

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue, Room 217
Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/boa/

Case No. S-1591

PETITION OF TUNG PI LEE

RESOLUTION TO REVOKE SPECIAL EXCEPTION

(Resolution Adopted May 24, 2017)

(Effective Date of Resolution: June 12, 2017)

The Board of Appeals has received a letter dated May 15, 2017 from Soo Lee-Cho, Esquire, on behalf of Korean Community Service Center of Greater Washington, Inc. ("KCSC"), requesting that this special exception for a non-resident medical office be revoked as abandoned. Ms. Lee-Cho indicates in her letter that KCSC has owned this property since December 15, 2015, and that the use has been abandoned since that time. In addition, Ms. Lee-Cho indicates that a new conditional use has been approved for this property.

The subject property is Parcel 328, located at 700 Buckingham Drive, Silver Spring, Maryland 20901 in the R-60 Zone.

The Board of Appeals considered Ms. Lee-Cho's letter at its Worksession on May 24, 2017. Based upon the letter the Board finds that the special exception is abandoned. Therefore, on a motion by Edwin S. Rosado, seconded by Stanley B. Boyd, with John H. Pentecost, Vice Chair, and Bruce Goldensohn in agreement, and with Carolyn J. Shawaker, Chair, necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-1591 is re-opened to receive Ms. Lee-Cho's letter dated May 15, 2017, with attachments.

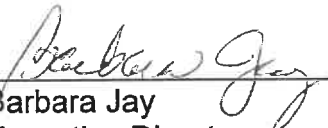
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that Case No. S-1591 is **revoked** as abandoned.



John H. Pentecost

Vice Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 12th day of June, 2017.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County

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Case No. S-1591

PETITION OF TUNG PI LEE

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution Adopted May 8, 2013)

(Effective Date of Resolution: June 13, 2013)

The Board of Appeals has received a letter, dated April 30, 2013, from Joseph T. Nah, Esquire, on behalf of Dr. Tung Pi Lee. Mr. Nah requests modification of the captioned special exception to allow the addition of one non-resident resident practitioner besides Dr. Lee to the practice for only two days a week. Mr. Nah explains that the request is to facilitate Dr. Lee's retirement by the end of 2014 and that it would thus only temporarily increase the number of practitioners from one to two. Mr. Nah further states that no other physical or operational changes are requested, and that "Dr. Lee does not expect any significant increase in the number of patients at the office as this modification represents a transition only, and not an expansion of the practice."

The subject property is Parcel 328, located at 700 Buckingham Drive, Silver Spring, Maryland 20901 in the R-60 Zone.

The Board of Appeals considered the modification request at its Worksession on May 8, 2013. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides, pertaining to modification of special exceptions:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board of Appeals considered the modification request at its Worksession on Wednesday, May 8, 2013. The Board finds that the standards for the special

exception in Section 59-G-2.36 of the Zoning Ordinance permit the addition of a second medical practitioner to the practice. The Board further finds that the temporary, part-time addition of one physician to the special exception practice, without a significant increase in the number of patients, will not substantially change the nature, character or intensity of the use or its effect on traffic or on the immediate neighborhood.

Therefore, on a motion by Stanley B. Boyd, seconded by Carolyn J. Shawaker, with John H. Pentecost, David K. Perdue, Vice-Chair, and Catherine G. Titus, Chair, in agreement:

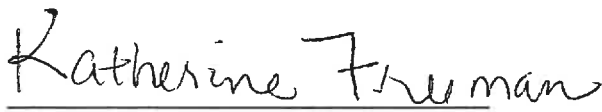
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-1591 is re-opened to receive Joseph T. Nah's letter dated April 30, 2013; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception is granted; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.


Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 13th day of June, 2013.


Katherine Freeman
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of

the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

COUNTY BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Telephone
Area Code 301
217-6600

Case No. S-1591

PETITION OF TUNG PI LEE
(Hearing held October 20, 1988)

OPINION OF THE BOARD

Case No. S-1591 is the petition of Tung Pi Lee, Petitioner, for a special exception pursuant to Section 59-G-2.36 of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1984, as amended) to permit a non-resident medical practitioner's office.

The subject property is Parcel 328 located at 700 Buckingham Drive, Silver Spring, Maryland in the R-60 Zone.

Decision of the Board: Special Exception granted to petitioner only, subject to conditions enumerated herein.

I. SUMMARY OF THE EVIDENCE
Petitioner's Proposal

Petitioner and his witnesses, Joseph Lynott, Esquire and Thomas Walsman (architect), appeared and presented the following binding testimony and exhibits of record.

Petitioner owns the subject property which consists of 24,000 square feet and has recently completed the construction of a three-story single-family residence fronting on University Boulevard. Petitioner proposes residential use for the two upper floors; conversion of the currently unimproved basement into his medical office. He stated that the residential area will be occupied regularly and continuously either by his parents or prospective tenants (perhaps in the future by him). Petitioner is confident he will be able to rent the residential portion of the house if his parents elect not to reside there.

Mr. Walsman described the residential area on the middle and top floor as including a kitchen, living, dining and family rooms as well as four bedrooms and two bathrooms, some 2600 square feet of floor area. Comparing this area to the proposed office area, which will encompass 1900 square feet, he established that sixty percent of the house will be used residentially (see plans, Exhibit Nos. 5(a)-(d)).

He advised that the required six off-street parking spaces, accessed off Buckingham Drive, will be provided in the eastern, rear of the house 85 feet from University Boulevard (Exhibit No. 5(a)). The parking area will meet or exceed all setback and landscape/screening requirements called for by the Zoning Ordinance, according to Mr. Walsman. Both right and left turn access from University Boulevard onto Buckingham Drive is permissible, enabling easy access to the subject property.

Access into the office will be through the existing garage area, which is to be converted into a patient waiting area. The garage door will be replaced by a permanent wall containing an entry door and window. According to Mr. Walsman, this will be the only exterior alteration to the house generated by the proposed special exception usage. Mr. Walsman testified that the facility will consist of a waiting/reception area, two examining rooms, two offices, one "operating/treatment" room, a lab, and a bathroom (Exhibit No. 5(a)). The office and residence will share a laundry room situated in the basement area.

Petitioner testified he will be the only practitioner to use the facility and outlined his proposed on-site practice as follows:

1. Office hours:

Monday - 8 a.m. to noon; 3:30 p.m. to 5:30 p.m.
Tuesday - 8 a.m. to noon; no p.m. hours
Wednesday - no hours
Thursday - 8 a.m. to noon; 3:30 p.m. to 5:30 p.m.
Friday - 8 a.m. to noon; no p.m. hours
Saturday - (alternating every other weekend) 8 a.m. to noon; no p.m. hours
Sunday - no hours

2. Employees

one receptionist
one nurse (part-time)

3. Patients scheduled for twenty minute intervals, with a maximum of three per hour.
4. The facility will have the equipment and functions typically found in the office of a gastroenterologist.
5. Activities will consist of examinations and treatment of patients, but no on-site operations will be conducted. No drugs will be dispensed, used, or otherwise kept on the premises. No equipment or other items or devices used will create any dangerous or offensive noise, odor, fumes, light and the like either on-site or upon neighboring uses. Nor will any potential threat of contamination by way of chemicals, radiation, disease and the like be present on site to the detriment of patients, employees, or neighbors.
5. A small sign depicting petitioner's name and practice will be sited on the property.

The subject property, located near Holy Cross Hospital and the Washington Adventist Hospital, where the petitioner regularly sees patients, is peculiarly well suited to his needs. He has outgrown his current office of 800 square feet and needs 1500 square feet. He surveyed the area of this property for another office location. The nearest facility leasing space for a medical office was 831 University Boulevard, which had only 700-800 square feet available, not sufficient for his needs.

- (d) The petitioner alone will treat patients at the facility; no other practitioner will use the facility;
 - (e) The use will not constitute a nuisance because of traffic or physical activity in view of the relatively modest size of the medical use, its hours of operation, and its location;
 - (f) The use will not constitute a nuisance because of noise;
 - (g) The use will not adversely affect the use and development of neighboring properties in the general neighborhood given the predominantly residential usage of the property;
3. The petition is consistent with the applicable master plan for the area which recommends continued R-60 zoning for this property. The R-60 zone allows the petitioned use by special exception.
 4. The petitioned use is in harmony with the general character of the neighborhood, considering population, density, design, scale and bulk of structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The density, scale and bulk of the structure is consistent with adjacent residential structures, and minimal traffic and physical activity will be generated at the location.
 5. Based upon the binding testimony of the petitioner, it is clear that the petitioned use will not be detrimental to the use, peaceful enjoyment, value or development of surrounding properties, and no objectionable nuisance factors will emanate from the use.
 6. The subject property currently is adequately served by public facilities.
 7. The Board finds that the use, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, will not increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential character, given the small scale and size of this use, together with its predominantly residential usage.

