

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

VINCENT P. SMITH, SR.
Appellant

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Appeal No. AP2010-006

OPINION

This action is a request for a special exception to establish a dental office in a residence. The subject property is located at 12066 Smithfield Farm Lane, Hagerstown, Maryland, is owned by the Appellant, and is zoned Agriculture.

A public hearing was held before the Board on February 24, 2010. No opposition was presented to this appeal.

FINDINGS OF FACT

The following findings of fact are made by the Board, based upon the testimony given and all data and other evidence presented, and upon a study of the specific property involved, as well as the neighborhood:

1. Appellant proposes the establishment of a dental office in his residence.
2. The office will be on the first level of Appellant's home, and it will be served by a separate entrance.
3. Office hours are four days per week, from 9 a.m. to 5 p.m.
4. The Appellant will see approximately six to eight patients per day.
5. The employees of the practice include the Appellant and his assistant.
6. The adverse effects of residence-based professional office are no greater at this site than they would be at any other location in the district, and the proposed use is compatible with the neighborhood and conforms to the Comprehensive Plan.
7. No one testified in opposition to this request.

RATIONALE

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Zoning Ordinance for Washington County, Maryland. A special exception is defined as “a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood.” Section 28.62.

Grant of a special exception is appropriate where the proposed use will have no greater “adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” *Schultz v. Pritts*, 291 Md. 1, 15 (1981). Here, Appellant is scaling back his practice and closing his off-site office. He proposes to use the first floor of his residence to see six to eight patients four days per week. The only employees will be himself and his assistant. Therefore, this use is of low to moderate intensity. The property is of adequate size to support the use, as are the adjacent traffic networks. In short, no adverse effects were presented at this site that would violate the *Schultz* test. In fact, no one testified in opposition to the proposal, and no evidence was presented that the proposed use was incompatible with the neighborhood; disruptive of neighbors’ quiet enjoyment of their properties; detrimental to surrounding property values; generative of excessive odors, dust, gas, smoke, fumes, vibrations, or glare; generative of traffic that would exceed the capacity of existing infrastructure; or that the proposal was an inappropriate use of land or structure.

Accordingly, based upon all of the testimony and evidence presented, this Board finds that the subject request does not adversely affect the public health, safety, security, morals, or general welfare, nor does it result in dangerous traffic conditions, or jeopardize the life and property of neighborhood residents. This appeal is hereby GRANTED.

BOARD OF APPEALS
By: Bert Iseminger, Chair

Date Issued: March 26, 2010