Diana Itter, Office of Planning, appeared and participated at the hearing. While there were no Protestants or other interested persons present, letters were received from Melinda A. Hipsley, Past President, Ralston Community Association, and Alan P. Zukerberg, President, Pikesville Communities Corporation, indicating their opposition to ingress and egress to the parking area from DeRisio Lane.

Testimony and evidence offered revealed that the subject property is a rectangular shaped corner lot located on the northwest side of the intersection of Sudbrook Lane and DeRisio Lane in Pikesville. The property contains a gross area of 0.33 acres, more or less, and is zoned R-O (Residential Office). As shown on the site plan, the property is improved with a 3-story building with basement, the first floor of which has an extension in the rear. The property is currently vacant. Testimony indicated that Dr. Rothschild is licensed as a dentist by the State of Maryland and specializes in reconstructive dentistry and maintains an office in Pikesville.

Subsequent to the Order in the prior case (dated November 5, 2008), the Petitioner acquired the property and commenced renovations.² It was discovered that the one-story addition in the rear of the original building had deteriorated to the point that it was not practical to rehab it and that, in addition, the layout of the dental offices within the proscribed area was not

² To the extent applicable, the findings and conclusions set forth in Case No. 2009-0072-SPHA are adopted by reference and incorporated herein.

optimal for the desired layout of the dental offices. The proposed one-story addition with basement extends approximately 30 feet beyond the previously approved footprint. The expansion of the rear addition creates a Class B office building. Special exception and special hearing relief is necessary to reflect the proposed expansion of the previously approved use from a Class A office building to a Class B office building and update the site plan for this property.

The residential appearance is to be maintained. All other buildings on Sudbrook Lane in the immediate area enjoy office use. Office use, including medical offices, is a use permitted in the zone. In addition, the property is surrounded by properties in commercial use. In these regards, the proposed use conforms to the legislative intent and policies articulated in Section 204 of the B.C.Z.R. As previously stated, to modify the configuration of the existing structure to strictly comply with the 25% limitation set forth in Section 204.3.B would indeed create a practical difficulty.

The Office of Planning does not oppose the variance requested provided certain conditions are met. The proposed improvements have been approved by the Design Review Panel. Petitioner indicated that he was willing to comply with the conditions suggested by the Office of Planning and the Design Review Panel.

Mr. Macgill appeared at the hearing on behalf of the Baltimore County Department of Economic Development. His organization fully supports the proposal. He indicated that the Petitioner's practice is appropriate for this location and will not result in detrimental impacts to adjacent properties and uses. In addition, the rehabilitation of this building is consistent with the Pikesville Revitalization Plan and would be eligible for various tax credits and grants. Ms. Itter appeared at the hearing on behalf of the Baltimore County Office of Planning. She reiterated that the Design Review Panel had unanimously approved the proposed project. She further stated that the landscaping plan and sign detail would be subject to approval by the Office of Planning.

As noted above, Ms. Diaz appeared as President of The Ralston Community Association, Inc. While she and the Association have no objections to the proposed expansion of the

improvements, some members have raised concerns relative to possible access to and from the east side of the property to DeRisio Lane. Ms. Diaz stated that the Association's membership will meet on April 22, 2009 and formally adopt a position relative to the Board's desired access at this location. However, in this regard, it is to be noted that the proposed access to DeRisio Lane is not before me at this time.

Based upon the testimony and evidenced offered, relief shall be granted in accordance with the following:

Special hearing relief shall be granted. That relief relates to the proposed amendment to the site plan and relief granted in Case No. 2009-0072-SPHA for modified parking pursuant to Section 409.12 of the B.C.Z.R. In addition, the special hearing relief granted in Case No. 2009-0072-SPHA is hereby affirmed. Since the proposed use by a small dental practice is self-limiting, the impacts of changing the use to medical office space are negligible. Accordingly, I find that the proposed use will not be detrimental to the health, safety, or general welfare of the area; which is now characterized by similar conversions; and as stated in this Commission's prior Order will not create congestion in roads, streets, or alleys; will not create a potential hazard from fire, panic, or other dangers; will not overcrowd land or cause undue concentration of population; will not interfere with adequate provisions for schools, parks, water, sewerage, transportation, or other public requirements, conveniences, or improvements; will not interfere with adequate light and air; will not be inconsistent with the spirit and intent of the B.C.Z.R.; and will not be inconsistent with the impermeable surface and vegetive retention provisions of the B.C.Z.R.

Similarly, the petition for special exception for a Class B office building will be granted. The R-O Zoning Regulations permit a Class B office building only by Special Exception. Further, a Class B office building is defined in the B.C.Z.R. as a building which is a new structure, or for which significant addition has been added to the previous building. I am persuaded that the Class B office building should be permitted on the subject site and that the proposed improvements are appropriate. I am satisfied that the special exception request

complies with the requirements of B.C.Z.R. Section 502.1 as recently applied by the Court of Appeals in *People's Counsel for Baltimore Co. v. Loyola College*, 406 Md. 54 (2008).

Finally, the petition for variance shall be granted. In this regard, relief will be granted to allow 13 parking spaces in lieu of the 16 parking spaces required pursuant to Section 409.6.2 of the B.C.Z.R.; to permit a Class B office building with 39% of the total adjusted gross floor area occupied by medical offices in lieu of 25% allowed pursuant to Section 204.3B.2.a of the B.C.Z.R.; to permit a Class B office building with a floor area ratio of 0.48 in lieu of 0.33 allowed pursuant to Section 2.4.4.C.1 of the B.C.Z.R.; and to permit a 0 foot landscaping buffer along the property lines which abut a non-residentially zoned property in lieu of 10 feet required by Section 204.4.C.9.C(2) of the B.C.Z.R.

I find that the property is unique because of the location of the existing improvements. In addition, I find that strict compliance with the B.C.Z.R. would result in practical difficulty and unreasonable hardship to the Petitioner to use the property for the uses allowed by its current zoning. Without the requested variances the existing improvements could not be retained without modifying the exterior and would be contrary to the stated goal of the R-O zone. I also note that the adjoining property at 2 Sudbrook Lane was acquired by Baltimore County for the right-of-way for DeRisio Lane. To the extent that this taking changed the requirement for side yard setbacks the Zoning Commissioner's Policy Manual calls for the variances to be granted and doing so is consistent with long-standing practice by the Zoning Office and as applied by this Commission in construing *Cromwell v. Ward*, 102 Md. App. 691 (1994).

Based upon the testimony and evidence offered, I am persuaded to grant the requested relief. In my judgment, the proposal is consistent with the surrounding locale and will not detrimentally impact the surrounding neighborhood. The proposed redevelopment of this site is appropriate and meets the spirit and intent of the Zoning Regulations and the goals of this Revitalization District.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 8th day of April 2009 that the Petition for Special Exception, to allow a Class B Office Building in an R-O zone, pursuant to Section 204.3.B.2, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Hearing to amend the site plan and Order approved in Case No. 2009-0072-SPHA and to affirm the relief granted in that Order as it relates to a modified parking plan pursuant to Section 409.12 of the Baltimore County Zoning Regulations (B.C.Z.R.) and to affirm the following variance relief granted in that Order as follows:

From Section 204.3, to permit 43% of the total adjusted gross floor area of an existing Class A office building to be occupied by medical offices in lieu of 25% allowed; from Section 409.4, to permit a two-way driveway 10 feet in width in lieu of 20 feet required; from Section 409.8.A.4, to permit a parking space in a surface parking facility for a nonresidential use to be 0 feet from the right-of-way line of a public street in lieu of 10 feet required; and from Section 409.8.A.1, and the Baltimore County Landscape Manual to permit a landscape strip of 0 feet between an existing paved surface and a lot line in a commercial zone in lieu of six (6) feet required, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from B.C.Z.R. Section 409.6.A.2, to allow 13 parking spaces in lieu of 16 parking spaces required; from B.C.Z.R. Section 204.3.B.2.a, to permit a Class B Office Building with 39% of the total adjusted gross floor area occupied by medical offices, in lieu of 25% permitted; from B.C.Z.R. Section 204.4.C.1, to permit a Class B Office Building with a floor area ratio of 0.48 in lieu of 0.33 permitted, and from B.C.Z.R. Section 204.4.C.9.c(2), to permit a 0 foot landscape buffer along property lines which abut a non-residentially zoned property in lieu of 10 feet required, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; subject to the following restrictions:

- 1) The Petitioner may apply for its permit and be granted same upon

- 2) Except as specifically modified herein, the terms and conditions of the relief granted in Case No. 2009-0072-SPHA shall be incorporated herein.
- 3) The Petitioner shall provide a sign detail with colors and materials to the Office of Planning for review and approval for any freestanding sign or sign on the building wall.
- 4) The Petitioner shall submit for review and approval a revised landscape plan to Avery Harden, the County's Landscape Architect. The plan should note additional landscaping for the foundation walls of the proposed addition as well as along the rear elevation and show screening on the west side of the rear parking lot.
- 5) A picket fence enclosure shall be utilized to surround the trash pad located at the rear of the property.
- 6) When applying for any permits, the site plan and/or landscape plan filed must reference this case and set forth and address the restrictions of this Order.

IT IS FURTHER ORDERED, that, in the event Baltimore County authorizes access to the subject property from DeRisio Lane, no further action by the Zoning Commissioner shall be required.

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

WJW:dlw

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