APPLICANT:
Nahid Z. Shahry

REQUEST: Special development approval and variance to allow conversion of a residence to a professional office, without access to public sewer

HEARING DATE: June 6, 2007

BEFORE THE

ZONING HEARING EXAMINER

FOR HARFORD COUNTY

BOARD OF APPEALS

Case No. 5597

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Nahid Z. Shahry

LOCATION: 1402 East Churchville Road, Bel Air
Tax Map: 41 / Grid: 4E / Parcel: 486
Third (3rd) Election District

ZONING: RO / Residential Office

REQUEST: A special development, pursuant to Section 267-47.1 of the Harford County Code, to permit the conversation of an existing residence to a professional office use, and a variance, pursuant to Section 267-45(E) to permit a professional office use which is not served by public sewer in the RO (Residential Office) District.

TESTIMONY AND EVIDENCE OF RECORD:

Nahid Shahry, Applicant, requests a special development to permit the conversation of an existing single family residential structure not serviced by public sewer, to a dental office. The subject property is a 0.421 acre parcel located on MD Route 22 to the east of Bel Air, zoned RO/Residential Office, and improved by 1,100 square foot ranch-type single family home. As Section 267-45(E) of the Harford County Development Regulations requires any such use to be served by public water and sewer, a variance is accordingly requested.

Dr. Shahry testified that she is the owner of the subject property. She wishes to convert it to a dental office. Dr. Shahry's present office is currently located at 1400 East Churchville Road, which is across Churchville Road from the subject property and less than a 1/4 mile distant. The office at the new location will see perhaps 30 patients per day. The Applicant will have one other dentist working with her, as well as a hygienist. She envisions a total of 5 employees working from the property. Parking requirements will be met. The Applicant had engaged Douglas J. Polt, Architect, to design the conversion of the subject property. A site plan was attached to Dr. Shahry's application, and is also marked as Exhibit 10 in the file.

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Dr. Shahry envisions no significant change to the appearance of the property or adverse impact to adjoining property owners.

Next testified Douglas J. Polt, architect. Mr. Polt explained that the property is about 4/10ths of an acre, and is zoned RO/Residential Office. The topography of the property is relatively flat. Certain interior improvements will be made to the structure. This will necessitate the removal of the roof, insertion of new trusses, and reinstallation of the roof. No significant change will be made to the exterior of the building, other than the addition of landscaping and parking.

The site plan shows six (6) parking spots behind the structure, and two (2) in front on the Route 22 side, including a handicap parking space.

Mr. Polt explained that a residential use is made of the parcel to the left of the property, an office structure is to the right, and Amyclae residential subdivision common areas are to the rear of the property. The adjoining parcel now used for office uses has also recently been converted.

Mr. Polt testified that the size of the dental office, once improvements are completed, will be consistent with other structures in the neighborhood which front on Route 22. There will be no outside storage. The existing drive will be extended to the rear of the property so as to provide the six (6) parking spaces to the rear. Landscaping will be installed along each property line. Modest security lighting will be installed. Mr. Polt does not believe a State Highway Access Permit will be necessary.

Mr. Polt explained that sewer lines exist to the south of MD Route 22; however, it would be extremely expensive to connect to that sewer, which would necessitate boring under MD Route 22. Public sewer is also at the Freedom Federal Credit Union structure to the west (Bel Air side) of the subject property, and about seven lots distant. However, sewer cannot be brought from that location at this time as not all property owners have agreed to connect to sewer.

Mr. Polt explained that the Harford County Health Department reviewed the proposal and has no objection. A Memorandum from the Health Department dated May 25, 2007, and accepted as Applicant's Exhibit No. 13, provided comments to an original site plan filed by the Applicant. The Health Department stated that the parking onsite and the waste disposal system must be relocated. According to Mr. Polt, the original site plan has accordingly been revised and the site plan now meets Health Department requirements.

Also contained in the file and marked as Attachment 12 to the Staff Report is a Memorandum dated May 16, 2007 from the Harford County Department of Public Works, which requested that conditions be appended to approval of Applicant's request. The conditions recommended by the Department are as follows:

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> "1. The Owner shall connect to public sewer when it becomes available. The determination of this requirement shall be at the discretion of the Department of Public Works or the Health Department. If in the future a sewer petition is developed for this area, the Owner shall support the petition. It is the applicant's responsibility to divulge this information to future purchasers of the property.
>
> 2. A 20-foot wide drainage and utility easement shall be dedicated to the County for the future construction of a sewer main. A deed of easement and an exhibit shall be prepared by the applicant and submitted to the Division of Water and Sewer to review. The documents must be recorded before a permit for the change in use may be issued."

Next testified Anthony McClune of the Harford County Department of Planning and Zoning. Mr. McClune confirmed that all properties surrounding the small enclave of approximately 9 properties along Route 22 and west of the Freedom Federal Credit Union are serviced by public sewer. All properties to the south of Route 22 are serviced by public sewer. The Amyclae Shopping Center to the east of the subject parcel located at the intersection of MD Route 543 and Route 22 is serviced by public sewer. It is only these nine RO zoned parcels to the north of Route 22 which are not publicly sewered. Mr. McClune explained that the County has been unable to obtain a Utility Easement extending eastward from the Freedom Federal Credit Union because one property owner will not cooperate. It is also economically not possible to bore under Route 22 to connect to the sewer line to the south of Route 22. Furthermore, the County prefers all properties be connected to sewer by one main running from the west to the east, north of Route 22.

Certain others of these nine parcels have been converted to residential office use and appropriate variances have been granted due to the inability of each to connect to public sewer. Mr. McClune reiterated that it makes no sense to run small sewer lines under Route 22 to connect each of the parcels. The preferred method is a gravity line running from the parcels to Freedom Federal Credit Union parcel.

The Department recommends that the requested special development and variance be granted, subject to conditions. The conversation of the existing residential office will be a use consistent with others in the neighborhood and will have no adverse impact. The Staff Report states:

> "The Department finds that the requested variance is justified. The Applicant would not typically be required to connect to public sewer at this time. The closest available service is on the south side of MD 22.

This would not be the preferred method for providing sewer to this lot and the adjacent properties. In the future a gravity sewer line should be extended from the Freedom Federal Bank property to the west to serve the properties along the north side of MD Route 22."

No evidence or testimony was given in opposition.

APPLICABLE LAW:

Section 267-47.1 of the Harford County Code states:

"A. Purpose. To provide opportunities for conversation of existing residential structures or the development of new structures for retail, service and office uses in predominantly residential areas. The purposes of these development standards are to ensure that the structures and uses developed are compatible and in harmony with the neighboring residential communities.

B. Development standards.

(1) Design. An architectural rendering of the building facade and elevation of the structure shall be submitted to the Board. The rendering shall demonstrate how the project meets the following standards and objectives:

(a) Redevelopment of existing residential structures. Redevelopment of existing residential structures shall be permitted provided that any physical modification is compatible and in harmony with the neighboring residential communities relative to architectural design, scale, building height and materials used in construction.

(b) Development of new buildings. New buildings developed for retail, service and office uses shall be designed to be compatible and in harmony with the neighboring residential communities relative to architectural design, scale building height and the materials used in construction. Elements to be considered in determining compatibility with neighboring residential communities shall include massing and building materials as well as cornice lines, window lines, roof pitch and entry.

(c) Design requirements. See Design Table VIIA.

(2) Maximum building coverage. The maximum building coverage shall be 40% of the lot, and the maximum impervious surface shall be 65% of the lot.

(3) Use limitations. The uses permitted under this section shall comply with the following:

(a) Enclosed building. All uses permitted shall be conducted within an enclosed building, except parking, loading, unloading or as otherwise permitted.

(b) Storage restriction. The outside storage of material or equipment shall not be permitted.

(c) Screening requirements. Parking, loading, unloading or other outdoor activity shall be screened from adjacent residential lots. Screening shall consist of landscaping, walls or solid fencing at least 6 feet high which shall be continuous to prevent visibility of the area.

(d) Hours of operation. Uses shall only be permitted to operate between the hours of 6:00 a.m. and 10:00 p.m., inclusive.

(4) Landscaping. The landscaping shall, to the extent possible, preserve unique features and mature vegetation, especially large trees. Lawn and landscaped areas shall be maintained to preserve the residential character of the area. Landscaped buffer yards shall be planted in harmony with adjoining residences and in accordance with Section 267-28 of this chapter. A landscaping plan shall be submitted to the Board for review and approval.

(5) Outside lighting. Outside lighting shall be so shaded, shielded, directed or maintained so that the lighting does not cause a glare or reflection on adjacent residential lots.

(6) Ingress and egress. Any ingress or egress to the site shall be designed to provide the safest means of traffic flow."

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Section 267-45(E) of the Harford County Code states:

> "*E. The project shall be served by public water supply and public sewerage disposal unless developing under guidelines for the conservation development as in Section 267-46.1.*"

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

> *"Variances.*
>
> *A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
>
> *(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
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> *(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
>
> *B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
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> *C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval."*

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FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject property is one of nine parcels located between the Freedom Federal Credit Union and the Amyclae Shopping Center located at the intersection of MD Route 543 and Route 22. All properties surrounding this small island of nine parcels are connected to public sewer. Interestingly enough, these nine parcels are all zoned RO which will allow, as a special development, the project proposed by the Applicant and similar conversations of these residential structures to relatively low intensity office uses. A special development is, of course, similar to a special exception and the use is allowable and is considered to be principally permitted as long as all specific and general conditions are met.

