

Tax Map/Block/Parcel
No. 30-24-309

Building Permit/Zoning
Certificate No. 91-2567

Case 3627

**OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND**

APPLICANT: Connie Burk Davis, Esquire
13 Kalten Road
Westminster, Maryland 21157

REQUEST: A conditional use for a professional office of an attorney and resident within the existing dwelling, and a variance reducing the minimum required access driveway width of 20 feet to 10 feet

LOCATION: 13 Kalten Road in Election District 7; Kalten Acres subdivision, Section 2, lot 21 recorded in Carroll County Plat Records in book 11, page 87

BASES: Article 5C, Section 5C.2(a); Article 14, Division I, Section 14.1(b)3; Article 15, Section 15.5; Ordinance 1E. (The Carroll County Zoning Ordinance)

HEARING HELD: October 23, 1991

On October 23, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use request for a professional office of an attorney and resident within the existing dwelling, and a variance reducing the minimum required access driveway width of 20 feet to 10 feet at 13 Kalten Road.

The Board visited the site October 21, 1991.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board will deny the conditional use and variance.

The pertinent findings determining the Board's decision include the following facts:

FINDINGS OF FACT

As depicted by Applicant's Exhibit 2, Section 2 of Kalten Acres consists of 24 lots. The subdivision plat was approved by the Carroll County Planning and Zoning Commission January 30, 1973, and development of the residential subdivision followed.

The 1.029 acre lot is located on the southerly side of Kalten Road, and is improved with a bi-level single family dwelling, including a two car garage and appropriate landscaping. A paved driveway, 10 feet in width, provides vehicular access to the parking and maneuvering area to the rear of the dwelling, and to the garage which is in the lower level of the dwelling. The driveway is similar to other driveways serving dwellings in the subdivision.

Mrs. Davis is an attorney and proffered that a law office, or the office of an attorney should be eligible for establishment as a conditional use as provided by Section 5C.2(a) of the zoning ordinance.

As planned, the office would be about 12 feet in width by 18 feet in length on the lower level of her home. The office would be solely for her practice, and there would be no employees. She plans to specialize primarily in family, estate, and probate law. Typically, such a practice usually involves one appointment by one client. Thereafter, advice and services are often provided to the client by telephone. Due to the characteristics of this type of practice, Mrs. Davis estimated that there might be one or two visits to the office by clients during a day, and that this would not necessarily occur on a daily basis. The office hours would normally be during the day, with evening hours as necessary. The entrance of the office would not be visible except from the properties to the south.

Parking for one or two vehicles and maneuvering area would be provided on the premises as required by the zoning ordinance. The existing parking and maneuvering area is not readily visible from Kalten Road, or the adjoining property to the west. The parking area is visible from the adjoining properties to the east and south.

No office identification sign is proposed, and the appearance of the dwelling would not be altered. No interior structural changes of the dwelling are proposed.

In order to increase the width of the driveway from 10 feet to 20 feet to provide for two way traffic, several trees would have to be removed, which would diminish the landscaping of the easterly side of the property. However, neither the estimated costs nor number of shrubs and trees that would have to be removed were established for the record.

Mrs. Davis anticipates that vehicular traffic to and from the office would use Littlestown Pike (Md. Rt. 97) to enter Kalten Road, and testified that in addition to the three lots to the east of lot 21, depicted on Applicant's Exhibit 2, there is one lot in Section 1 between the highway and her home. Thus, there are four lots on the south side of Kalten Road between her

home and Littlestown Pike. The residents of those lots could view vehicular traffic to and from the office.

The owners and residents of the lots to the south and the second lot to the east on the southerly side of Kalten Road submitted letters indicating that they did not believe that the office would harm their homes or the neighborhood, and that they were not opposed to the professional office.

The owner of the adjoining property to the east, Mr. Terry Jenkins, testified that he did not believe that the professional office, the vehicular traffic generated by the office, or leaving the width of the driveway at 10 feet, would adversely affect the value of his property, or detrimentally affect the community.

Mrs. Davis contested arguments presented in the letter from John R. Benjamin and Barbara E. Benjamin in opposition to the requests (Protestants' Exhibit 1). Their opposition is based, primarily, on item 1 of the Declaration of Restrictions which reads:

1. Land Use

The land included in said plats, except as hereinafter provided, shall be used for private residential purposes only, and no building of any kind whatsoever shall be erected, altered or maintained thereon except a private dwelling for occupancy by not more than one family, together with an accessory private garage and/or barn, for the sole and exclusive use of the owner or occupant of the lot upon which said garage is erected.

Mrs. Davis contends that the professional office would not change the residential use of the dwelling for reason that the provisions of the zoning ordinance limits the professional office to a resident of the dwelling.

With regard to the petition filed in opposition to the request, Protestants' Exhibit 2, Mrs. Davis directed attention to the facts that the petition opposed rezoning of the property, which is not involved in this case, and that most of the individuals signing the petition would not be affected by any vehicular traffic between Littlestown Pike and the proposed professional office.

Mr. Yingling, a property owner and resident of the subdivision, appeared before the Board and presented testimony in opposition to the request, citing:

1. There is no evidence of mistake in the "R-40,000" Residence District zoning of

the subdivision. In two previous cases before the Board, the requests were denied.

2. There is no need for such office space.
3. The covenant expressed in the Declaration of Restrictions cited above.
4. The issue before the Board is the use of the building, not its appearance.
5. Vehicular traffic to and from the proposed office would adversely affect his, as well as other residents of the subdivision, use of Kalten Road.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The applicant's lot and surrounding lots in the subdivision are zoned "R-40-000" Residence District as depicted on zoning map 30B. The land use provisions for the district are expressed in Article 5C. Section 5C.2, Conditional Uses (requiring Board authorization), paragraph (a) specifies:

Within a dwelling, the professional office of the resident physician, insurance agent, realtor, or other profession determined by the Board to be similar in use and characteristics. (Amended 1/31/85)

Article 17, Board of Appeals; Section 17.2, General Powers, reads in relevant part:

The Board shall have the following powers:

- (b) To hear and decide conditional uses to the ordinance upon which such Board is required to pass.
- (c) To authorize, upon appeal in special cases, such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions, the enforcement of the provisions of this ordinance will result in unwarranted hardship and injustice and which will most nearly accomplish the purpose and intent of the regulations of the Zoning Ordinance.

In exercising the above-mentioned powers, the Board may, in conformity with the provisions of law and this ordinance and amendments thereto, ...make such...decision or determination as ought to be made.

Article 20, Section 20.09 defines conditional uses as:

Uses which are specified for Board of Appeals approval prior to authorization and which uses, after public hearing, may be approved conditionally or disapproved in accordance with Section 17.2. The term "conditional use" shall constitute the same meaning as "special exception" specified as one of the general powers of the Board of Appeals in accordance with Article 66B of the Annotated Code of Maryland.

Section 17.7, Limitations, Guides and Standards, governs the Board in considering conditional uses and reads:

Where in these regulations certain powers are conferred upon the Board or the approval of the Board is required before a conditional use may be issued, the Board shall study the specific property involved, as well as the neighborhood, and consider all testimony and data submitted. The application for a conditional use shall not be approved where the Board finds the proposed use would adversely affect the public health, safety, security, morals or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood.

In deciding such matters, the Board shall give consideration, among other things, to the following:

- (a) The number of people residing or working in the immediate area concerned.
- (b) The orderly growth of a community.
- (c) Traffic conditions and facilities.
- (d) The effect of the proposed use upon the peaceful enjoyment of people in their homes.
- (e) The conservation of property values.

- (f) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.
- (g) The most appropriate use of land and structures.
- (h) The purpose of this ordinance as set forth herein.
- (i) Type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches, and the like.

Article 20, Section 20.39 defines a variance as:

...a relaxation of the terms of the Zoning where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship.

Article 15, Sections 15.0 and 15.5 govern the Board in considering variances and read in relevant part:

The regulations specified in this ordinance shall be subject to the following exceptions, modifications, and interpretations:

The Board may authorize, upon appeal, in accordance with Section 17.2, variances from...parking space requirements,.... The Board may grant such variance only in cases where the strict compliance with the terms of this ordinance would result in practical difficulty and unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to public health, safety and general welfare.

REASONING

The Board agrees with Mrs. Davis that an office of a resident attorney qualifies for consideration as a conditional use in accordance with Section 5C.2(a) of the zoning ordinance.

However, in considering the strictly residential land use of the properties within the subdivision, it is evident that

authorization of the professional office, which represents a business use, would be particularly inappropriate and contrary to the purpose and intent of the zoning ordinance.

With denial of the conditional use for the professional office, the variance request for reduction of the minimum required width of the driveway is inconsequential. However, to remove any doubt concerning the request, the Board finds that there is insufficient evidence of practical difficulty and unreasonable hardship that would justify authorization of the variance.

CONCLUSION

Therefore, in accordance with the record of this case and the findings as set forth above, the Board hereby denies the requested conditional use and the variance.

Date

Nov. 4, 1991

John Totura
John Totura, Chairman

JDN/bdc/C3627DEC
November 1, 1991