

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF ZONING HEARING EXAMINER**

**SPECIAL EXCEPTION
4623**

DECISION

Application:	Real Estate Sales Office
Applicant:	Galen W. TeSelle/TeSelle Realty, LLC.
Opposition:	None
Hearing Date:	December 21, 2009
Hearing Examiner:	Maurene Epps Webb
Disposition:	Approval with Conditions

NATURE OF REQUEST

- (1) Special Exception 4623 is a request to use a portion of a home situated on 0.3173-acre of R-55 (One-Family Detached Residential) zoned land for a Real Estate Sales Office. The subject property is located at the corner of Sadler Lane and Stonybrook Drive, and is identified as 12427 Sadler Lane, Bowie, Maryland. Applicant originally requested a variance for lot coverage. However, the need for the variance was obviated once the City of Bowie approved a departure for the existing driveway.
- (2) The Technical Staff recommended that the Application be denied, primarily due to the variance request. (Exhibit 14) The Planning Board recommended approval of the Application. (Exhibit 16(b))
- (3) No one appeared in opposition to the instant request.
- (4) The property lies within the boundaries of the City of Bowie. The City expressed its support of the instant Application. (Exhibit 24(a))
- (5) At the close of the hearing the record was left open to allow Applicant to submit some additional items. (T. 27) The last of these items was received on February 4, 2010, and the record was closed at that time.

FINDINGS OF FACT

Subject Property

- (1) The subject property is a rectangular shaped parcel developed with a one-story single-family residence. The dwelling was constructed in 1962. There has been a long history of home office uses at the site, as discussed *infra*.

(2) The subject property is exempt from the requirements of the Woodland Conservation and Tree Preservation Ordinance because it is less than 40,000 square feet in area and does not have a previously approved Tree Conservation Plan. (Exhibit 7) The subject property is also exempt from the requirements of the Landscape Manual because the Application does not propose the construction, enlargement or extension of a building.

Surrounding Property/Neighborhood

(3) The subject property is surrounded by the following uses:

- To the north, west and south, single family dwellings in the R-55 Zone and a Community Center
- To the east, properties in the C-S-C Zone

(4) The neighborhood is bounded on the north by MD 450; on the south by Stonybrook Drive; on the east by Belair Drive; and on the west by Belair Drive. The neighborhood is comprised mostly of single-family residences but there are commercial uses oriented toward MD 450 and Superior Lane.

Master Plan/Sectional Map Amendment

(5) The subject property lies within an area governed by the 2006 Master Plan for Bowie and Vicinity. The Master Plan recommended residential use for the subject property.

(6) The 2006 Sectional Map Amendment for Bowie and Vicinity retained the R-55 zoning for the subject property.

(7) The property is located in the Developing Tier. The vision for the Developing Tier is to maintain a pattern of low-to moderate-density suburban residential communities, distinct commercial centers, and employment uses that are increasingly transit serviceable.

Applicant's Request

(8) The Applicant wishes to operate a small real estate sales office from his residence. Applicant wishes to hire one (1) nonresident agent and one (1) nonresident receptionist to work at the office.

(9) The dwelling was constructed in 1962. In 1968 the garage was converted to office space and additional rooms were added behind the garage to house a dentistry practice pursuant to SE-1810. In 1976 the property was purchased by a new owner who opened a law office and practiced from the structure for nearly 30 years.

(10) Applicant purchased the property in 2007 from the individual who had operated the law practice in the dwelling. (T. 13-14) It was Applicant's intention to operate his own real estate business from the home since he had his own broker's license and there would be no need to retrofit the home because it had been used as an office of some sort for decades. (T. 13, 19) Applicant believes it would be cost prohibitive to find commercial office space in the area for so small a practice, and submitted an exhibit that indicates that the average square footage cost for office space in the area is \$21 and the minimum size is approximately 1,000 square feet. (Exhibits 29(a)-(b))

(11) In order to provide required parking Applicant initially required 36% lot coverage and requested a variance from the lot coverage requirement that a maximum of 30% is permitted in the R-55 Zone. After certain departures were granted by the City of Bowie, *infra*, the variance was no longer needed.

(12) The Site Plan properly indicates the maximum lot coverage allowed (30%) and the amount provided (28.7%). It further indicates that the hours of operation shall be 9:00 a.m. – 6:00 p.m., Monday through Saturday. The Planning Board suggested that the Site Plan be amended to show the distance from the existing sign to the right-of-way for Stonybrook Drive; that the driveway be shown as 18' 3" wide; that notes be added to reflect the City of Bowie's departure approvals; and that the proposed building addition be removed. Applicant submitted a revised Site Plan that addressed all of these but continued to show a small addition to the north of the dwelling as well as a patio and deck to the southwest of the dwelling. The Applicant resides at the home and would like to make some minor improvements to his residence without necessitating a revision to the Special Exception, if approved. He, therefore, proffered the following Note:

Certain proposed addition areas are shown on the site plan. Such additions may be permitted without the requirements of amending the Special Exception Site Plan provided:

- a) No additions which increase the percentage of impervious area coverage on the Lot beyond the maximum of 30% may be constructed unless a corresponding amount of impervious square footage is removed from the Lot to the extent necessary to ensure that the Lot coverage does not exceed the maximum permitted of 30% unless a departure is granted
- b) The additions must be residential purposes and not related to the home office use.
- c) All necessary permits shall be obtained and the addition(s) must comply with other applicable ordinances and regulations.

(Exhibit 30(b))

Agency Comment

(13) The Technical Staff believed Applicant did not satisfy the test for approval of a variance since there is nothing exceptional about the parcel nor will Applicant be denied all reasonable use of his property if the request is denied. Staff also noted that "[t]he real estate sales office may operate without a special exception as a home-based business [if it does not] have more than one (1) agent and that agent [is] a resident of the dwelling." (Exhibit 14, p. 6)

(14) The Transportation Planning Section noted that a real estate sales office of 2,975 square feet (the total area for the residential use *and* the proposed office) would only generate six (6) A.M. and six (6) P.M. peak-hour vehicle trips. It concluded that these minimal additional trips would have little if any impact upon the transportation facilities in the area.

(15) The Planning Board recommended approval given the City of Bowie's actions, below, and its belief that there is no nearby office space that would not be prohibitive in cost for an operation as small as the one sought by Applicant. It did suggest that certain revisions be made to the Site Plan, *supra*. (Exhibit 16(a))

(16) The City of Bowie recommended approval of the Application, with the conditions that the proposed addition be removed and lot coverage not exceed approximately 32%. (Exhibit 24(a)) In doing so, it noted that there had been a long history of professional office use on the site, the Applicant was not seeking any change to the existing structure, and there are other commercial uses in the area.

(17) The City subsequently approved Applicant's request for a departure from sign design standards to allow the freestanding sign to remain; a departure from design standards for the location of a building associated with a freestanding sign; a departure from design standards to permit the existing driveway width; and a departure from parking and loading standards for the two (2) on-site parking spaces. (Exhibits 22(a)-(b); T. 6-8) These approvals reduce the amount of lot cover to 28.7%, thereby negating the need for a variance. (T. 9)

APPLICABLE LAW

(1) A Real Estate Sales Office is permitted by Special Exception if it meets the provisions of Sections 27-317 and 27-399 of the Prince George's County Zoning Ordinance.

(2) Section 27-317 provides as follows:

- (a) A Special Exception may be approved if:
 - (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
 - (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
 - (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;
 - (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
 - (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
 - (6) The proposed site plan is in conformance with an approved Tree Conservation Plan.

(3) Section 27-399 provides as follows:

(a) The offices of not more than two (2) real estate brokers, agents, or salesmen may be permitted, subject to the following:

- (1) At least one (1) of the brokers, agents, or salesmen shall be a bona fide resident of the dwelling;
 - (2) Suitable office space is not available within the general vicinity;
 - (3) At least fifty percent (50%) of the gross floor area of the dwelling shall be devoted to residential use;
 - (4) The use shall not alter the residential character or appearance of the premises; and
 - (5) Not more than one (1) nonresident clerical assistant may be employed on the premises.
- (b) A use and occupancy permit shall be required for this use.

