

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(4 Country Hill Ct.)		
11 th Election District	*	OFFICE OF
5 th Council District		
Paul V. & Barbara Ann Morley	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2015-0215-X

* * * * *

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 4 Country Hill Ct. The Petition was filed on behalf of the legal owners of the subject property, Paul V. & Barbara Ann Morley. The Special Exception petition seeks relief pursuant to §1A04.2.B.11 of the Baltimore County Zoning Regulations (B.C.Z.R) for a professional home-office in the primary residence of an R.C. 5 zoned property. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit No. 1.

Appearing in support of the request were owners Paul V. & Barbara Ann Morley. J. Carroll Holzer, Esquire represented the Petitioners. An adjoining neighbor attended the hearing and opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). The Bureau of DPR noted a landscape plan is required, while the DOP did not oppose the request.

This matter is currently the subject of a violation case (Case No. CC1500979), and a copy of the Code Enforcement file was made a part of the zoning hearing file.

The subject property is approximately 1.5 acres and is zoned RC 5. The property is improved with a single family dwelling, constructed in 1988. Petitioners are the original owners of the property, and in 2009 they constructed a garage attached to their home via a breezeway. The petition here seeks approval for a professional office on the first floor of the attached garage.

Special Exception Law in Maryland

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. Here, there was no such evidence presented.

Ron Jacobs, who lives next door to Petitioners, testified he was concerned with traffic and the safety of school children whose bus stop is adjacent to the subject property. These are the same sorts of concerns that would be presented in any professional home office scenario. As such, they are “inherent” in the use and cannot serve as the basis for denying the special exception. There was no testimony to establish that these anticipated impacts would be greater at this location.

Here, the garage is connected to the home, and it is therefore considered “part of the principal building” per B.C.Z.R. §400.1. The zoning office, in a letter dated October 27, 2009 (Exhibit 2), indicated it also believed the garage should be considered part of the dwelling. Petitioners’ engineer submitted a certification (Ex. No. 3) stating the home office would be 800 sq. ft. in total area, which equates to 19.97% of the area of the dwelling. This is in compliance with B.C.Z.R. §1A04.2.B.11, which provides that the home office shall not exceed 25% of the total floor area of the dwelling.

Finally, Petitioners submitted documentation reflecting they are Certified Financial Planners (CFPs), real estate agents and Internal Revenue Service (IRS) enrolled agents. Exhibit 7. In Case No. 2015-0149-SPHA, a CFP was determined to be a “professional person” as that term is used in the B.C.Z.R. As such, Petitioners have satisfied all of the requirements set forth in B.C.Z.R. §§502.1 & 1A04.2.B.11, and the petition will be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 29th day of **May, 2015**, that the Petition for Special Exception to permit a professional home-office in the primary residence of an RC 5 zoned property, be and is hereby GRANTED.

The relief granted herein shall be subject to 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 may operate the home office Monday-Friday between the hours of 9 a.m. to 6 p.m.
3. Petitioners may not have any signage on the premises indicating that an accounting or financial planning office exists at the site.
4. Petitioners may have no more than five (5) client appointments daily at the subject premises.

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

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County