Accordingly, based upon the foregoing findings and conclusions, the requested special exception to permit the operation of a medical practitioner's office for use by other than a resident of the building (physician) is Granted to petitioner only, subject to the following conditions:

1. Petitioner shall be strictly bound by all oral and written testimony, evidence and exhibits in the record.
2. Any change to the statement of operation, to include additional staff or practitioners (either as a resident practitioner or

Opposition

Opposition in the form of letters in the record and by testimony of William R. Martin (President, Clifton Park Homeowners Association) was received by the Board. The concern centers upon a perception that the medical facility was petitioner's primary construction focus and will have a detrimental impact upon the neighborhood by changing its residential character. They doubt petitioner will be able to find and retain tenants capable of meeting the rental payments a house of this great size will command. Without tenants, the medical office will define the usage to the distress of the residential neighborhood. Some concern was also expressed that a house this large will likely be rented by a group not a family, creating a further detrimental impact on the neighborhood. All these factors, they fear, will deflate property values.

C. MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION TECHNICAL STAFF

The Technical Staff, after reviewing the petition, recommended conditional approval (Exhibit No. 8), finding that the proposed usage satisfied all conditions required for granting petitioner's requested special exception. Staff noted its concern over setback encroachments given petitioner's proposed siting of the parking area as set forth on the site plan. Staff believed this situation may be corrected by modifications to the site plan (to which petitioner testified in agreement). Staff also suggested the design of a coordinated landscaping plan be undertaken by petitioner and the neighboring Korean Housing for the Elderly project (see Case S-1424).

II. FINDINGS OF THE BOARD

The Board has carefully reviewed the binding testimony received at the hearing and the exhibits of record, and concludes that the petitioner, by a preponderance of the evidence, has met the burden of proof in the following manner:

1. A non-resident medical practitioner's office is a permissible special exception in the R-60 Zone.
2. The proposed use complies with the specific standards and requirements set forth for a non-resident medical practitioner's office (Section 59-G-2.36(a)) of the Zoning Ordinance as follows:
 - (a) The evidence reflects that the exterior of the premises will not be changed or altered in appearance, except for the modifications to the garage door;
 - (b) The middle and top floors of the residence, comprising 60% of the floor space of the building, will be continuously occupied and devoted to residential uses;
 - (c) Office space of suitable size and location for petitioner's medical practice is not available in either the nearest commercial zone or the nearest medical clinic office building;

non-resident practitioner), hours of operation, scope of activities, major equipment, or the layout design of the facilities will require a further approval by the Board of Appeals.


3. The non-residential use of the facility is strictly limited to the petitioner.
4. Petitioner shall provide six (6) on-site parking spaces on the property. They shall be shown on a site plan to be reviewed and approved by the Technical Staff of the Maryland-National Capital Park and Planning Commission.
5. Petitioner shall submit a landscape plan to the Technical Staff for review and approval. Once approved, all elements and features detailed on this plan will be promptly implemented and thereafter will be properly, adequately, and continuously maintained by petitioner. Two copies of the approved site plan and landscape plan will be submitted to the Board for its files.
6. Petitioner shall ensure that the residential portion of the property is occupied continuously as a residence without any substantial gaps in occupancy.
7. All required permits and licenses incidental to petitioner's proposed operation within the facility shall be obtained and thereafter timely renewed.

The Board adopted the following Resolution:

BE IT RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition.

The foregoing Resolution was proposed by K. Lindsay Raufaste, and concurred in by Judith B. Heimann, Chairman, Max H. Novinsky, Howard Jenkins, Jr., and Helen R. Strang.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 10th day of November, 1988.


Irene H. Gurman
Clerk to the Board

NOTE: See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-months' period within which the right granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.