(4) The Court of Appeals provided the standard to be applied in the review of a special exception application in Schultz v. Pritts, 291 Md 1, 432 A2d 1319, 1325 (1981):

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. . . . But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

The record in this case reveals “no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan”. It would, therefore, be proper to grant the request, once the conditions addressed below are satisfied.

CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are found in Section 27-102. The instant application satisfies the following purposes for the reasons provided:

To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County

The use is one that will serve the real estate needs of County residents.

To implement the General Plan, Area Master Plans, and Functional Master Plans

The Master Plan recommends residential land use for the subject property, and the Sectional Map Amendment retained the residential zoning. The use is one that will not detract from the residential character of the neighborhood, but could provide real estate

sales expertise to residents in the area. Accordingly, the instant request satisfies this general purpose.

To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development

The proposed use will operate within a 500 square foot area of the existing home. Applicant will continue to reside therein. The number of customers expected on a daily basis is quite small and the Office will only be open from 9:00 a.m. to 6:00 p.m. Monday through Saturday. Thus, the property will maintain its residential character and there will be no adverse impact on adjoining development.

To encourage economic development activities that provide desirable employment and a broad, protected tax base

The use ensures that a certain number of jobs will be provided and that taxes will be paid into the County's coffers.

Accordingly, the provisions of Section 27-317(a)(1) are met.

(2) The approved departures obviated the need for any variances; thus the use is in conformance with all applicable requirements of the Zoning Ordinance. (Section 27-317(a)(2))

(3) The proposed use will offer a service to the residents in the area and in a manner that does not substantially impair the intent of the Master Plan. (Section 27-317(a)(3))

(4) The proposed use will not detract from the residential character of the neighborhood. It is expected to draw relatively few customers to the site. Only two (2) parking spaces and one (1) handicap space are required, and they currently exist on site. Accordingly, it will not adversely affect the health, safety or welfare of residents or workers in the area, nor will it be detrimental to the use or development of adjacent properties. (Sections 27-317(a)(4) and (5))

(5) The use does not require the approval of a Tree Conservation Plan because it is less than 40,000 square feet in area and does not have a previously approved Plan. (Section 27-317 (a)(6))

(6) The Applicant is a licensed real estate broker and will continue to reside in the home. Only one (1) nonresident clerical assistant and one (1) nonresident real estate agent/broker will be employed. Applicant has researched the available office space in the neighborhood and avers that none is suitable since the size generally leased is 1,000 square feet. This is nearly twice the size of what Applicant requires for his proposed business. The office will be located within the dwelling and will not be visible from the exterior, thereby promoting the residential character of the neighborhood. Finally, the office will exist in approximately 500 square feet of the 2,975 square foot

home – thus, more than 50% of the floor area will be devoted to residential use. (Section 27-3996(a))

(7) Applicant will have to apply for a use and occupancy permit prior to operating the business. (Section 27-399(b))

DISPOSITION

Special Exception 4623 for a Real Estate Sales Office is approved, subject to the following conditions:

1. Prior to the issuance of permits, the Site Plan shall be amended to note that there may not be more than two (2) real estate brokers, agents or salesman permitted and not more than one (1) nonresident clerical assistant may be employed on the premises. The following language shall be deleted: “No more than one agent and one clerical assistant will be employed on the premise.”
2. The Note concerning the future addition(s) to serve the residence should be revised to read as follows:

Proposed additions are shown on the Site Plan. Such additions may be constructed in the areas shown, without requiring the amendment of the Special Exception Site Plan, provided:

- a) The additions will not increase the percentage of net lot area coverage on the Lot beyond the maximum of 30%;
 - b) The additions will solely be used for residential purposes and not for the Real Estate Sales Office; and
 - c) All necessary permits shall be obtained, and the addition(s) shall comply with all applicable ordinances and regulations.
3. Prior to the issuance of permits, the revised Site Plan shall be submitted to the Office of the Zoning Hearing Examiner for review, approval, and inclusion in the record.

[Note: The Special Exception Site Plan is Exhibit 30(b)]