

<b>IN RE: PETITION FOR SPECIAL EXCEPTION</b>	*	BEFORE THE
<b>(204 Brackenwood Court)</b>		
8 <sup>th</sup> Election District	*	OFFICE OF
3 <sup>rd</sup> Councilman District		
Joseph L. & Lynn A. Farrell	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
Petitioners	*	FOR BALTIMORE COUNTY
	*	<b>Case No. 2014-0033-X</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 204 Brackenwood Court. The Petition was filed by Jeffrey H. Gray, Esquire, on behalf of the legal owners of the subject property, Joseph L. and Lynn A. Farrell. The Special Exception Petition seeks relief pursuant to §1B01.1(c)(12) of the Baltimore County Zoning Regulations (B.C.Z.R.), to use a portion of the herein described property for the professional office of Lynn A. Farrell, Certified Public Accountant. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1A.

Appearing at the hearing was Joseph and Lynn Farrell and Keith Heindel of Professional Surveys, LLC, who prepared the site plan. Jeffrey H. Gray, Esquire attended and represented the Petitioners. Several neighbors (whose names are in the case file) attended the hearing and expressed certain concerns with the request. 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 from the Department of Planning (DOP), which did not oppose the relief, but requested that certain conditions be imposed.

Testimony and evidence offered at the hearing revealed that the subject property is 0.2486 acres and is zoned DR 3.5. The property is improved with a single family dwelling, which the Petitioners purchased last year. Ms. Farrell has been a Certified Public Accountant (CPA) since 1982, and would like to operate a professional office for her practice in the basement of her home. To do so requires Special Exception relief. The BCZR provides as follows concerning this requested special exception use:

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.

BCZR § 1B01.1.(C)(12).

#### Special Exception Law in Maryland

In AT&T Wireless Services v. Mayor and City Council of Baltimore, 123 Md. App. 681 (1998), the court ruled that the test in evaluating a special exception or conditional use is not whether a special exception is compatible with permitted uses in a zone or whether a conditional use will have adverse effects. Adverse effects 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, a special exception enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981).

Surveyor Keith Heindel, who prepared the site plan, opined that the Petitioners satisfied the requirements for a Special Exception. Mr. Heindel indicated that the office for Ms. Farrell would occupy 23% of the total floor space in the dwelling, which complies with the B.C.Z.R. Ms.

Farrell testified that she is the only CPA in the practice, and that she has only one other employee, an administrative assistant. Ms. Farrell stated she does not advertise, does not want the practice to grow, and operates (with rare exceptions) between the hours of 9:00 am to 5:00 pm Monday – Friday. The only sign on the premises is a small metal sign with the word “Office,” directing clients to the basement entrance to the home.

In these circumstances, I do not believe that the inherent adverse effects associated with this special exception use would be any greater at this location than they would be at any other location in the DR 3.5 zone. Several neighbors expressed concerns with the loss of a neighborhood feel, unknown visitors in the neighborhood and an increase in traffic. These concerns (while valid) are the same as those that would exist in any professional home office scenario, and the County Council is presumed to have been aware of same when it allowed offices for lawyers, doctors, etc. by special exception in DR zones. Though the petition will be granted, I will impose certain conditions designed to minimize any adverse impacts upon the community. In written comments submitted to the undersigned, a neighbor questioned how these conditions/restrictions would be enforced. Baltimore County zoning and code inspectors conduct investigations and enforcement actions initiated by citizen complaints. To the extent any of the conditions are not observed, the appropriate recourse would be to contact the County’s Code Enforcement Bureau.

One of the DOP’s recommendations was to restrict the special exception approval to Ms. Farrell personally. Generally speaking, special exceptions, like variances, “run with the land.” [Van Sciver v. Zoning Board of Adjustment, 396 Pa. 646 \(1959\)](#) (“... [A] special exception or a variance, although it may be granted conditionally or limited in time or use in any manner consistent with the ordinance *always runs with the land and cannot be personal*”). But there is also authority for the

proposition that if the grant is made personal, and the order is not appealed, that the restriction will bind a subsequent owner/lessee. *Kulak v. Zoning Board*, 563 A.2d 978 (Pa. 1989). As such, I will include the restriction recommended by the DOP.

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception request should be granted, subject to the conditions noted below.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 10<sup>th</sup> day of October, 2013, that the Petition for Special Exception relief under §1B01.1 (c)(12) of the Baltimore County Zoning Regulations ("B.C.Z.R."), to use a portion of the herein described property for the professional office of Lynn A. Farrell, Certified Public Accountant, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits 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. The "Special Exception area," in which all office activities must be conducted, shall be the basement rooms labeled "OFFICE," as depicted on the site plan marked as Exhibit 1A.
3. Client parking shall be located only in the driveway and on the street in front of (and on the same side of the street) the Petitioners' dwelling. Ms. Farrell shall make good faith efforts to notify her clients of this restriction.
4. Other than the small "office" sign existing on the site, no other signs shall be erected on the premises.
5. The Special Exception relief granted herein shall terminate if Ms. Farrell sells, leases or in any way conveys her interest in the subject property.
6. The professional office operation shall have no more than one employee, in addition to Ms. Farrell.

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

JEB/sln

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