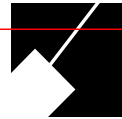


Maryland-National Capital Park and Planning Commission
 Prince George's County Planning Department
 Development Review Division
 301-952-3530



Comment [COMMENT1]: WHEN INSERTING
 INFORMATION AT THE @ SIGN
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Note: Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm

SPECIAL EXCEPTION APPLICATION NO. 4457

VARIANCE APPLICATION NO. VSE-4457

Application	General Data
Project Name Burch's Insurance Location South side of Old Marlboro Pike approximately 150 feet east of Brown Station Road, known as 14003 Old Marlboro Pike. Applicant Paul and Leigh Burch 14003 Old Marlboro Pike Upper Marlboro, MD 20772	Date Accepted 02/20/02
	Planning Board Action Limit N/A
	Tax Map & Grid 101 D-1
	Plan Acreage 0.56± acre
	Zone R-R
	Dwelling Units N/A
	Square Footage N/A
	Planning Area 79
	Council District 09
	Municipality None
	200-Scale Base Map 207SE12

Purpose of Application		Notice Dates	
Insurance Sales Office in accordance with Section 27-366 Variance of 17 feet from the 25-foot setback from the street		Adjoining Property Owners (CB-15-1998)	02/25/02
		Previous Parties of Record (CB-13-1997)	N/A
		Sign(s) Posted on Site	N/A
		Variance(s): Adjoining Property Owners	N/A
Staff Recommendation		Staff Reviewer: Tom Lockard	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	

November 27, 2002

TECHNICAL STAFF REPORT:

TO: The Prince George's County Planning Board
The Prince George's County District Council

VIA: Arie Stouten, Zoning Supervisor

FROM: Tom Lockard, Senior Planner

SUBJECT: **Special Exception Application No. 4457**
Variance Application No. VSE-4457

REQUEST: **Insurance Sales Office in the R-R Zone**
Variance of 17 feet from the 25-foot setback from the street

RECOMMENDATION: **DENIAL**

NOTE:

This application is on the agenda for the Planning Board to decide whether or not to schedule a public hearing. If the Planning Board decides to hear the application, it will be placed on a future agenda.

Any person may request the Planning Board to schedule a public hearing. The request may be made in writing prior to the agenda date or in person on the agenda date. All requests must specify the reasons for the public hearing. All parties will be notified of the Planning Board's decision.

You are encouraged to become a person of record in this application. The request must be made in writing and sent to the Office of the Zoning Hearing Examiner at the address indicated above. Questions about becoming a person of record should be directed to the Hearing Examiner at 301-952-3644. All other questions should be directed to the Development Review Division at 301-952-3530.

FINDINGS:

- A. **Location and Field Inspection:** The subject property is located on the south side of Old Marlboro Pike approximately 150 feet east of Brown Station Road, known as 14003 Old Marlboro Pike. The site is developed with a two-story single-family residence. The site is primarily cleared, except the southernmost section is wooded floodplain associated with Federal Branch.

B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	R-R	R-R
Use(s)	Single-family residence	Single-family residence and Insurance Sales Office
Acreage	0.56±	0.56±
Square Footage/GFA	771± square feet (residence)	630± square feet (residence) 141± square feet (sales office)
Dwelling Units:		
Detached	1	1

- C. **History:** The subject property was retained in the R-R Zone by the 1994 *Sectional Map Amendment for Subregion VI*.
- D. **Master Plan Recommendation:** The 1994 *Master Plan for Subregion VI* recommends a service-commercial use for the subject property. The Plan identifies several existing service-commercial uses along this section of Old Marlboro Pike, noting “At this time, certain properties on both sides of Old Marlboro Pike are appropriate for future Service-Commercial usage.” (Master Plan, pg. 144)
- E. **Request:** The applicant requests permission to use an enclosed porch (141 square feet) on the front of the existing residence as an insurance sales office. The applicant indicates that the residential character of the site will not be altered. Because the porch is only set back 8 feet from the future right-of-way line for MD 725, the applicant is requesting a variance of 17 feet from the 25-foot setback requirement.
- F. **Neighborhood and Surrounding Uses:** The neighborhood boundaries are identified as follows:

