

IN RE: PETITION FOR SPECIAL EXCEPTION*		BEFORE THE
(2518 Farringdon Road)		
3 rd Election District	*	OFFICE OF
2nd Council District		
Benjamin Fakheri & Pardis Parizadeh	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No. 2020-0152-X
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Petition for Special Exception filed on behalf of Benjamin Fakheri and Pardis Parizadeh, legal owners (“Petitioners”) for the property located at 2518 Farringdon Rd., Pikesville (the “Property”). The Special Exception Petition was filed per the Baltimore County Zoning Regulations (“BCZR”) §1B01.C.12 to permit a professional person to have proposed professional/dental office in the Property.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Petitioners appeared *pro se* in support of the Petition. Neighboring property owner Elliott Friedman, 2521 Farringdon Rd., appeared in opposition.

ZAC comments were received from the Department of Plan (“DOP”) and from Department of Environmental Protection and Sustainability (“DEPS”) which agencies did not oppose the requested relief.

FINDINGS OF FACT

Pardis Parizadeh testified that she is licensed in the State of Maryland as a dentist who has been practicing orthodontics for three (3) years. (Pet. Ex. 8). She resides in the Property with her husband, Benjamin Fakheri and their four (4) children. The Property measures 0.2 acres (8,692 sf. +/-) and is improved with a split-level single family home built in 1963 which measures 1,726 sf. +/- . It is located within a residential neighborhood of similar split-level and/or rancher style homes on lots of similar size. The zoning is Density Residential (DR 5.5).

Dr. Parizadeh desires to use part of the basement level of the home for her orthodontist office to see patients. No new construction is proposed. The patients would enter through an existing back door in the rear yard. She testified that she would only see patients one at a time. One (1) new paved parking space in the front of the Property would be provided for one (1) vehicle as shown on the site plan (the "Site Plan"). (Pet. Ex. 1). Dr. Parizadeh proposes that the orthodontist office will measure 300 sf. The basement measures 2,550 sf. There will not be a waiting room. She plans to purchase a mobile-cart orthodontist chair which is portable and does not require connection to the plumbing in the house. There are no employees proposed to work in the office and all billing and/or insurance information will be done remotely.

In regard to an x-ray machine, Dr. Parizadeh is still considering options to either install an x-ray machine in her office or send patients to a separate x-ray facility. She explained that the office and all dental equipment would be inspected and monitored by the Board of Dental Examiners twice per year. An x-ray machine requires a certain floor thickness so that people on other floors are not exposed to radiation. The other notable piece of dental equipment she would need to purchase is an autoclave machine to sterilize tools.

Eliot Friedman testified that his home is across Farrington from the Petitioners and he opposes a dental or orthodontist office in the Property. He testified that this is a residential neighborhood and not a business or office area. He felt that the presence of this use, at this location, would bring more people and more traffic. He stated that there are no other offices on Farrington Rd. but that, within ¼ mile from the Property, are business zones with professional offices which would be suitable for the Petitioners. Mr. Friedman felt that this use, at this location, would decrease the property value of his home. Approval of the Petition would only encourage other property owners to request offices in their homes.

Mr. Friedman added that his home, and the Petitioners home, were designed and built by the same developer. As such, he stated that the drywall was low quality and would not be thick enough to contain radiation. He also mentioned that total floor area of the home is under 2,000 sf. not 2,550 sf.

Dr. Parizadeh testified in rebuttal that the use would not generate additional traffic. In regard to the x-ray machine, an inspection would determine whether the wall thickness was safe. She added that neighborhood families are encouraging her to open the orthodontist practice in her home.

SPECIAL EXCEPTION

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 *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized 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.

Based on the exhibits and testimony detailed above, I find that the special exception relief should be denied. Specifically, I find that the operation of an orthodontic practice in this home, at this location, is detrimental to the general welfare of this neighborhood of single family homes. While it may be convenient for some families with children to walk to the Petitioner's home office for orthodontic appointments, this home is too small in size and too small in land area (only 1/5 of an acre of land) for an office. I find that the use will tend to overcrowd the land and cause undue concentration of population with patients coming and going from the Property. Because this Property is one of many homes on similarly sized lots, I find the proposed use will interfere with quiet use and enjoyment of not only Mr. Friedman's property, but with adjacent homes as well as other homes along Farrington Rd.

Notwithstanding the plan to see patients only one at a time, this plan does not prevent patients arriving early or leaving late, from congregating on the Property, or from parking along the street. The hours of operation of an orthodontic practice are non-conducive to a quiet residential neighborhood. This type of business needs a separate, remote location which is buffered from residential uses. Thus, on paper, the proposed use may appear simple and not intrusive to the neighborhood. However, in reality, there will be a constant influx of activity, of people and of vehicles every day. A successful orthodontic practice will have a high volume of patients in a given day. Additionally, orthodontic offices will have services, vendors and inspectors coming and going from the Property on a regular basis which will be disturbing to the neighborhood. Because of its location in this tightly condensed neighborhood of homes, this use will negatively impact surrounding residential use and enjoyment, even if all goes as planned.

I am equally concerned about the installation of an x-ray or other machines in this 1963 home particularly in light of the Petitioners' children residing in the home. Given Mr. Friedman's testimony that his home, and the Petitioners' home, were built at the same time with the same quality of construction materials, I find that the operation of an x-ray machine in this home is detrimental to the health, safety and general welfare of the adjacent properties. For all these reasons, the Petition for Special Hearing will be denied.

THEREFORE, IT IS ORDERED this 4th day of **August 2021**, by this Administrative Law Judge, that the Petition for Special Exception pursuant to BCZR, §1B01.C.12 to permit a professional person to have proposed professional/dental office in the Petitioners' existing residence is hereby **DENIED**.

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



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm