

<b>IN RE: PETITIONS FOR SPECIAL HEARING,</b>	*	BEFORE THE
<b>SPECIAL EXCEPTION &amp; VARIANCE</b>	*	OFFICE OF
<b>(8930 Liberty Road)</b>	*	ADMINISTRATIVE HEARINGS
2 <sup>nd</sup> Election District	*	FOR BALTIMORE COUNTY
4 <sup>th</sup> Council District	*	<b>Case No. 2016-0117-SPHXA</b>
Joetrin, LLC, <i>Legal Owner</i>	*	
Petitioner	*	

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of Joetrin, LLC, the legal owner (“Petitioner”).

The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to approve a modified parking plan to allow the number of spaces shown on the site plan (10 spaces) in lieu of the 24 required and to allow their configuration and layout as more particularly shown on the Site Plan to accompany the Petition; (2) to allow business parking in a residential zone; and (3) to confirm that the existing site is in compliance with the RTA requirements in B.C.Z.R. 1B01.1.B.

A Petition for Special Exception was filed pursuant to B.C.Z.R. §204.3.B.2 to permit a Class B office building containing medical offices. Finally, a Petition for Variance as follows: (1) to allow medical offices to occupy up to 100% of the total adjusted gross floor area of an existing office building in lieu of the maximum permitted 25% of the total adjusted gross floor area; and (2) to permit existing landscaping and buffering in lieu of the required buffers and screening.

Appearing at the public hearing in support of the requests was Trinity Tumban and Dr. Joseph Nkwanyuo. Lawrence E. Schmidt, Esq., represented the Petitioner. Several area residents

attended the hearing and opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

The subject property is approximately 0.41 acres in size and is zoned DR 3.5 & RO. The property is improved with a commercial building constructed in 1960. The site was used for many years as the headquarters for the Maryland Farm Bureau. Petitioner purchased the property last year, and Dr. Nkwanyuo proposes to operate a medical office at the site. Dr. Nkwanyuo explained he is a family practitioner, and that most of his patients live in or near the Randallstown area. He would be the only physician at the clinic, which would have three additional employees. No exterior construction or enlargement of the commercial building is proposed. Petitioner would construct interior improvements to accommodate the needs of the medical practice.

Members of the community agree Dr. Nkwanyuo would be an asset to the neighborhood, but they feared that granting zoning relief would set a dangerous precedent by allowing 100% medical use in the R.O. zone. They also believe the site has insufficient parking and would cause congestion and additional traffic along already over-burdened roadways. The Office of People's Counsel also submitted correspondence outlining their objections to the petitions.

With regard to the 100% medical use issue, counsel submitted several orders from prior zoning cases wherein such relief was granted, and it may be that such a request is an area variance, not a use variance, which is prohibited under the B.C.Z.R. Even so, Petitioner would nonetheless need to satisfy the requirements for variance relief, which I do not believe it can. I was impressed by Dr. Nkwanyuo's credentials and commendations, and I too believe he would be an asset to this

community. But I am obliged to evaluate the requests under the pertinent legal standards, which (at least with regard to the petition for variance) require the petition to be denied.

While I believe Petitioner is entitled to special exception and special hearing relief based on the evidence presented at the hearing, the petition for variance is subject to a more stringent standard and will be denied.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995). The Cromwell court stressed that variances should be “granted sparingly” and only in “rare instances and under peculiar and exceptional circumstances.” Id. at 700.

Under Maryland law, uniqueness involves the size, shape, topography, grade or accessibility of a site. Id. at 707. The site plan reveals the subject property is rectangular in shape and is similar in size and topography to surrounding properties. No testimony or evidence was introduced to establish that the subject property is peculiar or unlike other properties in the area. In these circumstances, I believe the petition for variance must be denied.

THEREFORE, IT IS ORDERED this 8<sup>th</sup> day of **January, 2016**, 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): (1) to approve a modified parking plan to allow the number of spaces shown on the site plan (10 spaces) in lieu of the 24 required and to allow their configuration and layout as more particularly shown on the Site Plan to accompany the Petition; (2) to allow

business parking in a residential zone; and (3) to confirm that the existing site is in compliance with the RTA requirements in B.C.Z.R. 1B01.1.B, be and is hereby DISMISSED as Moot.

IT IS FURTHER ORDERED that the Petition for Special Exception filed pursuant to B.C.Z.R. §204.3.B.2 to permit a Class B office building containing medical offices, be and is hereby DISMISSED as Moot.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to the B.C.Z.R. as follows: (1) to allow medical offices to occupy up to 100% of the total adjusted gross floor area of an existing office building in lieu of the maximum permitted 25% of the total adjusted gross floor area; and (2) to permit existing landscaping and buffering in lieu of the required buffers and screening, be and is hereby DENIED.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:dlw