

**IN RE: PETITIONS FOR SPECIAL HEARING,
SPECIAL EXCEPTION & VARIANCE**
East side of Jarrettsville Pike; 562 feet from
Sweet Air Road
10th Election District
3rd Councilmanic District
(14333 Jarrettsville Pike)

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

Four Corners Square, LLLP
Legal Owner

* **Case No. 2010-0031-SPHXA**

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception and Variance, filed by Thomas Moore, Authorized Signatory, on behalf of the legal owner of the subject property, Four Corners Square, LLLP. The Special Exception is requested pursuant to Section 259.3.B.1 and Section 204.3.B.2.a of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a medical office use to occupy over 25% of the total adjusted gross floor area of an existing building which is permitted in the C.R. District but is not permitted by right in the underlying district. In the alternative, the Variance request is from Section 204.3.B.2.a of the B.C.Z.R. to permit a medical office to occupy up to 50% of the total adjusted gross floor area of an existing Class B office building in lieu of the permitted 25%. The Special Hearing relief is requested in accordance with Section 500.7 of the B.C.Z.R. to amend the Order in Case No. 02-078-SPHX as may be required by the Zoning Commissioner; and, if necessary, to amend the previously approved Plan to Accompany the Petition for Special Exception/Development Plan in accordance with the newly requested relief. The subject property as it currently exists is shown on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested special exception, variance, and special hearing requests was Thomas Moore on behalf of Petitioner Four Corners Square, LLLP, and Lawrence E. Schmidt, Esquire, attorney for Petitioner. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is known as Lot No. 2 of a tract known as Four Corners Square. The property is owned by Petitioner and is approximately 3.3 acres in area, zoned R.O.-C.R. The property is located on the east side of Jarrettsville Pike (MD Route 146), just north of intersection known as “Four Corners” in the Jacksonville area of northern Baltimore County. “Four Corners” is the convergence of Paper Mill Road and Sweet Air Road running east-west, and Jarrettsville Pike running north-south. Surrounding Four Corners is a commercial village, with restaurants, retail shops, fuel service stations, and convenience stores.

As noted above, the subject lot is known as Lot No. 2 of the original tract. It is one acre in area and is improved with an existing two-story office building which is 4,866 square feet in area. Lot No. 1 is 2.31 acres in area and also contains an existing two-story office building, which is fully built out and occupied. Both lots are accessed by a single curb cut on Jarrettsville Pike.

The zoning history of the property is significant. In Zoning Case No. 96-269-XA and Development Plan Case No. X-326, Special Exception approval was granted for the property to permit a Class B office building. Additionally, certain setback and signage variances were granted. The zoning relief approved in that case was coupled with Development Plan approval for the subdivision of the overall tract. A copy of the Order for the Zoning/Development Plan cases was marked and accepted into evidence collectively as Petitioner’s Exhibit 2.

A second zoning case was considered under Case No. 02-078-SPHXA. In that case, a copy of which was marked and accepted into evidence as Petitioner's Exhibit 3, identical special exception approval was requested in that the original Special Exception had lapsed. Additionally, Special Hearing relief was requested to modify the initial Order. Identical variances were requested; however that Petition was ultimately dismissed as moot and as unnecessary. It was determined that the variances previously granted were still valid.

Although Lot No. 1 is built out and occupied, the instant petitions were filed for Lot No. 2. The building on Lot No. 2 has been constructed but is not fully occupied. The second floor of the building will be used for general office purposes (insurance business) and the first floor will be occupied by a dentist, Christopher Parsons, DDS. The instant petitions were filed to allow this occupancy.

The Petitions for Special Hearing and Variance were filed in the alternative. The Petition for Variance seeks an area variance; to permit 50% of the total adjusted floor area to be used for medical offices, in lieu of the maximum permitted 25%. Variances of this nature have been granted in the past (*See, e.g.*, Case No. 2003-0275-A and Case No. 1989-0554-SPHA). In *Balint vs. County Board of Appeals of Baltimore County*, Case No. 82-M-201, the Circuit Court for Baltimore County held that such an approval was not a use variance, but an area variance. The Court concluded that a restriction on percentage of occupancy could be varianced by the Zoning Commissioner.

