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IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
SW/Corner Joppa Road and Sixth Avenue		
(3106 Sixth Avenue)	*	ZONING COMMISSIONER
11 th Election District		
6 th Councilmanic District	*	OF BALTIMORE COUNTY
 Jorge Escalante	*	 Case No. 00-184-X
Petitioner	*	

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by the owner of the subject property, Jorge Escalante, through his attorney, Michael P. Tanczyn, Esquire. The Petitioner requests a special exception for a professional office (real estate broker) on the subject property, pursuant to Section 1B01.1.C.12 of the Baltimore County Zoning Regulations (B.C.Z.R.) and Policy Manual. The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of this request were Jorge Escalante, property owner, Herbert Malmud, Registered Land Surveyor who prepared the site plan for this property, and Michael P. Tanczyn, Esquire, attorney for the Petitioner. Appearing as Protestants in the matter were L. W. Eiring, David L. McCorkle, and John and Marilyn Ryan, nearby residents of the area, and Tim Caslin, who appeared on behalf of the Carney Improvement Association, Inc.

Testimony and evidence offered revealed that the subject property is located on the southwest corner of the intersection of Joppa Road and Sixth Avenue in the subdivision of Thornewood Park in Carney. The property contains a gross area of 0.22 acres, more or less, zoned D.R.5.5, and is improved with a brick and frame building which has historically been used as a dwelling. Although the property is zoned D.R.5.5, it is on the fringe of a commercial area. The

property immediately adjacent to the rear of this site, known as 3117 Joppa Road, is zoned R.O. and is improved with a 2½ story frame structure which is used as a real estate office. Across Joppa Road from the subject site are several properties, zoned R.O., featuring buildings that have been converted from single family homes to office uses. Across Sixth Avenue from the subject site is the Carney Elementary School and the major intersection of Harford Road and Joppa Road is located nearby. That intersection and the properties adjacent thereto have been commercially developed. Much of that area is zoned B.L.

Mr. Escalante purchased the subject property approximately two years ago and presently resides thereon. At the time of his purchase, the property was deteriorated and in dilapidated condition. Since his purchase of the property, Mr. Escalante has significantly upgraded the property. He has replaced many of the windows, installed a new kitchen, cleaned up the exterior of the building and yard area, and generally made significant improvements to the site. The rear of the site has also been improved with an asphalt parking area.

Further testimony revealed that Mr. Escalante is a licensed Real Estate Broker. Although previously working for other real estate companies, he is now self-employed through his own company known as Real Estate Experts, Inc. The company specializes in the acquisition of properties subject to foreclosure.

The Petitioner has filed the instant request seeking approval to open a real estate broker's office in his dwelling, pursuant to Section 1B01.1.C.12 of the B.C.Z.R. That Section permits, by special exception:

"Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons, providing that any such office or studio is established within the same building as that serving as the professional person's primary residence; does not occupy more than 25% of the total floor area of such residence; and does not involve the employment of more than one non-resident professional associate, nor two other non-resident employees."

The undisputed testimony and evidence presented at the hearing was persuasive that Mr. Escalante meets many of the requirements of the aforementioned Section. That is, I find that

the subject building does serve as his primary residence, that the proposed office area will not occupy more than 25% of the total floor area of the building, and that Mr. Escalante does not propose the employment of more than one non-resident professional associate, or two other non-resident employees.

Additionally, testimony and evidence presented was sufficient to satisfy the standards set forth in Section 502.1 of the B.C.Z.R. That Section sets out the criteria which must be met in order for special exception relief to be granted. In this case, I would find that the Petitioner meets those requirements and that the use of the subject property as a dwelling with a professional office would not be detrimental to the health, safety or general welfare of the locale. Indeed, this property, given its location, is an appropriate site for a professional person to establish an office therein. Similar uses abut the subject property, or are nearby. Moreover, this property is located near a commercial center. It is a corner lot with frontage on a major street (Joppa Road). For all of these reasons, a finding that the use of the property as a dwelling with a professional office complies with the standards set out in Section 502.1 of the B.C.Z.R. is warranted. In fact, a rezoning of the property to allow an office use may well be appropriate.

Irrespective of these findings, however, the Petitioner's request cannot be granted. The application fails in this instance because Mr. Escalante's occupation as a real estate broker is not considered a professional person, within the context of the regulation. In this regard, Counsel for the Petitioner submitted a series of documents and exhibits in an effort to establish that a real estate broker is a professional person. Selected portions of the Business and Occupations Article of the Annotated Code of Maryland (Title 17) were submitted. These Sections establish that real estate brokers must be licensed in the State of Maryland, are regulated by the Board of Realtors, are subject to education requirements, etc. Nonetheless, they are not considered professionals. I explain.

The identical issue presented herein was previously considered by the Office of the Zoning Commissioner in prior Case No. 85-78-X. That case concerned the application of Richard A. Dalla Tezza for special exception relief for a real estate broker's office in his residence. In a written opinion authored by then Zoning Commissioner Arnold Jablon, the application was denied.

Then Commissioner Jablon cited a series of cases relating to other occupations (i.e., chemist, rabbi, industrial designer, etc.) which related to this issue. Additionally, Commissioner Jablon cited Colker v. D.C. Board of Zoning Adjustment, (474 A2d 820 (1983)) where the Court faced similar language found within the B.C.Z.R. In that case, the Court determined that Mr. Colker, a Certified Public Accountant, was not a professional person.

Commissioner Jablon's opinion, although not binding on this Zoning Commissioner, is instructive. It discusses the treatment of language similar to that contained within the B.C.Z.R. by Courts throughout the United States. Moreover, this Zoning Commissioner has researched this issue further and identified a number of cases where the precise occupation at issue (i.e., real estate broker) was considered. In Jones v. Robinson, 180 P2d 929 (1947), a California appellate court rejected the assertion that a real estate broker was a professional person under the applicable zoning regulation. Although acknowledging that a real estate broker needed a license, was required to be of good moral character, must study and learn real estate law, needed to pass an examination in order to be licensed and was required to pay a fee for such licensing, the Court concluded that a real estate broker is not a professional person. Many of these same requirements are set out in the Business and Occupations Article of the Annotated Code of Maryland. A similar result was reached in Cummer v. Narbeth Borough, Board of Adjustment, 59 PA, D & C (1947). In that case, the Court, although acknowledging that a real estate broker has many of the attributes of a professional person, observed that such occupation has not met the status of a professional person under zoning laws. See also Riverside v. Kuhn, 82 NE 2d, 500 (1948), Seaman v. Zoning Board of Appeals, 165 NE 2d 97 (1960), Hackett v. Gale, 179 A2d 451 (1962) ("a real estate broker is a business, not a profession"), Katman v. Long Beach Township, 231 A2d 852 (1961), People v. Cully Realty, Inc., 442 NYS2d 847 (1981), and Ridley Township v. Pronesti, 244 A2d 7 (1968).

All of the above-cited cases reached the same conclusion, that a real estate broker is not a professional person within the zoning scheme. My research found no cases with a contrary finding.

Based on the foregoing, I find that a real estate broker is not a professional person under the B.C.Z.R. Thus, the Petition for Special Exception must be denied. The Petitioner must either seek a rezoning of his property, which may well be warranted, or a change to the governing regulation in order to obtain the relief he seeks.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 4th day of January, 2000 that the Petition for Special Exception to approve as a professional office, the use of the subject property for a real estate broker's office, pursuant to Section 1B01.1.C.12 of the Baltimore County Zoning Regulations (B.C.Z.R.) and Policy Manual, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

The Petitioner shall have thirty (30) days from the date of this Order to file an appeal of this decision.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

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