

87-327-X

#209

12/22/86

12/22/86

2/10/87

3/2/87

3/31/87

4/17/87

8/20/87

10/7/87

NW/cor. E. Joppa Rd. and Edgeview Rd.
(1102 E. Joppa Rd.)

9th Elec. Dist.

Special Exception - filing fee \$100.00 - Raphael Kahn

Hearing set for 2/10/87, at ~~10:30 a.m.~~ 3:30 p.m.

Advertising and Posting - \$73.75

Ordered by the Zoning Commissioner that the Petition for Special Exception for a Class B Office building in an R.O. Zone is DENIED.

Appeal filed by Petitioner/Appellant, Raphael Kahn, to County Board of Appeals - filing fee \$115.00

Hearing set for 7/7/87, at 10:00 a.m., before County Board of Appeals.

Ordered by the County Board of Appeals that the decision of the Zoning Commissioner dated 3/2/87 is REVERSED and ORDERED that the Petition for Special Exception for a Class B Office Building in an R.O. Zone, in accordance with and subject to, and as limited by EXHIBIT A is GRANTED subject to the terms of the Agreement and Declaration of Covenants dated 6/22/87 (EXHIBIT B) and specifically subject to the limitations and restrictions as set forth therein.

Ordered by the County Board of Appeals that the date of "February 12 to April 15 each year..." contained in Board's Order of 8/20/87 shall be changed to read "February 1 to April 15 each year..." and all other provisions of 8/20/87 Order remain in effect.

A circular stamp with a date. The text "OCT 03 1987" is printed in the center, followed by a small black triangle pointing to the right. The stamp is surrounded by a circular border with tick marks, and there are some faint, illegible markings around the perimeter.

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REVISION TO THE OPINION AND ORDER

"Notwithstanding provisions of this paragraph to the contrary, as to any accounting practice that may be conducted on the property from February 12 to April 15 each year,...." The date of February 12 is a typographical mistake and should in fact read February 1 to April 15 each year.

This revision does not change the effective date of August 20, 1987,
as it is not substantive in nature.

Thomas Hollyn

Robert B. Spencer

Harry E. Buckmaster

Harry E. Buchheister, Jr.

IN THE MATTER OF	:	BEFORE
THE PETITION FOR	:	
SPECIAL EXCEPTION FOR THE	:	COUNTY BOARD OF APPEALS
PROPERTY LOCATED AT THE	:	
NORTHWEST CORNER OF	:	OF
EAST JOPPA ROAD AND	:	
EDGEVIEW ROAD	:	BALTIMORE COUNTY
(1102 EAST JOPPA ROAD)	:	
9th ELECTION DISTRICT	:	NO. 87-327-X
RAPHAEL KAHN, PETITIONER	:	

: : : : : : : : : :

OPINION

The above captioned matter came on for hearing on an appeal from the decision of the Zoning Commissioner dated March 2, 1987 denying the Petition for Special Exception for a Class B Office Building in a R.O. Zone.

The Plat accompanying the Petition for Special Exception for a Class B Office Building in the R.O. zone indicates that the Petitioner has requested that he be allowed to add to the existing office facility, a two-story office building addition and connecting corridor comprising a total of 4,247 square feet all in accordance with the aforesaid plan.

The Zoning Commissioner denied the Petition on the basis that he felt that the proposed addition did not meet the standards of Section 502.1 of the Baltimore County Zoning Regulations, and that the project is not compatible with the surrounding community and too large for the lot while acknowledging that the bulk regulations have been met.

The Appellant submitted to the Board a revised plat which indicates that the Petitioner has modified his Petition for Special Exception by substantially reducing the size of the

Class B office building addition and the Petitioner requests that we approve the Special Exception for a one-story and corridor Class B Office Building addition consisting of 2,119 square feet all in accordance with the plan submitted. The Appellant also submitted a planting plan, and both plans were submitted as EXHIBIT A.

The Petitioner further submitted an Agreement and Declaration of Covenants dated June 22, 1987, executed by the 1102 East Joppa Road Partnership, of which the Appellant is a partner, as the Owner and Developer of the property, and executed by Douglas Biser, Wenceslaus J. Valis, Les Bley, Robert Stefan, Michael Gallagher, Neighbors, and the Towson Estates Association, Inc., the Association, who individually and collectively comprise the protestants of the plan submitted with the Petition.

The Protestants were present, and were represented by counsel, and they indicated for the record that due to the fact that the request had been substantially reduced in size and that the structure would be limited to a single story office and corridor addition in accordance with the exhibits submitted that subject to the terms of the Agreement; that they supported the revised plan for Class B Office Building and felt that it met the requirements of the zoning regulations; and that it would be compatible with the surrounding area; and they urged that the Board grant the Petition for Special Exception in accordance with

and subject to, and as limited by the plans submitted.

Upon reviewing the Exhibits submitted and having heard the statements made by counsel for the Petitioner and the Protestants, the Board is persuaded that the Petitioner has met the standards of Section 502.1 of the Baltimore County Zoning Regulations, and that the further development of the site in accordance with and subject to and as limited by the exhibits submitted will be compatible with the surrounding area.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 20th day of August, 1987, by the County Board of Appeals, ORDERED that the decision of the Zoning Commissioner dated March 2, 1987 is REVERSED: and

IT IS FURTHER ORDERED that the Petition for Special Exception for a Class B Office Building in a R.O. zone in accordance with and subject to, and as limited by EXHIBIT A is hereby GRANTED subject to the terms of the Agreement and Declaration of Covenants dated June 22, 1987 (EXHIBIT B) and specifically subject to the following limitations and restrictions:

1. The development of the property shall be limited to a single story Class B Office Building which shall be constructed in accordance with all governmental requirements, and as shown on the plats herein marked as EXHIBIT A as ultimately approved by

the approving authorities.

2. Subject to the terms of the Agreement and Declaration of Covenants, the hours of operation shall be as follows: daily, Monday through Friday, 7:00 a.m. through and including 6:30 p.m.: Saturday hours from 8:00 a.m. through 12:00 noon: and there shall be no Sunday hours. It is hereby understood and agreed to by all parties herein named, that the aforesaid hours of operation shall not be deemed to have been violated by an occasional emergency visit to the proposed offices beyond or before the aforesaid hours of operation. Notwithstanding provisions of this paragraph to the contrary, as to any accounting practice that may be conducted on the property from February 12 to April 15 each year, the hours shall be Monday through Friday 7:00 a.m. to 9:00 p.m. and Saturday 8:00 to 5:00 p.m. with no Sunday hours. The limitation as to hours of operation shall expire upon the passing of twenty (20) years from the date of this Order.

3. That all leases executed between Owner and Tenants shall require that employees of Tenant park their vehicles in spaces provided on the Property and said Tenants shall be furnished with a copy of the Agreement and Declaration of Covenants (EXHIBIT B) and be bound by the terms thereof.

4. That if the proposed improvements to the Property include a basement under the first level, said basement shall not be used for purposes other than utilities and storage.

5. That existing trees outside the building envelope and parking areas shall be retained except as to those that may be removed with regard to the location of the proposed improvements as well as those requiring removal based on requirements of any governmental agency, and the shall be site landscaped and maintained in accordance with EXHIBIT A, the Planting Plan, prepared by W. Duvall and Associates, dated April 2, 1987.

6. The Neighbors and Association shall cooperate with the Owner and Developer to effectuate the terms of this Order, and the Agreement and Declaration including the Exhibits attached thereto, and to secure a modification of the CRG Plan by the County Review Group in accordance with this Agreement and Declaration of Covenants and EXHIBITS A and B attached thereto, and to further cooperate with the Owner and Developer in obtaining all required approvals and permits required to construct, install and maintain the improvements and landscaping as shown on the attached Exhibits. Said cooperation to include executing any documents submitted to them in this regard, said documents and exhibits to be in compliance with the Agreement and Declaration and this Order.

7. The Neighbors herein identified, the Association, the Owner and Developer, and their respective successors and assigns are the parties affected by this Agreement and Declaration and they or any of them, their respective successors, heirs, personal

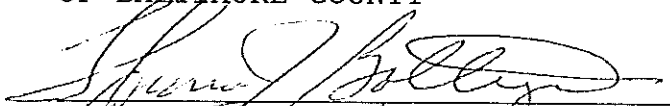
representatives or assigns as the case may be, from time to time shall be entitled to the protection of and to enforce the terms hereof. Upon written notice of violation or violations of this Agreement and Declaration by Baltimore County, the Neighbors herein defined and/or the Association, the Owner and Developer, their successors and assigns, shall promptly take action and diligently pursue such action as is necessary to cure said violation. In the event that the violation or violations are not cured within thirty (30) days, the Neighbors as herein defined and/or the Association may seek specific performance of this Agreement and if they shall prevail, they shall be reimbursed for reasonable counsel fees as determined by the Court. However, in the event that the Owner and/or Developer promptly initiates action to cure said violations and diligently pursues said cure but is unable to cure same within said thirty (30) day period, the Neighbors as defined herein and the Association shall not be entitled to an action for Specific Performance against the Owner/Developer. In the event that the Owner/Developer, its successors and assigns, prevail in any such action then they shall be reimbursed by each of the Neighbors and the Association, their respective, their respective successors and assigns, for reasonable counsel fees as determined by the Court.

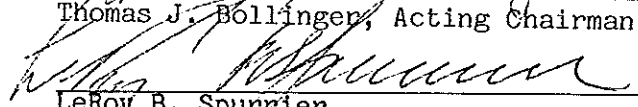
8. The Special Exception shall be utilized within five (5) years of the date of this Order.

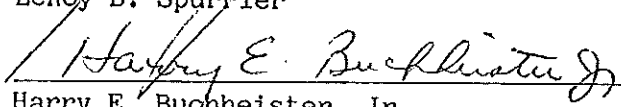
9. The foregoing conditions shall exist by reason of this Order separate and apart from the Agreement and Declaration of Covenants of June 22, 1987, and may only be modified by subsequent proceedings herein, including, and no less than an advertised and posted special hearing to modify, amend, or rescind in whole or in part.

Any appeal from this decision must be in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Thomas J. Bollinger, Acting Chairman


LeRoy B. Spurrier


Harry E. Buchheister, Jr.

IN RE: PETITION SPECIAL EXCEPTION	*	BEFORE THE
NW/corner of East Joppa Road	*	ZONING COMMISSIONER
and Edgeview Road (1102 East	*	OF BALTIMORE COUNTY
Joppa Road) - 9th Election	*	
District	*	
Raphael Kahn,	*	Case No. 87-327-X
Petitioner	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special exception for a Class B office building in an R-O Zone, as more specifically described on Petitioner's Exhibit 1.

The Petitioner appeared and testified and was represented by Counsel. Testifying on behalf of the Petitioner were Will Duvall, a registered civil engineer; Charles Kropp, an expert designer; and Glen Cook, a traffic engineer. Many residents of Towson Estates appeared in opposition and were represented by Counsel. Testifying on behalf of the Protestants were Fred Klaus, an expert realtor and real estate appraiser; Wenceslaus Valas, an adjoining property owner; Michael Gallagher and Robert Stefan, residents of the community; and Douglas Biser, President of the Towson Estates Association.

Testimony indicated that the subject property, located at the corner of Edgeview and Joppa Roads, is zoned R-O and contains 0.67 acres. It is improved with a Class A office building containing 1,872 square feet of office space, which was converted from an existing dwelling. The Petitioner has owned and utilized it for approximately two years. He now proposes to construct a 42' x 45', approximately 3,800 square feet, two-story addition 30 feet from the rear of the existing building. A 16' x 30' common waiting room area will connect the addition to the existing building and provide access to both wings. A common plant will heat both.

Mr. Kropp and Mr. Duvall testified that, in their opinion, the proposed office building satisfies all of the conditions delineated in Section 502.1, Baltimore County Zoning Regulations (BCZR), and that it is definitely highly compatible with the present or prospective uses of nearby residential properties. Mr. Cook testified that, in his opinion, the proposed combined offices would not create a traffic hazard nor contribute to any traffic congestion in the adjacent Towson Estates community.

The Protestants argued equally as vehemently that the proposed addition is not highly compatible, that the proposed combined office building is not one building but two, and that traffic problems furthering an already volatile situation will result.

The Petitioner seeks relief from Section 203.3.B.2, BCZR, pursuant to Section 502.1.

Section 203.2, BCZR, directs attention to the compatibility of the proposed use to the present or prospective uses of nearby residential properties. It also directs attention when defining such compatibility to other nearby uses, i.e., adjacent commercial activity, heavy commercial activity, or other similar factors. In fact, although the instant site is surrounded by residentially-zoned land, there are adjacent commercial and office uses which impact on any decision to grant or deny the special exception requested herein. In addition, Section 502.1.g, BCZR, requires that the proposed use not be inconsistent with the purposes of the property's zoning classification nor be inconsistent with the spirit and intent of the BCZR. A finding that the conditions required by Section 502.1.g have been met necessarily implies a finding that the proposed use is a compatible one, as required by Section 203.2, BCZR. People's Counsel v. Webster, 65 Md. 694 (1986).

The proposed use is in fact inconsistent with the purposes of the R-0 Zone and inconsistent with the spirit and intent of the BCZR, and therefore,

is not compatible with surrounding residential properties. It also, in the Zoning Commissioner's opinion, would create congestion in the roads, streets, or alleys of the residential community adjacent to the instant site. For these reasons, the special exception requested herein should not be granted.

The BCZR does not define "compatibility" and neither does the Development Regulations, Section 22-104, Baltimore County Code (BCC), which requires that the County Review Group (CRG) assure that the development of property in an R-O Zone "...be designed to achieve compatibility of the proposed development with the surrounding uses..." Section 22-104(b)(4), BCC, requires that the use or development be in "accordance" with the purposes of the zoning and in "accordance" with the BCZR.

In the instant case, the CRG approved the proposed development on December 17, 1986, subject to approval of the special exception filed herein by the Zoning Commissioner. Counsel for the Protestants argued that the Zoning Commissioner would not be bound by the CRG's approval and expressed finding of compatibility and that he should find independently whether compatibility exists. In fact, there is no definitional guidance provided to the CRG with regard to its findings. The BCZR provides the Zoning Commissioner with the authority to grant special exceptions and variances and delineates certain precepts and conditions which bind the Zoning Commissioner when making such a determination. In fact, these precepts and conditions, as expressed specifically in Sections 502 and 502.1.b, BCZR, implies a definition of "compatibility", whereas no definition can be found anywhere in the law which created the CRG. However, interpreting Section 502 and specifically Section 502.1.g in conjunction with Section 22-104 underscores the conflict which may result and which has resulted here. A conflict is possible when one disagrees with a finding of the other, which is unfair to both the Petitioner and the surrounding community.

Section 502.1.g requires that the requested special exception be consistent with the purposes of the property's zoning classification and with the spirit and intent of the BCZR. The R-O classification was created as a restricted transition zone between the commercially-zoned property and the residential sections which surround it. Section 203.1, BCZR, and Section 203.2 clearly explain the intent, objectives, and purpose of the R-O Zone, which includes the construction of small Class B office buildings in predominately residential areas. To determine whether Section 502.1.g has been satisfied, and therefore, whether the issue of "compatibility" is resolved, the following considerations are examined:

1. Existing and proposed uses on surrounding properties.
2. Site planning factors, i.e.,
 - a. size and scale of buildings, i.e., bulk, length, width, and height - see Section 101-Definitions, BCZR, Office building, Class B;
 - b. proposed grading of site;
 - c. access to parking lot and building, i.e., ingress and egress as they impact on adjacent residential properties;
 - d. amenity open space and landscaping, i.e., appropriate screening from adjacent residential properties - see Section 101-Definitions, Office building, Class B;
 - e. architectural style and types of materials used as they relate to adjacent residential properties; and
 - f. location and size of proposed signage.
3. Whether variances to floor area ratio, amenity open space, height, and parking are requested.
4. Whether additional parking is needed on residentially-zoned property adjacent to the R-O zoned property, pursuant to Section 409.4, BCZR, perhaps indicating that the proposed building is too large for the site.

For the most part, these considerations relate to the appearance of the building as perceived by those living adjacent or contiguous to the building itself. Grading, landscaping, scale, and bulk are inter-related and function together. A building such as the one proposed here, which has been designed to make use of the grades in order to give the appearance of a lower building, is more likely to be viewed as compatible. The entrance location and parking lot are "activity centers", and if located adjacent to or closer to the residential properties than the building itself, then perhaps compatibility would not exist. The existence of compatibility is not determined by the finding that all factors are present; rather, it is an overall finding that a spirit and intent exists to have a small office building blend in with the surrounding residences. No such finding can be conclusive; rather, a certain amount of subjectivity is required. Finally, the intended use of the proposed office building by the developer must also be factored into this equation.

The site consists of two-thirds of an acre with an existing Class A office building. The engineer and designer propose to separate the addition with a 16' x 28' common corridor. The Petitioner argued that this corridor satisfies the requirement that only one principal building exist on the site. Indeed, it has been the policy of the Zoning Commissioner to permit connections of separate units in order to assure their compliance with the definition of a "building", as defined by Section 101, i.e., "[a] structure enclosed within exterior walls or firewalls..." In Akers v. Mayor and City Council of Balto., 20 A.2d 181 (1941), the Court of Appeals reviewed City approval of six garden apartment houses "...2 stories in height, five of them extended irregularly in units with the appearance of so many individual dwellings...Those units were planned to overlap and connect at the corners, leaving them separate fronts, sides and backs, except for the corner connections, where the foundation walls and roofs are to be continuous. They would have no

access from one to another..." The purpose of these "connections" was to avoid the setbacks otherwise required if separate buildings were constructed on the approximately eight acres to be developed. The Court determined that the connections were enough to consider the six apartment houses to be one "building". The determination was based on the intended singleness in use and operation. There was to be no leasing of any of the six units, only of the apartments within each, and they were to be owned and maintained by a single owner as six units, with conveniences supplied to all by him "...exactly as with apartment houses of the more familiar, unbroken lines..." Akers, supra. In Feinberg v. The Southland Corp., 301 A.2d 6 (1973), the Court of Appeals found that the definition of the word "building" in the BCZR and the use of that word in other definitions in the BCZR was sufficiently broad enough to include a combination of units and did so after examination of the intended use. As in Akers, supra, the Court found a "singleness of use" so as to conclude that the proposed structure was a "building" and not two "buildings". See also Shapiro v. Balto, 186 A.2d 605 (1962).

The policy of the Zoning Commissioner, as described above and approved by the Court of Appeals in Feinberg, supra, is to permit "connections" under the circumstances described. It is concluded that the connection here, although large, satisfies these precepts. However, it is because the building is to be treated as one that the special exception should not be granted. Although this may cause the Petitioner to find himself in a proverbial catch-22 (if considered two buildings, it would not be permitted as of law), he elected, for whatever reason, not to literally attach the addition to the existing Class A office building nor did he elect to raze the existing building and construct a new one. The configuration proposed is not compatible with the surrounding residential community. It is too large and too widely spaced to fit on this particular lot. Even though no variances are required, it is of interest to

note the engineer's answer to the question of how much more office space would be available on this lot without the need for variances. The response was "approximately 500 square feet". In other words, the Petitioner is proposing to utilize every available square foot of this lot. It is certainly not illegal to use one's property as he wishes when no law is being abridged, but on this lot, in this zone, that catch-22 referred to will cause the Petitioner to fail in the herein special exception request. Notwithstanding that all bulk regulations are satisfied without variances, this office building is not small. It is not the R-0 classification's intent to "accommodate a substantial part of the demand for office space..." Rather, it is intended to provide a buffer between the nearby residential and commercial uses. It is, as described above, a transition zone to afford some protection from the ever-encroaching commercialization creeping outward from our business centers. The proposed expansion is not compatible with the surrounding residences. Although there is an office building on the opposite corner and a shopping center across the street, there is a well-defined, maintained, and long-standing residential community contiguous and adjacent to this lot. The size and scale of the proposed office building, the access available to it, and the concomitant impact on the residential community which has very narrow streets and no sidewalks, mitigate against a finding of compatibility. Section 502.1.g has not been satisfied.

It is clear that the BCZR permits the use requested by the Petitioner in an R-0 Zone by special exception. It is equally clear that the proposed use would be detrimental to the primary uses in the vicinity. It must be determined whether the conditions as delineated in Section 502.1 are satisfied by the Petitioner.

After reviewing all of the testimony and evidence presented, it appears that the special exception should not be granted.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1. In fact, the Petitioner has not shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have an adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

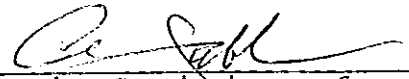
The proposed use will be detrimental to the health, safety, or general welfare of the locality and will tend to create congestion in roads, streets, or alleys therein. It will be inconsistent with the purposes of the property's zoning classification and inconsistent with the spirit and intent of the BCZR.

The site is not large, and the proposed addition will make it appear much smaller. Although the mandated number of parking spaces will be provided, the configuration and location of the building will create additional traffic congestion and make a poor parking situation worse. Testimony and evidence underscored the parking problems caused by vehicular parking on the narrow streets of the community due to the office building located opposite the instant site. Clearly, the proposed building, if approved, would add to the congestion. The location of the lot as well as the lot size causes this problem to multiply out of proportion. Access cannot be gained directly from eastbound East Joppa Road. Vehicles attempting to enter the instant site must either go down to the light at the old Bendix plant and make a U-turn or make a left onto Center Road, which is to the west of the instant site, and park on the street, or they must go down to Edgemont Road, make a right to Edgeview

Road, make another right and come up to Joppa Road, all within the Towson Estates community, and park on the street or make a left and a right onto the site. See Protestants' Exhibit 1. While sounding complicated, the existence of the median strip on Joppa Road, which prevents direct access for eastbound traffic, will actually lend itself to the use of business traffic on the local narrow streets. The streets are not wide enough to accommodate such traffic; they were not constructed to do so. Traffic will not utilize U-turns, which is dependent on a traffic light and westbound traffic; rather, it will utilize easy left and right turns without obstructions and will utilize the streets for parking notwithstanding the existence of parking spaces on the site. The proposed Class B office building in this zone and in this location will create traffic problems not otherwise created in other locations within an R-O Zone.

Pursuant to the advertisement, posting of property, and public hearing held, and it appearing that by reason of the requirements of Section 502.1 not having been met and the health, safety, and general welfare of the community being adversely affected, the special exception should not be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 2nd day of March, 1987, that the Petition for Special Exception for a Class B office building in an R-O Zone be and is hereby DENIED.



Zoning Commissioner of
Baltimore County

AJ/srl

cc: Julius W. Lichter, Esquire
Newton A. Williams, Esquire
Mr. Douglas W. Biser
People's Counsel