

<b>IN RE: PETITIONS FOR SPECIAL EXCEPTION</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
<b>(5401 Baltimore National Pike)</b>	*	OFFICE OF
1 <sup>st</sup> Election District		
1 <sup>st</sup> Councilmanic District	*	ADMINISTRATIVE HEARINGS
Catonsville Plaza, LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner		
	*	<b>Case No. 2013-0163-XA</b>

\* \* \* \* \*

**ORDER AND OPINION**

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 5401 Baltimore National Pike. The Petitions were filed by Jeffrey H. Scherr, Esq., on behalf of Catonsville Plaza, LLC, the legal owners of the subject property. The Special Exception Petition seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) Section 4C-102(1) for a State licensed medical clinic, specifically, a kidney dialysis center, to be located within a large shopping center zoned Business Major (BM) in the Commercial Community Core (CCC), known as Catonsville Plaza. The Petition for variance seeks to locate the dialysis clinic within 750 ft. of a residentially zoned property, and the petition also seeks a determination that sufficient parking exists to accommodate employees and patients. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 2.

Appearing at the hearing was Matt Copeland and David Taylor, the engineer who prepared the site plan. Jeffrey H. Scherr, Esquire, attended and represented the Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The only substantive comment was submitted by the Department of Planning (DOP), which recommended that landscaping be provided along a fence line and that additional architectural features be added to the concrete wall at the front of the proposed clinic. Counsel indicated Petitioner was amenable to these requests.

Testimony and evidence offered at the hearing revealed that the subject property is 15.33 acres and is zoned BM-CCC. The site is improved with a shopping center that was constructed forty years ago, and which has been redeveloped several times throughout the years. At present, the Petitioner proposes to open a kidney dialysis center (9,800 sf) on the periphery of the site. The clinic would serve approximately 35-40 patients a day, and is located 106' from a DR zone, which is situated on the other side of a public road (Old Frederick Road).

#### SPECIAL EXCEPTION

As noted above, Petitioner seeks Special Exception relief for a State licensed medical clinic, specifically, a kidney dialysis center. Under Maryland law, a Special Exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a Special Exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the Special Exception use. There was no such evidence presented in this case, and the Petition for Special Exception will therefore be granted.

## VARIANCE

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

Petitioner has met this test. The subject property is large and irregularly shaped, and thus it is unique for zoning purposes.

If the B.C.Z.R. were strictly enforced, the Petitioner would suffer a practical difficulty and/or hardship. Indeed, the Petitioner would be unable to operate the clinic at this location.

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. This is demonstrated by the support of the Department of Planning (DOP), and the lack of community opposition.

Finally, I also believe that sufficient parking exists at the site for employees and patients of the proposed clinic, as required by the B.C.Z.R. §4C-102A.2.b. At present, Mr. Taylor has determined that 1,401 spaces are required while 1,128 are provided. See exhibit 2 (“Parking Analysis”). By Order in case number 89-385-A, the Petitioner was granted variance relief allowing 1,155 spaces in lieu of the required 1,404 spaces. Recently, the Director of Permits, Approvals & Inspections, pursuant to B.C.Z.R. §409.13, granted a reduction in the number of required spaces (to 1,128), and I believe that sufficient parking will therefore be provided for the proposed clinic.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions, and after considering the testimony and evidence offered, I find that Petitioner's Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 20<sup>th</sup> day of March, 2013, that Petitioner's request for Special Exception relief under section 4C-102(1) of the Baltimore County Zoning Regulations ("B.C.Z.R."), for a State licensed medical clinic, specifically, a kidney dialysis center, to be located within a large shopping center zoned Business Major (BM) in the Commercial Community Core (CCC), known as Catonsville Plaza, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's request for Variance relief from Section 4C-102(2) of the B.C.Z.R., to permit a state licensed medical clinic, specifically, a kidney dialysis center, to be located within 750 ft. of a residentially zoned property line and a determination that there is sufficient parking to accommodate all employees and patients of the state licensed medical clinic, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for appropriate permits 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 would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner must comply with the ZAC comments from the DOP dated February 1, 2013 (See exhibit 3).

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

\_\_\_\_\_  
Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/sln