

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(8613 Old Harford Road) *	OFFICE OF
9 <sup>th</sup> Election District	
6 <sup>th</sup> Council District *	ADMINISTRATIVE HEARINGS
Candice M. Holt, <i>Legal Owner</i>	
Petitioner *	FOR BALTIMORE COUNTY
	<b>Case No. 2015-0001-SPHA</b>

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of Candice M. Holt, Legal Owner (“Petitioner”).<sup>1</sup> The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to determine whether or not the Administrative Law Judge should approve a commercial parking lot in a residential zone, and to approve 100% medical office use in lieu of the permitted 25% medical office use. The Variance petition seeks relief from the Residential Transition Area standards (RTA), B.C.Z.R. § 1B01.1.B.1.e(5), to permit a 5 ft. landscape buffer and a 5 ft. setback to the property line in lieu of the required 50 ft. and 75 ft. setbacks, respectively. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 4.

Appearing at the public hearing in support of the requests was Candice Holt and Brian Dietz, from Dietz Surveying Co., whose firm prepared the site plan. Bruce Covahey, Esquire, represented the Petitioner. Ruth Baisdon, President of the Greater Parkville Community Council, and Thomas Wedge, who owns the property at 8611 Old Harford Road, attended and opposed the requests.

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<sup>1</sup> Since the petition was filed, Ms. Holt has purchased the property from Mr. Baumgartner; as such, she is the sole Petitioner.

The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was submitted by the Department of Planning (DOP), indicating that agency does not support the requests. In addition, a ZAC comment was received from the Bureau of Development Plans Review (DPR) indicating that parking spaces must be 10 ft. from the road right-of-way, and that the Landscape Manual requires a 10 ft. strip of class 'A' screening adjacent to residences.

The subject property is approximately 7,050 square feet and is zoned R.O. and DR 5.5. The RO zoned portion of the property is improved with a small single family dwelling and one-story detached garage. The DR 5.5 zoned portion of the site is unimproved. Petitioner, a licensed acupuncturist and massage therapist, proposes to operate her office at the property, which as shown on the plan would require zoning relief.

The Petitioner recently purchased the property from Mr. Baumgartner, who operated an HVAC business from the site. Petitioner previously leased space for her practice at 8611 Old Harford Road (next door), and the owner of that property was granted zoning relief in Case No. 2012-0218-SPHA to have 100% medical use in an R.O. zone. Petitioner's Exhibit 8. Having reviewed this Order and the B.C.Z.R., I do not believe that variance relief can be granted to permit 100% medical use. I think this would constitute a "use" variance, since the 25% limitation is found in the "use regulations" for the R.O. zone. B.C.Z.R. § 204.3. Section 307 of the B.C.Z.R. permits variances of height, area, parking and sign standards only, and to grant the requested relief would be changing the use of the property to a medical office building, which is antithetical to the goals the R.O. zone.

But even though the special hearing will be denied, that does not mean the Petitioner cannot operate her practice from the site. The regulations permit 25% of the floor area to be

used for medical offices. The plan shows the office building as a “1 story building” with 770 sq. ft. But the Petitioner testified there is a second floor of the building that is not currently in use, and the state tax records show that the “office building” was constructed in 1954 and contains 1,110 sq. ft. of “above grade enclosed area.” As such, the Petitioner is entitled to utilize 277.5 sq. ft. of the building for treatment rooms to provide acupuncture and massage therapy services. Petitioner noted she has a bathroom for patients and a reception/waiting area, and neither of these constitutes a “medical” use, as opposed to a feature found in virtually all office buildings. As such, these areas shall not count against the 277.5 sq. ft. allotment.

The Petitioner testified she treats 1-2 patients per hour, and thus the three parking spaces shown on the plan (in the R.O. zone) should suffice. In addition, the plan shows a 1 story garage also located in the R.O. zone, and that too could be used for parking. In these circumstances, I am not inclined to grant the special hearing request for commercial parking in a D.R. zone. To do so would require additional impervious surfaces and the parking (whether now or in the future with a different user) could encroach upon the residential character of the properties on Edgewood Avenue. In light of the above, the RTA variance is not required, and that request will be dismissed.

THEREFORE, IT IS ORDERED this 12<sup>th</sup> day of September, 2014, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to determine whether or not the Administrative Law Judge should approve a commercial parking lot in a residential zone, and to approve 100% medical office use in lieu of the permitted 25% medical office use, be and is hereby DENIED.

