

IN RE: PETITIONS FOR SPECIAL HEARING,*		BEFORE THE
SPECIAL EXCEPTION AND VARIANCE		OFFICE OF ADMINISTRATIVE
SE/S Hooks Lane; 1,050 feet NE of	*	HEARINGS FOR
c/l of Reisterstown Road		BALTIMORE COUNTY
(27 Hooks Lane)	*	
3 rd Election District		
2 nd Council District	*	
		CASE NO. 2012-0135-SPHXA
Twenty Seven Hooks Lane, LLC	*	
<i>Petitioner</i>		

* * * * *

ORDER AND OPINION

This matter comes before the Administrative Law Judge as Petitions for Special Hearing, Special Exception and Variance filed by the legal owners of the property, Twenty Seven Hooks Lane, LLC (Petitioners). The Petitioners are requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to determine whether or not the Administrative Law Judge should approve an amendment to the site plan approved in Case No. 95-312-A, including confirmation that the Variance granted in that case may be utilized for the current site plan, or, in the alternative, a new Variance for the same purpose on the site plan filed in support of this request. The Petitioner is also requesting Special Exception relief to permit a Class B office building, including a finding of compatibility pursuant to Baltimore County Code (“B.C.C.”) Section 32-4-402. Variance relief is also being sought pursuant to the B.C.Z.R. as follows:

- From Section 204.3.B.2.a - To permit up to 100% of the total adjusted gross floor area of a Class B office building within the RO zone to be occupied by medical offices; and
- From Section 204.4.C.6 - To permit 0% amenity open space, in lieu of the required 7%; and
- From Section 204.4.C.9.c.(2) - To permit landscape buffers as small as 0 feet, in lieu of the required 10 feet; and
- From Section 409.6.A.2 - To permit 14 off-street parking spaces, in lieu of the 18 required spaces.

In the alternative to the special hearing request, a Variance from Section 409.4.A of the B.C.Z.R. to permit a driveway for a two way movement to have a width of 10 feet, in lieu of the required 20 feet and a vehicular travelway with direct access to parking spaces. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing held for this case were Richard Hoffman and Stacy Hoffman, on behalf of 27 Hooks Lane, LLC, the owner of the property, David Benn, AIA, with Cho Benn Holback + Associates, Kenneth W. Schmid, Vice President of Traffic Concepts, Inc., Jeffrey Ring, and Bruce E. Doak with Gerhold, Cross & Etzel, Ltd., the professional land surveyor who prepared the site plan for the Petitioners. The Petitioners were represented by Christopher Mudd, Esquire with Venable, LLP. Alan Zukerberg, President, Pikesville Communities Corporation, appeared in opposition to the request, both as an individual Protestant as well as a representative of the Pikesville Communities Corporation.

The ZAC comments were received and made a part of the file. A comment was received from the Bureau of Development Plans Review ("D.P.R."), dated December 9, 2011 which states:

"Widen the mouth and the first 30 feet of the entrance to 16 feet so that at least one car can turn in off of Hook's Lane while another waits to turn out. Build a County standard concrete apron, curb and gutter, and sidewalk along the frontage."

Comments were received from the Department of Planning dated January 10, 2012, which states:

"The petitioner proposes to redevelop a property that has been improved with a 2 story, 1782 sq. ft. frame and masonry Class A Office Building known as 27 Hooks Lane. The subjects of this petition are a Special Hearing to amend a previously approved plan, a Special Exception for a 2-story 4,000 sq. ft. Class B Medical Office Building and associated Variances. The Department of Planning has reviewed the prior order Case No. 95-132a; the site plan and compatibility report that addresses the compatibility objectives as set forth in Section 32-4-402(c) of the Baltimore County Code. Note that a request to rezone the property from RO to OR2, known as 2012 CZMP Map Issue 2-005 has been filed; however this issue should not have any bearing on the subject case. The Department of Planning finds

the site layout and building's conceptual design to be compatible with other uses within the neighborhood. Should the Administrative Law Judge grant the petitioner's requests the Department of Planning requests the following: Submit full-scale architectural elevation drawings, sign and lighting details to the Department of Planning staff for review and approval prior to application for any building permits."

Mr. Zukerberg, by way of a preliminary motion, objected to the manner in which the property was posted for the hearing before me. On January 3, 2012, at 10:35 a.m., Mr. Zukerberg visited the subject property on Hooks Lane and noticed that the sign which was posted on the property had fallen down and was lying flat on the ground. A photograph marked as Protestant's Exhibit 1A was submitted into evidence showing the sign lying flat on the ground. Mr. Zukerberg argued that this fact violates the requirement that a sign be posted for a continuous 15 day period prior to the hearing before me. He argues that the hearing should be postponed and reset after a new sign is posted on the property for a continuous 15 days.

Testifying on behalf of the Applicant was Mr. Bruce Doak. Mr. Doak appeared as a expert professional land surveyor as well as the individual who posted the sign on the subject property. Mr. Doak received a phone call from Counsel for the Applicant advising him that the sign had in fact fallen over. Mr. Doak testified that he believed that a strong wind may have blown the sign over causing it to fall flat on the ground. The very next morning Mr. Doak testified that at 4:45 a.m. he traveled to the subject property and once again stood the sign back in its upright position. The sign remained properly posted since that time.

Mr. Zukerberg also objected to the fact that the sign was posted in a position that is parallel to Hooks Lane and not perpendicular thereto. He argued that this makes it difficult to read the sign for motorists traveling along Hooks Lane in that they would have to slow or stop their vehicles in order to read the language on the sign. Mr. Doak testified that he posts all his signs in this fashion and that this is the standard within the industry. These signs are not double sided. If

it were posted perpendicular to Hooks Lane, it could only be read from one direction of travel as the back side of the sign is blank.

After considering the testimony offered by Mr. Zukerberg and the responses given by Mr. Doak, I find that the posting requirement was satisfied and that the Applicant has met its burden of posting. It is very common for signs to either be knocked down or blown over in certain instances. The key fact is that the very next morning at 4:45 a.m., the Applicant re-erected the sign which clearly met the spirit and intent of the posting requirement. In addition, I find that given that the signs are one-sided, it is appropriate to situate the sign parallel to Hooks Lane.

Mr. Zukerberg also objected that the advertising for the hearing before me was only placed in one newspaper of general circulation in Baltimore County. He cited the section of the B.C.Z.R. which requires advertising in two newspapers of general circulation. However, as Mr. Mudd correctly pointed out, Section 32-3-302 of the Baltimore County Code requires that the advertising for zoning hearings before this Court only appear in one newspaper of general circulation within the County. It is standard practice and procedure by the Zoning Office to follow this Section of the B.C.C. and require that the Applicant advertise their hearing in only one newspaper of general circulation. Therefore, I find that the Applicant has in fact met his posting and advertising obligations for the hearing before me. The preliminary motion raised by Mr. Zukerberg shall be denied.

Moving on to the requested relief before me, the Applicant proceeded with a presentation of his case. First called to testify was Richard Hoffman, the 100% owner of 27 Hooks Lane LLC. Mr. Hoffman testified that he acquired the property in 1994 and located his CPA business within the small two story Dutch Colonial frame and masonry building located on the property. The subject property as stated previously is located on the south side of Hooks Lane, just west of its intersection with Reservoir Road. The property at this time is improved with an old two story

frame masonry single family structure which has long since been converted to office use. The property also has a small parking area located to the rear of the property and a driveway coming off of Hooks Lane. At this time, Mr. Hoffman rents the subject property to four individuals who are in the financial planning business. Mr. Hoffman also maintains a small office and visits the property usually once a week. Mr. Hoffman stated that he merged his CPA practice with another firm and that office is located at another location.

He stated during his weekly visits he has noticed no traffic issues or parking problems associated with the property. He has also noticed that the property has become somewhat deteriorated over the years and capital improvements are needed in order for the subject building to continue to function as office space. He consulted an architect to discuss renovations to the building, but found that the subject building, which was originally constructed as a dwelling, would be too expensive to renovate. It is simply no longer functional as an office building. Therefore, Mr. Hoffman made the decision to raze the old converted dwelling and construct a brand new two story office building in its place. The details of the building footprint, driveway entrance, and parking area are clearly depicted on the site plan which was submitted into evidence as Petitioner's Exhibit 1.

Mr. Hoffman also stated that he speculates that medical office use may be a potential tenant of the newly constructed two story building. This area of Hooks Lane has become very popular for doctors and physicians, and therefore Mr. Hoffman has requested that the building be approved for medical offices. Therefore, as part of his application process, he has requested approval that up to 100% of the office building to be constructed on site be used a medical offices. He also has requested special exception relief for a Class B office building as well as a finding of compatibility in accordance with Section 32-4-402 of the B.C.C.

On cross examination by Mr. Zukerberg, Mr. Hoffman stated that he has also filed a Petition to have the zoning of the property reclassified from RO, Residential Office, to OR 2. This application is pending before the County Council at this time and will not be voted upon for many months to come. Therefore, the Applicant has chosen to proceed by way of a hearing before this Administrative Law Judge to seek approval to construct this 4,000 square foot medical office building on the subject site.

The next called to testify was Bruce Doak, a professional land surveyor, with the firm of Gerhold, Cross & Etzel, Ltd. Mr. Doak was accepted as an expert in zoning and land development and for the purposes of the hearing before me specifically Sections 502.1 and 307 of the B.C.Z.R. Mr. Doak prepared Petitioner's Exhibit 1 which was the site plan of the property. Mr. Doak testified that an amendment was made to Petitioner's Exhibit 1 and is shown in red-line ink on the site plan. In accordance with comments issued by Dennis Kennedy of the Development Plans Review Section of the Department of Permits, Approvals and Inspections, he has modified the site plan to allow an entrance driveway to be 16 feet in width for approximately 20 feet into the subject site. The amendments also show a sidewalk along the front of the subject property adjacent to Hooks Lane. These modifications met with the approval of Mr. Kennedy who indicated he had no objection to the design of the parking and driveway for the subject medical office building. Mr. Kennedy's revised comment dated January 11, 2011, was submitted into evidence as Petitioner's Exhibit 3.

Mr. Doak went on further to testify regarding the relief requested by the Applicant. In order to raze the old converted single family dwelling and construct a two story medical office building in its place, certain relief is necessary from the B.C.Z.R. First, Mr. Doak testified regarding the uniqueness of the subject property. He stated that the property itself is very small and consists of 0.24 acres. At this time it is zoned RO and is surrounded for the most part on all

sides with exception of its frontage along Hooks Lane with much larger commercial office and medical office complexes. It is surprising that this small parcel was not purchased by the developers of the surrounding complexes. It stands alone at this time as a converted single family dwelling and functions at this time as office space. It does benefit, however, from open areas around its borders which allows for and provides some nice natural screening, vegetation and buffers around its perimeter. These factors lead to the conclusion and finding that this property is in fact unique as compared to other properties in the area for purposes of entertaining the variance request made by the Applicant herein.

In order to construct the two story office building on the subject property, several variances are necessary. Mr. Doak testified regarding each of those variance requests. The first variance request was to allow up to 100% of the adjusted gross floor area of the subject office building to be occupied by medical offices. Mr. Hoffman testified that he has no tenants scheduled to rent medical offices within the building at this time. However, given the popularity of medical offices along Hooks Lane, he makes this request to keep his options open in the event a suitable tenant comes along.

In addition, a second variance is requested from Section 204.4.C.6 of the B.C.Z.R. to allow 0% amenity open space in lieu of the required 7%. Mr. Doak testified that this requirement imposes traffic islands or some green space to be situated within the drive aisle areas of the subject site. It is not possible or practical for the Applicant to provide this amenity open space given the small size of the property, its uniqueness and limited area for parking. Any attempt to provide amenity open space would interfere with the proper flow of traffic and parking on the subject site.

The Applicant is also requesting pursuant to Section 204.4.C.9.C.2 of the B.C.Z.R. to allow landscape buffers of 0 feet in lieu of the required 10 feet. As stated previously, there are natural vegetative buffers around three sides of the subject property as was depicted on the

photographs that were submitted into evidence of the subject site. This unique property does benefit from the surrounding property owners having previously installed berms and vegetation around the perimeter of the site. Accordingly, the Applicant herein is able to meet its visual landscaping requirements by taking advantage of these natural buffers and does not need to provide landscaping buffers on site.

Additionally, the Petitioner is requesting approval to allow 14 off-street parking spaces in lieu of the required 18 parking spaces. Again, taking into consideration the uniqueness of the property and the small area of the site the Applicant has provided as many parking spaces as is possible on the subject property. It is not possible to add any additional parking on site and the Applicant has calculated their parking requirements on a worst case scenario basis speculating that the entire building will be rented as medical office use. It remains to be seen how this building will lease in the future so the parking requirements may be reduced. Given the quick turn around time for parking for medical offices, the amount of parking will be sufficient for the uses proposed.

The last variance request is made in the alternative should the special hearing request not be granted. The special hearing request was to allow the continuation of a driveway with a two way movement to have a width of 10 feet in lieu of the required 20 feet. It should be noted that there was a previous zoning hearing on the subject property which approved a variance request for a driveway width of 10 feet in lieu of the required 20 feet. That particular decision was rendered in Case No. 95-312-A and was issued by Lawrence E. Schmidt, the Zoning Commissioner at the time. The Applicant in the case before me asked pursuant to their special hearing request that that variance carry forward to this new proposed two story medical office building. However, given that the building for which that variance was approved back in 1995 is being razed and a new two story building constructed in its place, I find it is a better practice to require a new variance to be

issued for a driveway width of 10 feet in lieu of the required 20 feet and that variance shall be entertained as the fifth variance request pursuant to the Petition filed herein.

In addition to the variance relief as described above, the Applicant is also requesting special exception relief to allow a Class B office building including a finding of compatibility pursuant to B.C.C. 32-4-402. Mr. Doak testified that in his expert opinion, the construction of a Class B office building at this location satisfies all of the requirements of Section 502.1, specifically subsections A, C, D, E, F and G. In addition, the Applicant is requesting approval that the utilization of this special exception for a Class B office building be extended for a full five year period as opposed to the two year period normally associated with the vesting of a special exception.

Mr. Doak also testified concerning the special hearing relief to amend the site plan which was previously approved in Case No. 95-312-A and furthermore to allow the variance for a driveway aisle width to carry over to the new office building which is proposed to be constructed pursuant to this case. It is certainly necessary to entertain the special hearing request to amend the previously approved site plan in Case No. 95-312-A, but for the reasons stated previously, I find that the second part of the special hearing request should not be entertained believing that a new variance should be granted pursuant to this request for the driveway aisle width. Since this is an entirely new office building being constructed on the property and not simply a renovation to the previous office building, I find it to be the better practice to consider that variance request anew.

Next called to testify on behalf of the Petition was Ken Schmid, owner and vice president of Traffic Concepts, Inc. Mr. Schmid was offered and accepted as an expert in traffic engineering. His curriculum vitae was accepted into evidence as Petitioner's Exhibit 9. Mr. Schmid prepared for the Applicant as Petitioner's Exhibit 10 a trip generation report and also measured the sight lines along Hooks Lane in both directions. Mr. Schmid concluded that the construction of the

office building in question would impose no adverse impacts on traffic along Hooks Lane and that the special exception request to approve this Class B office building satisfied Section 502.1.B of the B.C.Z.R. This particular subsection of Section 502.1 deals with adverse impacts involving traffic.

Last called to testify on behalf of the Applicant was David Benn, architect. Submitted into evidence as Petitioner's Exhibit 11 was the curriculum vitae of Mr. Benn. He testified that he prepared the conceptual drawings of the office building to be constructed on the property which were marked and submitted into evidence as Petitioner's Exhibit 8. Mr. Benn specifically testified regarding the compatibility requirements as contained within Section 32-4-402 of the B.C.C. He stated that in his expert opinion the building to be constructed on the subject property along Hooks Lane satisfies all the compatibility requirements contained within that provision. He also assisted in the preparation of an exhibit identifying the neighborhood which was utilized in the analysis resulting in a finding of compatibility. Lastly he did testify that he was retained approximately two years ago to determine whether the office building that exists on the property at this time could be renovated and made more functional. His opinion was that it was too costly to renovate the existing structure and that his client would be better served to raze the old house and construct a new modern office building in its place.

As to compatibility, it is noted that the Office of Planning has issued a comment dated January 10, 2012, which was submitted into evidence as Petitioner's Exhibit 13. The Planning Office, having reviewed the compatibility report prepared by Architect Benn and submitted through Counsel for the Applicant, has concluded pursuant to their summary of recommendations that the site layout and the building's conceptual design is in fact compatible with the uses within this particular neighborhood. Having considered the testimony offered by Mr. Benn and the exhibit submitted into evidence by the Office of Planning, I find that the request to construct a two

story building on this property is in fact compatible and the Applicant has satisfied Section 32-4-402 of the B.C.C. as to compatibility. I also find that the second part of the special exception request to approve a Class B office building on the subject property should also be approved. The Applicant produced ample testimony offered by Mr. Doak, Mr. Schmid and Mr. Benn, all offered in their expert capacity, that the requirements of Section 502.1 have been clearly met. Accordingly, the special exception request shall be approved. Furthermore, it is noted and as requested at the hearing, that the special exception request shall have five years to vest.

As stated previously, Alan Zukerberg appeared and offered very limited testimony in opposition to the Petitioner's request. However, Mr. Zukerberg was effective in his cross examination in bringing out what he believed to be some deficiencies in Petitioner's case. Mr. Zukerberg questioned the Applicant's witnesses as to the fact that the property which is the subject of this Petition request abuts property that is residentially zoned. On the north side of Hooks Lane is property zoned DR 10.5 and is the location of the Green Tree residential subdivision. Because of this, Mr. Zukerberg argued that the buffering requirements for this property would be up to a 20 foot landscape buffer as opposed to the 10 feet requested in the Petition. However, I find that the subject property is not abutted by a residential zone and in fact is completely surrounded by commercial zoning. The RO zone line does in fact run down the center of Hooks Lane which causes the area in front of the subject property to be zoned RO. It is noted that on the opposite side of Hooks Lane there is residentially zoned land; however, that does not impact the subject property so as to require a 20 foot landscape buffering requirement.

Mr. Zukerberg also argued that the subject property is not unique. However, for the reasons previously stated and based on the testimony offered by the Petitioner, I find that the property is unique for purposes of entertaining the variance request.

After considering the testimony and evidence offered by the expert witnesses and the limited testimony from Mr. Zukerberg, I find that the variance request should be granted. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

In addition to the variance relief, the Applicant also requested special hearing relief . The first part of the special hearing relief was to amend to previously approved site plan in Case No. 95-312-A. I hereby find that it is appropriate to amend the previously approved site plan to show a proposed two story 4,000 square feet office building and associated parking in place of the old converted single family dwelling which is now used as office space. That special hearing request shall be approved. However, the second part of the special hearing request to allow the utilization of a previously approved variance in Case No. 95-312-A to carry forward and continue with this newly constructed two story office building shall not be approved. As previously concluded, I have approved the fifth variance request to allow a drive aisle width of 10 feet in lieu of the required 20 feet for the construction of this new building and did not believe it was appropriate to carry forward the old variance approval given that this is entirely new structure being built on the subject site.

Lastly, as to the special exception request, I have previously found that the Applicant has met and satisfied all the requirements of Section 502.1 of the B.C.Z.R. as well as the compatibility requirements as contained in Section 32-4-402 of the B.C.C. Accordingly, the special exception request shall be granted as well as an extension for the utilization of the special exception request to a full five year period as opposed to the normal two year period.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held and for the reasons set forth above, the relief requested shall be granted in part and denied in part.

THEREFORE, IT IS ORDERED, this 25th day of January, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing seeking relief from Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve an amendment to the site plan approved in Case No. 95-312-A, shall be GRANTED.

IT IS FURTHER ORDERED, that the confirmation that the Variance granted in Case No. 95-312-A may be re-utilized for the current site plan, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a Class B office building, including a finding of compatibility pursuant to Baltimore County Code (“B.C.C.”) Section 32-4-402, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petitioner shall have five years from the date of the final Order granting this Special Exception to utilize and vest the approval granted herein.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to the B.C.Z.R. as follows:

- From Section 204.3.B.2.a - To permit up to 100% of the total adjusted gross floor area of a Class B office building within the RO zone to be occupied by medical offices; and
- From Section 204.4.C.6 - To permit 0% amenity open space, in lieu of the required 7%; and
- From Section 204.4.C.9.c.(2) - To permit landscape buffers as small as 0 feet, in lieu of the required 10 feet; and
- From Section 409.6.A.2 - To permit 14 off-street parking spaces, in lieu of the 18 required spaces;
- From Section 409.4.A to permit a driveway for a two way movement to have a width of 10 feet, in lieu of the required 20 feet and a vehicular travelway with direct access to parking spaces,

be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioners may apply for their building permit and may be granted same upon receipt of this Order, however the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.
2. Submit full-scale architectural elevation drawings, sign and lighting details to the Department of Planning staff for review and approval prior to application for any building permits.

Signed _____
TIMOTHY M. KOTROCO
Administrative Law Judge for
Baltimore County

TMK:pz