The special exception relief, which is requested in the alternative, is based upon the language in Section 204.3.B.2(a) of the B.C.Z.R. (the R.O. zone use regulations) and Section 259.3.B.2 of the B.C.Z.R. (the C.R. District overlay regulations). Read in conjunction with one another, those regulations permit a medical office which occupies greater than 25% of the

adjusted gross floor area in the R.O.-C.R. zone where Petitioner satisfies the special exception criteria set forth in Section 502.1.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. The comment received from the Office of Planning dated August 20, 2009 indicates that they reviewed the request, site plan and visited the site on August 13, 2009. The comments correctly state that the exterior of the building has been completed and the parking lot has been paved. Although the exterior of the building is completed, construction on the property is not yet completed as landscaping is not installed and there is no dumpster or dumpster enclosure. There is also a free-standing monument sign advertising the building on the property and a temporary “for lease” sign. The comment states that the Greater Jacksonville Plan provides that trash containers and mechanical equipment be screened and not be audible to any adjacent residential property. Landscaping is also suggested given that nearby properties to the north and east are residential in nature. Finally, the comment recommends that Petitioner provide landscaping on the site, screening for the dumpster area when a dumpster is installed, and any signage shall be similar in size and style to the existing. Provided the aforementioned requests are adhered to, the Office of Planning does not oppose Petitioner’s request.

In considering this comment, it is to be noted that the subdivision of the subject property was approved pursuant to the Development Plan submitted in Case No. 96-269-XA. That plan addressed the landscaping, signage and other issues. Rather than restate those requirements, Petitioner is reminded that the requirements as shown on the Development Plan remain applicable. Specifically, that Plan describes the landscaping requirements (See Note 18 and schematically shown as a 20 foot buffer), and requires that any dumpsters be screened (See Note 19), and that signage be in accordance with Section 450 of the B.C.Z.R. (See Note 16).

A DEPRM comment was also submitted requiring that Petitioner submit a usage letter to the Ground Water Management division of DEPRM to determine the impact of the medical offices on the septic system. Petitioner indicated no objection to this requirement.

Upon due consideration of the testimony and evidence offered, I am persuaded to grant the requested relief under the Petition for Special Exception. I find that Petitioner has met the burden under Section 307.1 for a variance to be granted, but conclude that approval is more properly granted pursuant to the Petition for Special Exception. Given the locale, size of the lot, and existing conditions, I hereby find that the proposed dental office will not detrimentally impact the health, safety and personal welfare of the locale. This use is entirely consistent with others in the Four Corners commercial town center. Particularly given the subject lot and locale, I find that this request is consistent with the criteria set forth in Section 502.1 and approval of the use as a special exception is warranted.

I will also grant the special hearing to permit the plan to be amended to reflect the medical office use. This amendment is appropriate and the plan will properly reflect actual site conditions.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and after considering the testimony and evidence offered, I find that Petitioner's requests for special exception, special hearing, and variance should be granted.

THEREFORE, IT IS ORDERED this 29th day of October, 2009, by the Deputy Zoning Commissioner, that Petitioner's request for Special Exception pursuant to Section 259.3.B.1 and/or Section 204.3.B.2.a of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a medical office use to occupy over 25% of the total adjusted gross floor area of an existing building which is permitted in the C.R. District but is not permitted by right in the underlying district be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's request for Special Hearing to amend the Order in Case No. 02-078-SPHX as may be required by the Zoning Commissioner, and to amend the previously approved Plan to Accompany the Petition for Special Exception/Development Plan in accordance with the newly requested relief be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's request for Variance from Section 204.3.B.2.a of the B.C.Z.R. to permit a medical office to occupy up to 50% of the total adjusted gross floor area of an existing Class B office building in lieu of the permitted 25% be and is hereby DISMISSED AS MOOT.

The relief granted herein shall be subject to the following conditions:

1. Petitioner may apply for its permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner will be required to return, and be responsible for returning, said property to its original condition;
2. Petitioner shall provide landscaping on the site and screening for the dumpster as required under the Development Plan;
3. All signage shall be in compliance with the Section 450 of the B.C.Z.R. as shown/approved on the Development Plan and as modified in Zoning Case No. 96-269-XA and Development Plan Case No. X-326, and Case No. 02-078-SPHX; and
4. Petitioner shall submit a usage letter to DEPRM to determine the impact of the medical offices on the septic system.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz