

**IN RE: PETITION FOR VARIANCE**  
N side of Fitch Avenue; 200 feet E of  
the c/l of Rossville Boulevard  
14<sup>th</sup> Election District  
6<sup>th</sup> Councilmanic District  
(4416 Fitch Avenue)

**Emil A. Schott Jr. and  
Barbara J. Schott, Power of Attorney**  
*Petitioners*

**Kafo, LLC; Dr. Patricia A. O'Brien,  
Managing Member**  
*Contract Purchaser*

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

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\* **CASE NO. 2010-0290-A**  
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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owners of the subject property, Emil A. Schott, Jr. and Barbara J. Schott by Power of Attorney of Emil A. Schott, Jr., and the current lessee and contract purchaser of the subject property, Dr. Patricia O'Brien (hereinafter collectively referred to as "Petitioners"). Petitioners are requesting Variance relief as follows:

- From Section 238.2 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a side yard of 18 feet in lieu of the 30 feet required; and
- From Section 250.2 of the B.C.Z.R. to permit a side yard of 28 feet in lieu of the 30 feet required, and the sum of two side yards of 46 feet in lieu of the 80 feet required.

The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the variance requests were the contract purchaser, Dr. Patricia A. O'Brien, Managing Member, Kafo, LLC, Christine O'Brien --

Dr. O'Brien's daughter and business manager, and William A. Beale, Esquire, attorney for Petitioners. Also appearing in support of the requested relief was Richard E. Matz, with Colbert Matz Rosenfelt, Inc., the professional engineer who prepared the site plan. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is rectangular in shape, containing 0.70 acre, zoned M.L.R.-I.M. and B.R. and located on the north side of Fitch Avenue, east of the centerline of Rossville Boulevard, in the Nottingham area of Baltimore County. The subject property is currently improved with a 1½-story building currently occupied by the contract purchaser, Dr. Patricia O'Brien and her dental practice, O'Brien Family Dentistry. Dr. O'Brien currently leases the property from the legal owners, but at this juncture desires to purchase the property and develop it further. The current office is a residence-like structure that, according to the Real Property Data Search contained in the file, was built in 1963 and contains approximately 1,152 square feet. Photographs of the existing improvements on the property were marked and accepted into evidence as Petitioners' Exhibits 3A and 3B. The subject property is located in what could be termed a "transition area" between the large commercial corridor along Belair Road (Route 1), zoned with various business and manufacturing districts, and residential properties to the east of the subject property, including numerous Perry Hall subdivisions. The zoning map, which also shows the various zoning designations surrounding the subject property, was marked and accepted into evidence as Petitioners' Exhibit 2.

Petitioners request variance relief in order to facilitate the sale of the subject property. Development of the subject property would result in the razing of the current improvements on the property and the subsequent construction of a new and improved two-story medical office building. It is this redevelopment that drives the need for variance relief. The first phase of

redevelopment would entail razing the existing garage and canopy near the rear of the property and removing the existing driveway to the east of the primary structure. The garage, canopy and driveway can be seen more clearly in the aforementioned photographs (Petitioner's Exhibits 3A and 3B). Demolition would make way for the construction of a proposed 50 foot by 74 foot two-story office building for a dental office to be occupied by the O'Brien Family Dentistry on the second floor, and other medical office tenants on the first floor. The second phase of redevelopment, razing the existing primary structure, would commence once the proposed building was completed and occupied. Elevation, cross-section and architectural drawings and renderings of the proposed development were marked and accepted into evidence as Petitioners' Exhibit 5. Petitioners' attorney, Mr. Beale, noted the existence of an agreement with the adjacent property owner to the east, Beltway Property Management, Inc., to execute an agreement similar to the "Declaration of Easement and Covenants for Maintenance of Private Driveway" that was marked and accepted into evidence as Petitioners' Exhibit 4, for the use of the private driveway for the benefit of the subject property. As shown on the site plan and explained by Petitioners' engineer, Mr. Matz, the use of this private ingress and egress will result in better traffic flow to and from the proposed parking area to the rear, while not having any measureable effect on the property owner's use of the road for their benefit.

Mr. Matz also explained that the proposed development could not move forward absent variance relief. Under existing Zoning Regulations only a 20 foot wide structure could be built due to the narrow nature of the property and the side yard requirements. Thus, the subject property would be disproportionately impacted compared to others in the zoning district. Additionally, the property's location in a "transition area" renders it unique. Moreover, the unique topography of the property, which slopes from front to back, creates difficult conditions

for development. Mr. Matz also provided expert testimony that strict compliance with the Zoning Regulations would be unworkable and would create practical difficulty and unreasonable hardship upon Petitioners.

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 21, 2010 which indicate that the Office does not oppose the Petitioners' request provided certain conditions are met, including architectural building elevations to be reviewed and approved prior to issuance of any building permits, and submission of a landscape plan which includes details on any proposed signage and lighting for review and approval prior to the issuance of any building permits. No other comments in opposition to the requests were received.

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. There is adequate evidence that the subject property is peculiar, unusual and unique in accordance with Section 307.1 of the B.C.Z.R., as interpreted in the case of *Cromwell v. Ward*, 102 Md. App. 691 (1995). Factors such as environmental conditions, topography and lot configuration are indicators of a unique property. Further, a property owner has a common law right to use his property in a manner so as to realize its highest and best use. *See, Aspen Hill Venture v. Montgomery County Council*, 265 Md. 303 (1972). Under the current Zoning Regulations, the odd lot configuration of the subject property would only enable Petitioners to construct a 20 foot wide structure -- certainly not practical for this property's commercial zoning. Compliance with the Regulations would thereby create a practical difficulty that would result in depriving Petitioners of a use otherwise permitted under the Regulations. Moreover, the location of the subject property in a transition or "buffer" area between primarily commercial uses to the

west and more residential uses to the east, as well as the sloping topography, contribute to the uniqueness of the subject property.

Finally, I find that the variance requests can be granted in harmony with the spirit and intent of the Regulations, and in such manner as to grant relief without injury to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED this 28<sup>th</sup> day of June, 2010 by this Deputy Zoning Commissioner, that Petitioners' Variance requests as follows:

- From Section 238.2 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a side yard of 18 feet in lieu of the 30 feet required; and
- From Section 250.2 of the B.C.Z.R. to permit a side yard of 28 feet in lieu of the 30 feet required, and the sum of two side yards of 46 feet in lieu of the 80 feet required,

be and are hereby **GRANTED**, subject to the following:

1. Petitioners may apply for their building permit and be granted same upon receipt of 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. Architectural building elevations for the proposed structure shall be submitted to the Office of Planning for review and approval prior to the issuance of any building permits.
3. A landscape plan which includes details on any proposed signage and lighting shall be submitted to the Office of Planning for review and approval prior to the issuance of any building permits.

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