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| IN RE: PETITION FOR VARIANCE | * | BEFORE THE |
| (1903 York Road) | | |
| 8th Election District | * | OFFICE OF ADMINISTRATIVE |
| 3rd Council District | | |
| Douglas E. Weeks & Donna N. Weeks | * | HEARINGS OF |
| | | |
| Legal Owners | * | BALTIMORE COUNTY |
| Anush John | | |
| Contract Purchaser/Lessee | * | Case No: 2021-0267-A |
| | | |
| Petitioners | * | |

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by the Petitioners, Donna N. Weeks, and Douglas E. Weeks who is deceased for property located at 1903 York Road. The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”) § 204.3.A.2 to permit an RO zoned property to be used 100% as a medical office in lieu of the maximum allowed 25% for medical uses.

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. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”). They did not oppose the requested relief, subject to proposed conditions. Nor did they address the issue of whether this request is properly characterized as an area variance. People’s Counsel submitted a letter in opposition with supporting exhibits, urging that the request is for a use variance, which is expressly prohibited by BCZR § 307.1. There were no protestants or interested citizens that appeared at the hearing. Petitioner did, however, submit an email from the President of the Greater Timonium Community Council, stating that they did not oppose the relief provided that the DOP’s proposed conditions were met.

The contract purchaser, John Anush, appeared at the hearing. Joseph Woolman III, Esquire

represented the Petitioners. The subject property is approximately 0.28 acres and is split-zoned, with the majority of the site zoned R.O. and a portion at the rear zoned DR 3.5. Mr. Woolman explained the site and the need for the variance relief. He explained that the contract purchaser wants to use 100% of the floor space for a medical office. He urged that this was in fact a request for an area variance, not a use variance. He noted that virtually the entire front yard of the property is already paved over so there is ample existing parking to accommodate the requested square footage of medical office space under the parking regulations.

As I stated at the hearing, I would like to grant the requested relief as this proposed use seems reasonable at this site. But BCZR § 307.1 expressly prohibits me from doing so because the request is in fact for a use variance and I am only authorized to consider “height, area, off-street parking, or sign” variances. *Id.* In enacting BCZR § 204, which created the Residential – Office Zone, the Council explained that “[i]t is not the R-O classification’s purpose to accommodate a substantial part of the demand for office space, it being the intent of these zoning regulations that office space demand should be met primarily in C.T. Districts, C.C.C Districts and, to a lesser extent, in other commercial areas.” BCZR § 204.2. With this in mind the Council therefore enacted “Use regulations” in BCZR § 204.3, which expressly limited the percentage of floor area that can be used for medical offices to 25%. In Case No. 2015-0001-SPHA, my predecessor was confronted with the identical issue and held that “to grant the requested relief would be changing the use of the property to a medical office, which is antithetical to the goals of the R.O. zone.” Mr. Woolman notes that in a subsequent case (2016—0117-SPHXA) the same ALJ observed, that “with regard to the 100% medical use issue, counsel submitted several orders from prior cases wherein such relief was granted, and it may be that such a request is an area, not a use variance, which is prohibited under the B.C.Z.R.” However, in that case the ALJ denied the relief on other grounds,

so this musing was mere *dicta*. Further, People’s Counsel cites Case No. 95-108-XA from the Board of Appeals where they held that the grandfathered medical office use had been lost during a subdivision of the property and therefore they strictly applied the 25% limit. People’s Counsel further urges that “[w]e recognize the Department of Planning does not oppose the petition. Nevertheless, this is a matter of law and precedent. The legislative purpose is to limit medical office building use in the R.O. Zone.” This, in my view, is a correct statement of the law.

And touching briefly on the merits of the variance request – assuming *arguendo* that this were an area variance, People’s Counsel further argues, that “it does not fit the uniqueness/resulting practical difficulty standard. There is nothing about a property’s [site’s] situation, unique or not, which could possibly relate to the percentage of [floor area] use.” Again, I agree.

In sum, the authority to grant variances is strictly circumscribed by BCZR § 307.1, and I am not at liberty to gainsay the judgment of the County Council. And § 307.1 essentially codifies Maryland common law, where it is well established that “the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.” *Mueller v. Baltimore County*, 177 Md. App. 43, 71 (2007). This is because “a variance is an authorization for that which is prohibited by a zoning ordinance.” *Cromwell v. Ward*, 102 Md. App. 691, 699 (1995). And because “citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations.” *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965).

THEREFORE, IT IS ORDERED, this 7th day of **December 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR § 204.3.A.2 to permit an RO zoned property to be used 100% as a medical office in lieu of the maximum allowed 25% for medical uses is hereby **DENIED**.

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

Signed

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm