

VELI DEMIREL,

PETITIONER

* BEFORE THE ZONING BOARD

* OF HOWARD COUNTY

* ZONING BOARD CASE NO. 1077M

* * * * *

DECISION AND ORDER

On October 21, 2009 and February 16, 2010, the Zoning Board of Howard County, Maryland considered the petition of Veli Demirel to amend the Zoning Map of Howard County so as to reclassify from the R-20 (Residential Single) District to the OT (Office Transition) District, 1.52 acres of land located on the south side of Frederick Road approximately 200 feet west of the intersection with Centennial Lane, and identified as Tax Map 24, Grid 1, Parcels 62 and 63, 10105 and 10109 Frederick Road, in the Second Election District of Howard County.

The notice of hearing was advertised, the subject property was posted with notice of the hearing, and the adjoining property owners were mailed notice of the hearing as evidenced by the certificates of posting, advertising and mailing to adjoining property owners which were entered into the record. Pursuant to the Zoning Board's Rules of Procedures, all of the reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning, and the Planning Board's recommendation, were entered or incorporated into the record of the hearing. Both the Department of Planning and Zoning and the Planning Board recommended approval of the petition.

The Petitioner was represented by Andrew H. Robinson, Esq. Seven residents appeared in opposition to the petition at the October 21, 2009 hearing. No residents appeared at the February 16, 2010 hearing. None of the residents were represented by counsel.

After careful evaluation of all the information presented, the Zoning Board of Howard County makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Petitioner proposes rezoning of the 1.52 acre subject property to the OT District. Because the OT District is a floating zone, the Petitioner presented testimony and evidence relating to the criteria in Section 117.3.G of the Howard County Zoning Regulations, rather than to the change-mistake rule applicable to Euclidean rezoning cases.

2. As required by the OT District requirements, the Petitioner submitted a preliminary development plan with the petition showing the proposed development of the subject property: two, two-story professional office buildings, each of which had a footprint of 3,000 square feet, 6,000 total square feet, and hours of operation of 6:00 a.m. to 10:00 p.m., seven days per week. In response to comments of the Department of Planning and Zoning and Planning Board, the Petitioner amended the plan to limit weekend hours to 6:00 p.m. The Petitioner also explained that existing landscaping had been inadvertently omitted from the plan submitted in response to Department of Planning and Zoning comments, and that the plan had been revised to reflect the retention of such landscaping. A revised Preliminary Development Plan ("PDP") was submitted as Petitioner's Exhibit 1.

3. Mr. Jeff Henneman, Registered Architect, testified on behalf of the Petitioner. Mr. Henneman explained that the buildings were designed to be sixty feet wide in order to give them a linear orientation with the street and fifty feet deep and two stories in height in order to emulate the architecture and style of the residences in area. Mr. Henneman does not believe the proposal will have an adverse visual impact on the surrounding community. Mr. Henneman

testified that the PDP furthers the design recommendations of the Route 40 Enhancement Study, the purposes of the OT District, and does not alter the essential character of the community.

4. Mr. Henneman acknowledged that homes in the Fairways subdivision (south of Frederick Road) are approximately 2,500 square feet, that surrounding ranchers on Frederick Road are approximately 1,500 square feet, and that the structures proposed by the Petitioner are more than twice the size of any of the residences in the area. Mr. Henneman stated that he believes the proposed structures are proportionate in the sense that they provide a transition to the commercial uses in the surrounding area.

5. Mr. Henneman testified that the proposed buildings are 34 feet high, with a mean height of 30 feet. The buildings will accommodate four office suites, each with approximately 1,500 square feet. Mr. Henneman stated that the proposed buildings are compatible with the general character of the neighboring residential structures.

6. Mr. Micky Cornelius, Traffic Engineer, testified on behalf of the Petitioner. Mr. Cornelius conducted a review of the plan to identify potential traffic generation and to evaluate the surrounding road system, particularly whether safe access can be provided to the proposed development. Mr. Cornelius stated that, under the PDP, there will be a single access to the property at Frederick Road. Mr. Cornelius testified that 12,000 square feet of general office space would generate 19 morning peak hour trips and 18 afternoon peak hour trips. According to Mr. Cornelius, a speed study was conducted for a 24 hour period along Frederick Road adjacent to the property, and the 85% design speed was calculated at 35 miles per hour in both the east and west bound direction, which is the posted speed limit. According to Mr. Cornelius, under the Howard County Design Manual, acceleration and deceleration lanes are not required

for the project, although the County has the authority to require them if they deem them to be appropriate.

7. Mr. Charles Crovo, Sr., Registered Engineer and Land Surveyor, testified on behalf of the Petitioner. Mr. Crovo prepared the PDP and a boundary survey on the subject property. Mr. Crovo indicated that several changes had been made to the plan. The storm water management facility was originally situated on adjacent property Lot 112, which is also owned by the Petitioner. The County asked that it be relocated onto the subject property and the storm water management facility is now located on Parcel 62. Existing vegetation had also been inadvertently omitted from the plan originally submitted to the County. According to Mr. Crovo, the PDP was amended to include all existing vegetation, none of which will be removed.

8. Mr. Crovo stated that ingress and egress to the subject property would be provided opposite the entrance to Centennial Place on Frederick Road. The PDP indicates a line of site easement along Lot 112. No obstructions can be placed in the line of site easement. According to Mr. Crovo, a site distance analysis was done and the PDP meets the criteria for intersection spacing and stopping distance at the 85% speed, which is 35 miles per hour. Mr. Crovo opined that the revised PDP provides safe access to and from Frederick Road.

9. Mr. Crovo stated that the house closest to the subject property in the Fairways subdivision, which is south of the subject property, is on Lot 30, approximately 165 feet from the proposed project. Other homes in the Fairways subdivision are more than 200 feet from the project. Mr. Crovo testified that there is a twenty foot drop in elevation between the subject property and the residential properties in the Fairways subdivision.

10. Mr. Crovo testified that 42 parking spaces will be provided, two more than the 40 spaces required. The PDP also provides two handicap spaces per building, although only one

space per building is required. The buildings are positioned so as to be just beyond the 20 foot setback restriction on Frederick Road and away from the residences to the south. According to Mr. Crovo, the site complies with all applicable setbacks in the OT District.

11. Mr. Crovo stated that 44% of the site is covered by impervious surface. Lighting for the project is provided by ten light poles. All lighting would have to be shielded and pointed downward in accordance with County requirements. The closest distance from a light pole to a residential structure south of the property is 170 feet, and the distance from a light pole to the residential structure to the west is approximately 75 feet. Mr. Crovo stated that a dumpster pad is shown on the PDP adjacent to the storm water management facility and away from the parking facilities. The dumpster pad is contained within a barrier and is surrounded by landscaping. Mr. Crovo testified that existing vegetation along the southern border of the subject property will remain intact.

12. Mr. Crovo testified that, although the PDP indicates the presence of a storm water management pond, given a change in County requirements, a bio retention facility will be constructed. More landscaping will be provided and there will be less impervious surface, probably through the use of pavers, to intercept and discharge water from the subject property. Mr. Crovo also indicated that other measures could be used along the perimeter to accept and discharge water.

13. The Planning Board recommended a Type E buffer on the southern border of the subject property. Mr. Crovo testified that existing vegetation – evergreen trees – would more than adequately meet the requirements of the Landscape Manual and will adequately buffer the residences to the south from the proposed office uses.

14. Veli Demirel, Petitioner, testified in support of the petition. He stated that in 2001, he planted approximately 350 Leyland Cypress trees along the southern border of the subject property. Approximately 40 of those trees have since died. According to Mr. Demirel, children used to pass through the subject property to and from Globe Drive. The trees are currently 12-17 feet in height. Mr. Demirel stated that one would have to cut through the trees in order to pass through them.

15. Ms. Bonnie Miller testified on behalf of the Petitioner. Ms. Miller stated that, several years ago, Mr. Demirel hired Auction Brokers, for whom she works, to auction off the subject property when he was not able to sell it on his own. She indicated that there was a lot of interest in the auction, but that no one wanted to buy the property for residential purposes. Ms. Miller stated that she knows Mr. Demirel and that if the proposed rezoning is approved, the office buildings will be an asset to the community. Ms. Miller stated that she does not believe the subject property is suitable for residential purposes. Ms. Miller acknowledged on cross-examination that she is not a licensed realtor.

16. Six vicinal residents, all of whom live on Globe Drive in the Fairways subdivision, testified in opposition to the petition, including Palaniyandi Devamanohoran, Feng Chen, Jieying Qian, Pailin Wang, Paul Hess, and Andrea Friend. The residents' testimony was based on several factors including that the proposed structures are incompatible in scale with residential structures in the vicinity. The residents testified that that the proposed office buildings are far larger than any of the residences in the area. Several of the residents also pointed out that, given the elevated nature of the subject property over Globe Drive, the proposed structures will appear even more out of scale with residential structures in the area.

17. Several of the residents were concerned that Mr. Demirel had not stated with any specificity what types of businesses would be located in the proposed buildings, other than that the buildings are for general office use. The residents also voiced concern over the proposed hours, questioning why general office space needed to be open until 10:00 p.m. on weekdays and have Saturday and, particularly, Sunday hours. Another common concern of the residents was the adequacy of the existing buffer of trees on the subject property, the possibility that outside lighting for the buildings would be visible from their homes, and the potential for increased crime, noise, and traffic as a result of the proposed development.

18. At its November 4, 2009 work session, the Zoning Board voted in favor of asking the Petitioner to submit proposed amended plans for the proposed office buildings on the subject property showing the following changes: (1) one story and/or reduced height design for the buildings; (2) 5,000 square foot maximum floor area for the buildings; (3) a landscape "C" evergreen buffer for the P-3 perimeter area as shown on the original Zoning Map Amendment Plan to be located parallel to the existing double row of Leyland Cypress trees on the property; and (4) proposed hours of operation of 6:00 a.m. to 10:00 p.m. on weekdays and 7 a.m. to 6:00 p.m. on weekends. The Zoning Board informed the Petitioner that, should he decide not to file amended plans, the Board would reconvene its work session to consider the original plan.

19. In response to the Zoning Board's request, the Petitioner submitted Amended Preliminary Development Plan No. 1 depicting two, one-story office buildings, each containing a floor area of 5,000 square feet, and Amended Preliminary Development Plan No. 2 depicting two, two-story, 5,000 square feet office buildings (building footprint of 2,500 square feet each). Revised hours of operation and an increased evergreen landscaping buffer along the southern perimeter of the subject property were incorporated into both amended plans.

20. On February 16, 2010, the Zoning Board held a hearing on the proposed amended development plans. Pursuant to the Zoning Board's Rules of Procedures, the following additional documents were incorporated into the record: (1) a November 13, 2009 letter from the Zoning Board Chairperson to Mr. Robinson, advising Petitioner of the Zoning Board's request for amended development plans as set forth in Paragraph 10; (2) a January 7, 2009 letter from Robin Regner, Administrative Assistant to the Zoning Board, to all parties of record informing them of the February 16, 2010 public hearing to consider Petitioner's amended development plans; (3) a January 6, 2010 letter from the Zoning Board Chairperson to Marsha McLaughlin, Director of the Department of Planning & Zoning, asking for the Department's review of the amended development plans submitted by the Petitioner; and (4) a January 25, 2010 memo from Marsha McLaughlin advising the Zoning Board that the alternate plan proposals submitted by the Petitioner are in compliance with the Howard County Zoning Regulations. The Petitioner, Mr. Demirel, was present at the February 16, 2010 hearing, along with his counsel, Andrew H. Robinson, Esq. No one appeared in opposition.

21. At the February 16, 2010 hearing, Mr. Robinson presented Petitioner's amended plans and exhibits. Mr. Robinson explained that in Amended Preliminary Development Plan No. 1, parking is provided in the middle of the site and that no parking faces residential structures. Building No. 2 in Amended Preliminary Development Plan No. 1 has been rotated clockwise ninety degrees. According to Mr. Robinson, both amended plans depict 25 feet high buildings, an increased evergreen landscaping buffer along the southern perimeter of the subject property, and revised hours of operation of 6:00 a.m. to 10:00 p.m. on weekdays and 7:00 a.m. to 6:00 p.m. on weekends.

22. The Board finds that the Petitioner has not established convincing evidence as to several of the standards of Section 117.3G of the Zoning Regulations. The Board notes that it must find that the Petitioner has met all of the standards of Section 117.3G before it may grant a petition for an OT District. Each of the pertinent standards will be addressed.

23. The Petitioner must present evidence that the district will accomplish the purposes of the OT District. *See* Section 117.3G(1). The purpose of the OT District pursuant to Section 117.3A of the Zoning Regulations is to “allow low-impact office uses adjacent to areas of residential zoning ... that will provide a transition along the edges of residential areas impacted by nearby retail/employment areas or arterial highways carrying high volumes of traffic. The standards of this district should result in small-scale office buildings on attractively-designed sites that are compatible with neighboring residential uses.”

24. The evidence presented by the Petitioner is insufficient to convince the Board that rezoning to the OT District, with either two, one-story office building of 5,000 square feet, or two, two-story office buildings of 5,000 square feet, as alternatively proposed by the Petitioner, will result in “small-scale office buildings ... that are compatible with neighboring residential uses.” Section 117.3A. Mr. Henneman testified that homes in the Fairways subdivision (south of Frederick Road) are approximately 2,500 square feet and that the surrounding ranchers on Frederick Road are approximately 1,500 square feet. The proposed structures, at 5,000 square feet each, are twice the size of the homes in the Fairways subdivision. Moreover, the footprints of Petitioner’s proposed one-story buildings (5,000 square feet) are more than three times the size of the footprints of the surrounding ranchers on Frederick Road (1,500 square feet). Given the excessive size of the proposed buildings and the elevated nature of Frederick Road in relation to Globe Drive, the Board finds the proposed development plans, if approved, would result in

large-scale office buildings as opposed to small-scale office buildings. The Board further finds that Petitioner's proposed weekend hours of operation – 7:00 a.m. to 6:00 p.m. on both Saturdays and, particularly, Sundays – would be incompatible with the neighboring residential uses.

25. The Board finds that the Petitioner did present sufficient evidence for the Board to find that the site meets the requirements of Section 117.3B, in accordance with Section 117.3G2. Section 117.3B provides that “the OT district may be established at a particular location if ... [t]he site has frontage on and direct access to an arterial road ... [and] [t]he site abuts or is directly across a public street from ... [a] nonresidential zoning district that is zoned for commercial or employment uses, but not another OT district.” The subject property has frontage on and direct access to Frederick Road, a minor arterial road, and is directly across the street from Centennial Place, which is zoned and used for commercial/retail uses.

26. The Board also finds that “[a]dequate sight distance and safe access can be provided at proposed points of access to the site,” as required by Section 117.3G3. Mr. Cornelius testified that, based upon studies that he conducted, acceleration and deceleration lanes are not required in order to provide safe access to the subject property. Mr. Crovo testified that safe access can be provided to the proposed development via the single proposed entrance at Frederick Road. There was no evidence presented from which it could reasonably be inferred that adequate sight distance and safe access cannot be provided to the subject property. Accordingly, the Board finds that the Petitioner has sufficiently met its burden of proving “adequate site distance” and “safe access” in accordance with Section 117.3.G3.

27. The Board finds that Petitioner has not met his burden of proving that “[t]he site layout and landscaping will buffer neighboring residences from business uses.” Section 117.3.G4. The Petitioner testified that he planted approximately 350 Leyland Cypress trees

along the southern border of the property several years ago and at the February 16 hearing, Petitioner proposed an increased evergreen landscaping buffer. The Board is impressed with Petitioner's efforts. However, given the elevated topographical nature of Frederick Road and the size of the structures proposed by Petitioner, the Board is not convinced that existing and proposed trees would adequately buffer the residences from the proposed development.

28. The Board finds that the parking areas meet the requirements of Section 117.3.G5. That section requires the Board to find that "[p]arking areas and driveways are oriented towards neighboring non-residential land uses and screened from residential land uses." The Board finds that the plan depicting two, one-story buildings of 5,000 square feet provides for parking in the middle of the site and that none of the parking in that plan is oriented toward neighboring residential land uses. The Board further finds that the increased evergreen landscaping buffer in Petitioner's amended plans would adequately screen all parking from residential land uses.

29. The Board finds that the Petitioner presented sufficient evidence for the Board to conclude that no more than 50 percent of the site is covered by impervious surfaces, as required by Section 117.3.G6. In its Technical Staff Report, the Department of Planning and Zoning found the impervious surface area of the original PDP was 44 percent. At the February 16, 2010 hearing, the Petitioner submitted amended alternate plans, both of which depict an impervious surface area on less than 50 percent of the site.

30. The Board finds that the Petitioner failed to present sufficient evidence that design of the structures "will be generally compatible in scale and character with residential structures in the vicinity," as the Board must find under Section 117.3.G7 to grant the proposed OT rezoning. The Board finds, for the reasons stated in Finding 24 above, that the proposed

buildings are incompatible in scale with the residential structures on Frederick Road and Globe Drive.

