

IN THE MATTER OF
JOSEPH AND LYNN FARRELL
S/S BRACKENWOOD COURT, 204' W OF
C/L FOXLEY ROAD
(204 BRACKENWOOD COURT)

8th Election District
3rd Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: 14-033-X

* * * * *

OPINION

This matter comes before the Board of Appeals as a de novo appeal from the October 10, 2013 decision of the Office of Administrative Law in which the requested special exception for the use of the Petitioners' property to include a professional office was granted with conditions.

BACKGROUND

The property involved in this appeal is known as 204 Brackenwood Court is owned by Joseph and Lynn Farrell. The property is situated on a 0.2486 acre lot and is improved by a single family dwelling. Ms. Farrell is a Certified Public Accountant (CPA) and proposes to operate a professional office for her practice in the basement of the subject property. The property is zoned DR 3.5 and as such under the relevant zoning regulations requires a Special Exception for the proposed use of the property.

The Administrative Law Judge granted the Special Exception with conditions placed upon the use of the property.

HEARING

The appeal before the Board arises from the petition of the Springlake Community Association, Inc. which is the community association that represents the area in which the subject property is located. Counsel for the Springlake Community Association offered as an

initial objection to the relief granted below the provisions of a restrictive covenant executed in 1960 and thereafter assigned in 1982 to the said community association. The provisions of the documents do not specifically identify the situation before the Board. The provisions of the covenants do refer to the use of residential property for owners engaged in the professions of medicine and dentistry. However, in this case the Board has no statutory authority to adjudicate the validity of, or to enforce, restrictive covenants. The Board will therefore defer to a court of competent jurisdiction for the resolution of this matter.

Turning then to the area over which the Board has legal authority to rule we will discuss the evidence presented on the issue of the Special Exception as sought by the Petitioners pursuant to Section 1B0.1(c)(12) of the Baltimore County Zoning Regulations (B.C.Z.R.). As regards the instant case the B.C.Z.R. establishes the following provisions for the establishment of a professional office in a residence located in an area not specifically zoned for the requested use:

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

Received into evidence on behalf of the Petitioners were: a site plan (Exhibit 1); the CPA license of Mrs. Farrell (Exhibit 6) and a traffic engineering report prepared by Traffic Concepts, Inc. (Exhibit 15).

The Petitioners first witness was Keith Heindel a professional land surveyor who testified that the proposed office would be located in the basement of the Petitioner's residence and would

measure 650 sq ft. The entire usable area of the property, according to Mr. Heindel is 2,823 sq ft. with the basement consisting of 1,195 sq ft.

The next witness called by the Petitioners was Kenneth Schmid of Traffic Concepts, Inc. who was accepted by the Board as an expert in the area of traffic engineering. Mr. Schmid prepared the traffic engineering report introduced into evidence as Exhibit 15. His written and stated conclusion was that the proposed use in this case would have only a minimal impact on the volume and flow of traffic along Petitioners' street. Mr. Schmid described the Petitioners' property as being located in a residential neighborhood with a fully improved roadway including 34 feet of paving with a sidewalk for pedestrian use. He continued in his testimony to indicate that the Petitioners' house has a driveway that can fit one potential client's car along with the car owned by the Petitioners and has room for two parked vehicles in front of their home at the curb.

Several residents who are neighbors of the Petitioners testified as to their concerns above the proposed special exception. The concerns were, inter alia: that there was a fear of a proliferation of special exception uses within the neighborhood; a concern for the safety of children in the area; and, the concern for unanticipated negative impacts to the neighborhood character of the area.

DECISION OF THE BOARD

The law on this subject as interpreted by the Court of Special Appeals of Maryland in found in the case of *AT&T Wireless Services v. Mayor and City Council of Baltimore*, 123 Md. App. 681 (1998). In AT&T the Court ruled that the test in evaluating a request for a special exception or conditional use is not whether the special exception is compatible with permitted uses in a zone or whether a conditional use will have adverse effects. Adverse effects the Court held are inherent in all conditional or special exception uses. The standard is whether the

adverse effects of the use at the particular location proposed would be greater than the adverse effects ordinarily associated with that use elsewhere within the same zone.

Under Maryland law it has been established that a special exception enjoys a presumption that it is in the interest of the general welfare of a particular zone as allowed by law and therefore, valid. *Schultz v. Pritts*, 291 Md 1 (1981).

In this case the Board will affirm the decision of the Administrative Law Judge and finds that the Petitioners' property is in conformity with the size requirements of the B.C.Z.R and the proposed use does not present any unacceptable adverse influence to the surrounding neighborhood. The Board will impose the conditions to the Petitioners' grant of the special exception as those established by the Judge in the case below.

Therefore the request for a special exception is granted subject to the conditions contained in the following Order.

ORDER

IT IS THEREFORE, this 30th day of May, 2014, by the Board of Appeals of Baltimore County

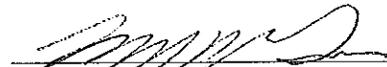
ORDERED that the Petition for Special Exception to for the use of the Petitioners' property to include a professional office is hereby GRANTED, subject to the following conditions:

1. The "Special Exception Area," in which all office activities must be conducted, shall be in the basement rooms labeled as "OFFICE," as depicted on the site plan labeled as Exhibit 1.
2. Client parking shall be located only in the driveway and on the street in front of the Petitioners' dwelling.

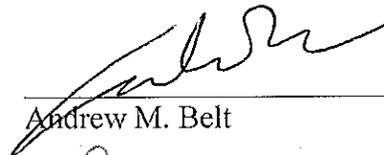
3. Other than the small "office" sign existing on the site, no other signs shall be erected on the premises
4. The Special Exception relief granted herein shall terminate if Mrs. Farrell sells. Leases or in any way conveys her interest in the subject property.
5. The professional office operation shall have no more than one employee other than Mrs. Farrell.

Any petition for judicial review from this decision must be made in accordance with Rule 7- 201 through Rule 7-210 of the *Maryland Rules*.

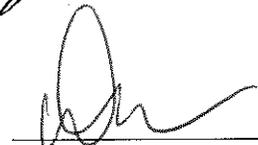
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Wendell H. Grier, Panel Chairman



Andrew M. Belt



David L. Thurston