North - Old Marlboro Pike, including uses on both sides

East
And South - Federal Spring Branch

West - Ritchie-Marlboro Road

The neighborhood is comprised of mostly single-family residences. However, there are several commercial uses along this stretch of Old Marlboro Pike including a farm equipment dealer, used car sales lot, and the Villages of Marlborough Shopping Center. In addition,

there are several institutional uses, including a fraternal lodge, a church and a warehouse used by the Board of Education.

The uses immediately surrounding the proposed special exception are as follows:

North - Across Old Marlboro Pike is a shopping center in the L-A-C Zone

East, South
And West - Single-family residences in the R-R Zone

G. Specific Special Exception Requirements: Section 27-366 - Insurance Sales Office:

- (a) **The offices of not more than two (2) insurance brokers, agents, or salesmen may be permitted in a dwelling, subject to the following:**

- (1) **At least one (1) of the brokers, agents, or salesmen shall be a bona fide resident of the dwelling;**

Finding: The applicant is a licensed insurance agent and is a bona fide resident of the subject property.

- (2) **Suitable office space is not available within the general vicinity;**

Finding: The applicant details a fruitless search for suitable office space in an addendum to the statement of justification. The applicant requires no more than the 140 square feet proposed by this application. According to the applicant, the existing office space in the greater Upper Marlboro area is inappropriate because he is unable to find a lessor willing to lease or sublease fewer than 200 square feet. He identifies two individuals in the area who might be able to provide space in their existing suites, but deems them unsuitable because they do not provide for client confidentiality, and because the offices (a title attorney and builder) were not connected with his insurance business.

Staff generally takes a fairly strict approach regarding this finding. Undoubtedly there are thousands of square feet of available office space in the Upper Marlboro area. The applicant finds the available space unsuitable because it only comes in increments greater than 200 square feet. Staff is willing to accept that it would be difficult to find such a small amount of office space for lease. However, we are not convinced that the applicant could not find appropriate space in an existing office, such as the title attorney (who also needs confidentiality for his clients) and builder cited. The applicant needs room for a desk, file cabinets, a phone and fax line. Most of his work with clients is going to be done on the phone or through the mail, with the office being used for paperwork.

The applicant argues that the available space is not suitable principally due to excess costs, amenities that are not needed and concerns for confidentiality. Although the Zoning Ordinance does not define suitable, *Webster's Seventh New Collegiate Dictionary* (albeit a 1969 edition) defines it as 1: matching, similar; 2: adapted to a use or purpose. Staff maintains that the available office space, although relatively expensive and admittedly not as convenient as the applicant's dwelling converted for use as a home occupation, may not be the optimum choice of the applicant; however, it is suitable for use as an insurance sales office.

- (3) **At least fifty percent (50%) of the gross floor area of the dwelling shall be devoted to residential use;**

Finding: The area proposed for the insurance office comprises approximately 20 percent of the gross floor area of the building. The remaining 80 percent will be solely for the residential use.

- (4) **The use shall not alter the residential character or appearance of the premises; and**

Finding: The applicant is not proposing any material changes to the site.

- (5) **Not more than one (1) nonresident clerical assistant may be employed on the premises.**

Finding: The applicant will not employ more than one clerical assistant.

- (b) **A use and occupancy permit shall be required for the use.**

Finding: Upon grant of the special exception, the applicant will secure the necessary use and occupancy permit.

H. **Parking Regulations:** The residence and the sales office require two parking spaces. Two spaces are shown.

I. **Landscape Manual Requirements:** This proposal is exempt from landscaping, buffering and screening requirements of the *Landscape Manual* since no new buildings are proposed.

