

IN RE: PETITION FOR SPECIAL	*	BEFORE THE
EXCEPTION		
N side of Pine Hill Road; 179 feet W	*	DEPUTY ZONING
of Belair Road		
11 th Election District	*	COMMISSIONER
5 th Councilmanic District		
(4112 Pine Hill Road)	*	FOR BALTIMORE COUNTY
Joyce A. Smith	*	
<i>Petitioner</i>		
	*	Case 2010-0277-X

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by the legal owner of the subject property, Joyce A. Smith. Petitioner is requesting a Special Exception to use the property for the office of an architectural practice within the primary residence of the architect-owner of the practice; the office area will occupy 22% (891 square feet of the total 4,040 square feet) of the residence, within the basement. The subject property and requested relief are more fully described on the revised 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 was Petitioner Joyce A. Smith and her husband, Donald D. Smith, a registered architect and the subject of the instant special exception request. Also appearing as counsel to Petitioner was Gerald W. Soukup, Esquire. Appearing as an interested citizen in support of Petitioner’s request was Mr. Ronald Goetzke who resides at 4108 Pine Hill Road. No Protestants or other interested persons attended the hearing.

Testimony and evidence offered revealed that the subject property is irregular in shape, much like a trapezoid, and contains approximately .79 acre of land (34,415 square feet), more or

less, zoned predominantly D.R.3.5 (.714 acre) with a small part of the property zoned R.O.A. (.076 acre). The property is located on the north side of Pine Hill Road, approximately 200 feet northwest of Belair Road, in the Perry Hall area of Baltimore County. The property's ingress/egress is via frontage on Pine Hill Road. It then tapers outward toward the rear property line. The property is improved with an existing two and a half-story residence¹ with a one and a half-story addition together comprising 4,040 square feet where Petitioner and her husband have resided since 1976. The property is further improved with a swimming pool in the side/rear yard, which was the subject of prior zoning relief². According to Petitioner's revised site plan, the property also contains several species of trees, including English Walnut, Cedar, Pine, Maple and Oak.

Pursuant to Section 1B01.1.C.12 of B.C.Z.R., Petitioner's husband, Mr. Donald Smith, proposes to maintain an office for an architecture practice in the basement of the residence. Such a use is permitted by special exception pursuant to the aforementioned section of the B.C.Z.R., subject to certain criteria set forth in Section 502.1 of the B.C.Z.R. The proposed office would be established in the lower level of the residence and would consist of 891 square feet out of the total 4,040 square feet (22%). Adequate parking of five spaces is to be provided as indicated on the revised site plan. The current footprint of the residence would not be altered.

Mr. Smith, who was accepted as an expert in architecture, proffered testimony that he has been a registered architect since 1972 upon completing a three year internship with an architecture firm. Mr. Smith graduated from the University of Cincinnati with a Bachelors degree in Architecture and has been in private practice since 1975. From 1990 to 1998, Smith

¹ According to a Maryland Department of Assessments and Taxation Real Property Data Search, the primary structure was constructed in 1924.

² Case No. 82-277-A, decided in July, 1982.

Architects, P.A. was located on St. Paul Street in Baltimore City. From 1998 to present, Mr. Smith's architecture firm has been located in the 3100 block of Elm Avenue in the Hampden neighborhood of Baltimore City. Mr. Smith's current work involves designing public facilities, though he has also designed projects in private development in the past.

At this juncture, he desires to relocate his Smith Architects, P.A. office to the subject property in order to consolidate the operation of the firm within the home, due to the recent economic downturn and subsequent financial constraints. Mr. Smith asserted that he has two non-resident employees that would work in the basement office most weekdays. Meetings and other trips by the employees are performed in the morning prior to the employee's arrival at work. Furthermore, clients would not normally come to the office as most work is performed in the field. The hours of operation for the business are Monday through Friday, 8:30 a.m. until 7:00 p.m. Mr. Smith also stated that the establishment of the practice would not be a detriment to the health, safety and general welfare of the surrounding community, indicating there would be an almost immeasurable impact in regards to traffic, with the occasional UPS-type delivery. Mr. Smith offered his expert opinion that the requested special exception use of the property would comply with the limitations stated in Section 1B01.1.C.12, as well as the relevant criteria contained in Section 502.1 of the B.C.Z.R.

Also appearing in support of the requested relief was Mr. Ronald Goetzke. Mr. Goetzke, who resides at 4108 Pine Hill Road, testified in support of Petitioner's request and stated that to his knowledge there was no opposition in the community.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated May 11, 2010 which indicate that the character of the Bel Air corridor is in flux between a previously

residential corridor and a commercial corridor. A number of properties have tried to rezone their properties to commercial zoning and have been unsuccessful in the last zoning cycle. This property is only one property away from Belair Road and threatens to encroach an office land use on a solidly residential street. Therefore, the Office of Planning recommends a condition that any approval for an office be limited to the current business and property owner and not for the entire property itself. If the office or property owner moves or relocates, the special exception would be voided. If the request is approved, the Planning Office suggests several conditions to include, retaining existing trees near the street, provide hours of operation on the site plan, limited signage, and removing “future garage” from the site plan.

In response to these comments Petitioner’s attorney, Mr. Soukup, indicated that the site plan had been revised with the hours of operation and the removal of the “future garage.” Moreover, it was indicated that existing trees would be retained and that no signs are planned for the property. It was further stipulated that the special exception, if granted, would be personal to Petitioner and her husband and would not run with the land.

In regard to the requested special exception, subject to the criteria set forth in Section 502.1 of the B.C.Z.R., such a use as described above is permitted pursuant to Section 1B01.1.C.12 of the B.C.Z.R., with certain limitations. In particular, this section states as follows:

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

Considering the testimony and evidence provided, I am persuaded to grant the special exception request to use the subject property as a home office for an architecture practice. The uncontroverted testimony from Mr. Smith indicates that the proposed use would not have any detrimental impacts on the required 502.1 criteria and would likewise meet the requirements of Section 1B01.1.C.12. Further consideration of the evidence shows that this use would not have a negative impact on the residential nature of Pine Hill Road. As proposed, the practice would be contained completely within the residence and there would be no outward indication of a professional office within. In addition, the office would not occupy more than 25% of the total floor area of the residence and would not involve the employment of more than two other nonresident employees. Moreover, the nature of the practice indicates a benign use, with the design and drafting of architectural plans and specifications using primarily computer aided design software. Therefore, I am convinced that the use proposed at the subject location would not have any adverse effects above and beyond those inherently associated with such a special exception use, irrespective of its location within the zone. *See, Schultz v. Pritts*, 291 Md. 1 (1981); *see also People's Counsel v. Loyola College*, 406 Md. 54 (2008).

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's special exception request should be granted with conditions.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 8th day of June, 2010 that Petitioner's request for a Special Exception pursuant to Section 1B01.1.C.12 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to use the property for the office of an architectural practice within the primary residence of the architect-

owner occupying 22% of the residence, be and is hereby **GRANTED**, subject to the following conditions:

1. Petitioners may apply for their necessary building or use permits, as applicable, and be granted same upon receipt this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The existing trees near the street shall be preserved.
3. Signage shall be limited as per Section 450.4.5(m) of the Baltimore County Zoning Regulations.
4. The Special Exception use granted herein shall be *in gross*, and is to be personal to Petitioner and her husband and is not to run with the land upon devise, trust, descent or arms-length sale in fee simple. Hence, upon the discontinuance of Mr. Smith's architecture practice, or if the property is sold, leased, or otherwise converted or transferred, the said Special Exception use shall be terminated and considered null and void. Any successor would be required to file a separate Petition for Special Exception for the proposed use.

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