

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(9736 Harford Road)
9th Election District
3rd Council District
Raphael J. & Mary Louise Santini,
Legal Owners
Petitioners**

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BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2015-0220-XA

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 9736 Harford Road. The Petitions were filed on behalf of Ralph J. & Mary Louise Santini, the legal owners of the subject property. The Petitioners seek special exception relief per Baltimore County Zoning Regulations (B.C.Z.R.) §204.3.B.2.a to approve Class B office building additions to an existing office building and all accessory uses related thereto. The petition for variance seeks the following relief: (1) to permit 0% amenity open space in lieu of the 7% required for the existing, accessory off-street parking area; (2) to permit the existing landscaped buffer in lieu of the required additional screening or fencing for the dumpster and existing parking areas which may abut any residential zone to remain without modification or enlargement; and (3) to permit the existing 15 ft. drive aisle to remain in lieu of the 20 ft. required. The subject property and requested relief are more fully described on the site plan which was marked as Petitioners' Exhibit 1.

Appearing at the hearing in support of the petitions was Raphael Santini and professional engineer Rick Richardson. Howard L. Alderman, Jr., Esq. represented the Petitioner. Two area residents (Meg O'Hare and Ruth Baisden) attended the hearing and opposed the requests. The Petition was advertised and posted as required by the B.C.Z.R. Zoning Advisory Committee

(ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP).

The subject property is approximately 0.65 acres and is zoned RO. The Petitioner has operated a law office at the site for over 20 years, and proposes to expand the office. To do so requires zoning relief, as discussed below.

SPECIAL EXCEPTION

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.

While the Protestants stated the proposed building would be too large for the site and the neighborhood, and that the larger office could lead to traffic problems, there is nothing to indicate that these concerns are not inherent in the operation of a law office adjacent to a residential zone. All special exception uses are presumed to have certain adverse impacts upon a community. But those uses (here, a law office) are also presumptively proper, and it is only when a protestant can show the use would have certain "non-inherent" adverse impacts upon the locality that a petition for special exception will be denied. I do not believe such a showing was made in this case, and the petition will be granted. Protestants expressed concern that at some point in the future a subsequent owner/lessee could operate a different type of business within the parameters of the special exception for a Class B office building. I agree this is a valid concern, and a condition will be included in the Order below to address this issue.

VARIANCES

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 small lot is the only R.O. zoned property in the vicinity. As such the property is unique. If the B.C.Z.R. were strictly interpreted Petitioner would suffer a practical difficulty, in that he would be unable to expand his law office at this location, where he has practiced for over 20 years. Finally, I find that the variances 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 ZAC comments of the reviewing County agencies, neither of which opposed the requests.

The Bureau of DPR did however indicate that a landscape and lighting plan are required, and such a condition will be included in the Order below. As such, variance request #2 (pertaining to the landscape and parking area buffers) will not be granted, and Petitioner shall be required to install plantings and/or vegetative screening at the site as determined in the sole discretion of the County's landscape architect.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 4th day of June, 2015, that the Petition for Special Exception under B.C.Z.R. § 204.3.B.2.a to approve Class B office building additions to an existing office building and all accessory uses related thereto, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance from B.C.Z.R. as follows: (1) to permit 0% amenity open space in lieu of the 7% required for the existing, accessory off-street

parking area; and (2) to permit the existing 15 ft. drive aisle to remain in lieu of the 20 ft. required, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit the existing landscaped buffer in lieu of the required additional screening or fencing for the dumpster and existing parking areas which may abut any residential zone to remain without modification or enlargement, be and is hereby DENIED.

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

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must submit for approval by Baltimore County landscape and lighting plans for the site.
3. No additional signage is permitted on the subject property.
4. The special exception for a Class B office building granted herein shall be limited to the operation of a law office only. Any other use of the Class B office building on the subject property must be approved following a public hearing.

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