J. **Zone Standards and Need for Variances:** The existing enclosed porch does not meet the 25-foot setback from the ultimate right-of-way for Old Marlboro Pike. The applicant is seeking a variance of 17 feet. Section 27-442(e) of the Zoning Ordinance states:

- (a) **A variance may be only granted when the District Council finds that:**

1. **A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;**

Finding: The subject property is exceptionally long and narrow, being 79 feet in width but 339 feet in depth. The existing front porch was built as part of the original structure in the 1920s, prior to the setback regulations. IN fact, the porch exceeds the 25-foot setback from the existing paved road; however, a wide future right-of-way extends an additional 20 feet onto the subject property. In addition, the rear 100± feet of the site is in the 100-year floodplain associated with Federal Branch.

2. **The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and**

Finding: Not allowing for the variance would create undue hardship for the applicant if the District Council were to find this use appropriate for the subject property. Although the building meets the setback from the existing roadway, it is unused future right-of-way that

determines the extent of the setback. There is no current road widening project for the affected section of MD 725. The strict application of the Zoning Ordinance would render even the long-existing residence nonconforming. Even if the applicant were to locate the office elsewhere in the building (rather than in the front porch area), a variance would be required.

3. The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.

Finding: Allowing the variance would not impair the intent of the *Subregion VI Master Plan*, which recommends the site for a service-commercial use. Rather, it would allow the site to be developed in accordance with the recommendation of the plan.

K. **Sign Regulations:** The applicant is not proposing a freestanding sign on the site.

L. **Required Findings:**

Section 27-317(a) of the Zoning Ordinance provides that a special exception may be approved if:

(1) The proposed use and site plan are in harmony with the purposes of this Subtitle.

Finding: The proposed use and site plan are in harmony with the purposes of the Zoning Ordinance. The general purposes of the Ordinance are to promote the health, safety, morals, comfort, convenience and welfare of the inhabitants of the County. There is no evidence in the record to indicate that the applicant's proposal is in conflict with these general purposes.

(2) The proposed use is in conformance with all the applicable requirements and regulations of the Zoning Ordinance.

Finding: The proposed use is not in conformance with all the applicable requirements and regulations of the Zoning Ordinance. Specifically, the applicant has failed to demonstrate that the available office space in the general vicinity is not suitable for an insurance sales office, as required by Section 27-366(a)(2). The few site plan deficiencies identified by the Permit Section have been addressed with a revised site plan.

(3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or in the absence of a Master Plan or Functional Master Plan, the General Plan.

Finding: The proposed use will not substantially impair the integrity of the Subregion VI Master Plan, which recommends a service-commercial use for the site. This proposal retains the recommended character by retaining the dwelling as the primary use and minimizing exterior alterations.

(4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area.

Finding: The proposed use will not adversely affect the health, safety or welfare of residents or workers in the area because: (1) most business and sales transactions are proposed to be conducted by telephone and mail, (2) there will be little or no "drop-in" business visits, (3)

the exterior appearance of the dwelling will not change, and (4) no new floor area will be added.

- (5) **The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.**

Finding: The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood. The proposed exterior changes are minimal. There will be no freestanding business signs and little or no drive-in/walk-in customer traffic.

- (6) **The proposed site plan is in conformance with an approved Tree Conservation Plan.**

Finding: The property is exempt from needing a tree conservation plan because it is less than 40,000 square feet in area, and it contains less than 10,000 square feet of woodlands. A Letter of Exemption must be obtained from the Natural Resources Section (M-NCPPC) if this application is to be approved.

CONCLUSION:

Staff is compelled to recommend DENIAL of Special Exception Application No. 4457 because it is not in conformance with all the applicable requirements and regulations of the Zoning Ordinance. Specifically, the applicant has failed to demonstrate that the available office space in the general vicinity is not suitable for an insurance sales office, as required by Section 27-366(a)(2). Given the Master Plan's service-commercial recommendation for this site and the benign nature of the use, staff would otherwise have recommended approval.

Similarly, because staff is recommending denial of the Special Exception, we must also recommend DENIAL of the companion variance application; although, it otherwise meets the criteria for approval.