However, through no fault of the Applicant in this case, the property cannot be connected to public sewer, and yet a specific applicable requirement is that a residential office use cannot be created without public sewer. It seems that one of the property owners of the nine parcels will not allow a Harford County Utility easement across his or her land and therefore none of the parcels to the east of that parcel can be serviced. Those parcels include that of the Applicant.

At least two other similar variance requests in this area have been granted, for the same reason advanced by the Applicant.

The Applicant proposes a fairly low impact dental practice, one which she operates now, not a far distance from the subject property. The property is located on MD Route 22, a high traffic arterial. Other than increased parking spaces, there will be little noticeable change to the exterior improvements on the property and, as stated above, its use as a dental office is consistent with the uses allowed in this residential/office district.

Clearly, the Applicant meets all specific requirements of Section 267-47.1 which allows as a special development the conversation of existing residential structures to office uses. Those standards are addressed as follows:

A. Purpose. To provide opportunities for conversation of existing residential structures or the development of new structures for retail, service and office uses in predominantly residential areas. The purposes of these development standards are to ensure that the structures and uses developed are compatible and in harmony with the neighboring residential communities.

B. Development standards.

(1) Design. An architectural rendering of the building facade and elevation of the structure shall be submitted to the Board. The rendering shall demonstrate how the project meets the following standards and objectives:

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The Applicant proposes no additions or major changes to the facade of the structure. The only existing change will be to the interior which will require the removal and replacement of the roof.

> *(a) Redevelopment of existing residential structures. Redevelopment of existing residential structures shall be permitted provided that any physical modification is compatible and in harmony with the neighboring residential communities relative to architectural design, scale, building height and materials used in construction.*

No external modifications will be made to the exterior of the dwelling. All interior renovations will require permits. Two parking spaces will be placed to the front of the property, and six to the rear. Landscaping will be installed. The compatibility of the planned improvements to the existing neighborhood will be maintained.

> *(b) Development of new buildings. New buildings developed for retail, service and office uses shall be designed to be compatible and in harmony with the neighboring residential communities relative to architectural design, scale building height and the materials used in construction. Elements to be considered in determining compatibility with neighboring residential communities shall include massing and building materials as well as cornice lines, window lines, roof pitch and entry.*

Not applicable to this request.

> *(c) Design requirements. See Design Table VIIA.*

According to the Department of Planning and Zoning and as is apparent from the site plan submitted by the Applicant, the existing dwelling meets all required setbacks in conformance to the applicable design standards.

> *(2) Maximum building coverage. The maximum building coverage shall be 40% of the lot, and the maximum impervious surface shall be 65% of the lot.*

The Applicant will meet this requirement.

> *(3) Use limitations. The uses permitted under this section shall comply with the following:*

(a) Enclosed building. All uses permitted shall be conducted within an enclosed building, except parking, loading, unloading or as otherwise permitted.

All uses will be conducted inside. There will be no outside storage.

(b) Storage restriction. The outside storage of material or equipment shall not be permitted.

There will be no outside storage.

(c) Screening requirements. Parking, loading, unloading or other outdoor activity shall be screened from adjacent residential lots. Screening shall consist of landscaping, walls or solid fencing at least 6 feet high which shall be continuous to prevent visibility of the area.

Existing shrubbery and trees will be maintained. The property will be improved on the east and west side with additional plantings of leland cypress. All parking spaces must be paved.

(d) Hours of operation. Uses shall only be permitted to operate between the hours of 6:00 a.m. and 10:00 p.m., inclusive.

A condition of approval will be that the hours of operation be limited to 6:00 a.m. to 10:00 p.m.

(4) Landscaping. The landscaping shall, to the extent possible, preserve unique features and mature vegetation, especially large trees. Lawn and landscaped areas shall be maintained to preserve the residential character of the area. Landscaped buffer yards shall be planted in harmony with adjoining residences and in accordance with Section 267-28 of this chapter. A landscaping plan shall be submitted to the Board for review and approval.

The Applicant's site plan shows existing landscaping will be retained, and improved along the eastern and westerly property line.

(5) Outside lighting. Outside lighting shall be so shaded, shielded, directed or maintained so that the lighting does not cause a glare or reflection on adjacent residential lots.

If installed in the future, lighting will be designed to minimize glare onto surrounding properties. The Department of Planning and Zoning shall review and approval specific placement of outside lighting.

> *(6) Ingress and egress. Any ingress or egress to the site shall be designed to provide the safest means of traffic flow.*

The Staff Report notes the entrance onto Churchville Road is subject to State Highway's requirement for a commercial entrance. This will be made a condition of this decision.

Accordingly, the Applicant clearly meets all specific requirements of the special development for the conversation of an existing dwelling to an office use, with the exception of the more general requirement of Section 267-45(E), which requires all special developments be served by public water and sewer. While public water is available to the property, the property cannot, of course, at this time be serviced by public sewer. It is this section for which a variance is requested.

Preliminarily, it must be noted that Section 267-45(E) is applicable to all special developments, including special exceptions which anticipate a much more intensive use of land then the consideration in this case. Special developments include new home subdivisions, housing for the elderly, continuing care facilities, mixed use retail centers, shopping centers, etc. A conversation of an existing home to an office is probably the least intensive of all the special developments which are allowed under Harford County Development Regulations.

Nevertheless, the Applicant must show that she is entitled to the variance. While perhaps not the most clear-cut case, it is easily found that the property cannot be serviced by public sewer through no fault of the Applicant. It is further found that all surrounding properties are publicly sewered (with the exception of this small enclave of nine parcels). It is further found that the Applicant is willing to connect to sewer at such time as it is brought down Route 22 through the adjoining properties, at least one of which now is acting to block the sewer line. It is further found as a matter of fact that approvals have been granted in the immediate neighborhood for similar relief, based on similar reasons.

Accordingly, it is found that the Applicant suffers an unusual difficulty in that sewer cannot be brought to her property due to no fault of her own, and due to the decision of an adjoining property owner to not allow a utility easement through his or her property. Unless relieved, this hardship will prohibit the Applicant from using the property for an otherwise allowable special development use.

Accordingly, it is found that the Applicant is entitled to a variance to allow the development of the subject property for the proposed special development without public sewer availability.

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Furthermore, the application must be reviewed in light of the Limitations, Guides and Standards, Section 267-9I. That section is discussed as follows:

(1) The number of persons living or working in the immediate area.

This area contains, generally, a mix of residential and commercial uses. The proposed use should have no adverse impact on the number of persons living or working in the area. In fact, the relocation of this dental office will continue a presently available neighborhood service.

(2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

The property fronts of MD Route 22, a heavily traveled, arterial highway. Sight distances are good. There will be no adverse impact on traffic.

(3) The orderly growth of the neighborhood and community and the fiscal impact on the County.

As discussed above, the use of the subject property is a fairly low intensity dental office which is compatible with the orderly growth of the neighborhood and community. The proposed use is allowable in a residential/office district.

(4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

The proposed use should not generate any of these impacts.

(5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Bel Air Volunteer Fire Company will provide fire protection. Public water is available. A private septic system will be utilized. A private trash contractor will handle trash removal.

(6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

The use is consistent with the generally accepted planning principles and practices.

(7) The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.

No such structures have been identified which will be impacted by this use.

(8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

The proposed use is compatible with existing zoning and the Harford County Master Land Use Plan.

(9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

There will be no identified environmental impact.

(10) The preservation of cultural and historic landmarks.

No such landmarks have been identified.

Lastly, the special development must be reviewed in light of Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981), which requires that a special exception (analogous to a special development right), be approved provided it has no impact above and beyond that which would normally be associated with such a use.

Based on the evidence of record, there is found to be no impact by this proposed use at the proposed location different from that of any other similar use at any other location within the zone. The proposed use is a low intensity use, allowed in its principal zoning district as a special development. There is simply no evidence of any particular adverse impact that this use would have on the surrounding neighbors, particularly given the finding that many of the parcels in this 9 parcel enclave have already been converted to office uses. That the property will continue to use its existing private septic system until public sewer is available does not change these findings as there is no evidence that the continued use of a private septic system will have any impact or is a cause of concern.

CONCLUSION:

Accordingly, it is recommended that the requested special development and variance be granted subject to the following conditions:

1. The Applicant shall obtain all necessary permits and inspections for the conversation of the existing structure.

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2. The Applicant shall prepare a detailed site plan to be reviewed and approved thru the Development Advisory Committee. The site plan shall include a final landscaping plan and lighting plan. Lighting must be designed to minimize glare onto surrounding properties. The Department of Planning and Zoning shall review and approve specific placement of outside lighting.

3. The Owner shall connect to public sewer when it becomes available. The determination of this requirement shall be at the discretion of the Department of Public Works or the Health Department. If in the future a sewer petition is developed for this area, the Owner shall support the petition. It is the applicant's responsibility to divulge this information to future purchasers of the property.

4. A 20-foot wide drainage and utility easement shall be dedicated to the County for the future construction of a sewer main. A deed of easement and an exhibit shall be prepared by the applicant and submitted to the Division of Water and Sewer to review. The documents must be recorded before a permit for the change in use may be issued.

5. The hours of operation of the dental office will be limited from 6:00 a.m. to 10:00 p.m.

6. The Applicant shall pave all required parking areas and driveways.

7. The access point from MD Route 22 shall be subject to Maryland State Highway requirements for a commercial entrance.

Date: July 2, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JULY 31, 2007