31. The Board finds that the Petitioner failed to demonstrate that the hours of operation will not adversely impact the adjoining residential neighborhood, as required under Section 117.3G8. Several of the Globe Drive residents testified that weekend hours would have a detrimental impact on them. Given the elevated nature of Frederick Road in relation to Globe Drive, the size of the proposed structures, and Petitioner's failure to meet his burden of demonstrating the adequacy of the proposed tree line buffer, the Board finds that the residents' concerns are warranted. Although the Globe Drive residents also expressed concern over outside lighting, the Board finds that the Petitioner adequately demonstrated that "site lighting will not adversely impact the adjoining residential neighborhood." Section 117.3.G8, Mr. Crovo testified that all outdoor lighting would be shielded and point downward, in accordance with the requirements of the Zoning Regulations. Because, however, the Petitioner failed to demonstrate that the proposed weekend hours will not adversely impact the adjoining Globe Drive residences, the Board is unable to find that the Petitioner sufficiently satisfied the criteria of Section 117.3.G8.

32. The Board notes that some of the evidence presented in this case, including speculation over increased crime and the feasibility or desirability of the subject property for residential development, are not material to any of the standards in Section 117.3G of the Zoning Regulations, and, therefore, will not be addressed by the Board in this decision.

CONCLUSIONS OF LAW

1. The Petitioner, as one seeking a piecemeal rezoning to the OT District, a floating zone, has the burden of demonstrating that its petition, with its proposed PDP, meets all the

standards for approval of Section 117.3G of the Howard County Zoning Regulations. If this burden is not met, the Zoning Board is not permitted to grant the requested rezoning. This burden of proof on the Petitioner is one of the preponderance of the evidence to show that the request meets all prescribed standards and requirements, pursuant to Section 2.403D.3 of the Board's Rules of Procedure.

2. The evidence which the Petitioner has presented to show that the proposed rezoning will accomplish the purposes of the OT District, pursuant to Section 117.3G1 of the Zoning Regulations, is insufficient to meet the burden of proof as to this standard based on the Board's Finding 24. The Board concludes that Petitioner failed to meet his burden to show that the proposed OT District would result in "small-scale office buildings" that are "compatible with neighboring residential uses," given the size of the proposed structures, the corresponding size of the neighboring residential structures, the elevated nature of Frederick Road in relation to Globe Drive, and the proposed weekend hours.

3. The evidence which the Petitioner has presented to show that the site meets the requirements of Section 117.3.G4 of the Zoning Regulations, is insufficient to meet his burden as to this standard based on the Board's Finding 27.

4. The evidence which the Petitioner has presented to show that the site meets the requirements of Section 117.3.G7 of the Zoning Regulations, is insufficient to meet his burden as to this standard based on the Board's Finding 24, and for the reasons stated in Conclusion 2.

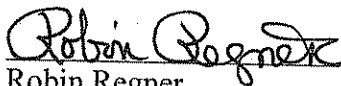
5. The evidence which the Petitioner has presented to show that the site meets the requirements of Section 117.3G8 of the Zoning Regulations, is insufficient to meet his burden as to this standard based on the Board's Finding 31.

6. The Board concludes that the Petitioner presented sufficient evidence to meet all the remaining standards contained in Section 117.3G of the Zoning Regulations, but the Board concludes that it may grant a petition for OT rezoning only if all the standards of that section have been met. The Board concludes that it may not grant the subject petition because Petitioner failed to meet his burden of producing sufficient evidence that would allow the Board to find that the standards of Section 117.3G1, 4, 7, and 8 have been met.

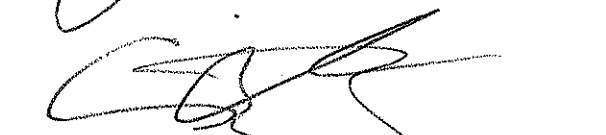
For the foregoing reasons, the Zoning Board of Howard County, Maryland, on this 13th day of September, 2010, hereby DENIES the Petitioner's request for rezoning of the subject property from the R-20 to the OT District.

ATTEST:


ZONING BOARD OF HOWARD COUNTY

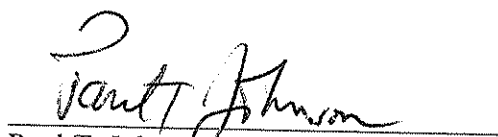

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