

MEMORANDUM

To: City Council

From: David J. Deutsch
City Manager

Subject: Resolution #R-57-09 (Consent Agenda)
Departure #BD-03-09
Mr. Galen TeSelle
12427 Sadler Lane

Date: September 3, 2009

I. Background

Attached is Resolution #R-57-09 recommending approval of the following Departures:

Departure of Design Standards (DDS) from Section 27-563 of 3.7 ft. to permit an existing driveway connection to a street to remain at a width of 18.3 ft.; and,

Departure from Parking and Loading Standards (DPLS) from Section 27-568 (a) of two (2) on-site parking spaces; and,

Departure from Design Standards (DDS) from Sections 27-614 (a) (1) (2) and (4) regarding:

the location of a building associated with a free-standing sign (building setback of 40 ft. required/33 ft. & 34 ft. exist; Departure of 6 ft. & 7 ft. requested); and,

a sign proposed within 50 ft. of a residential zone (proposed sign is in a residential zone); and,

the location of the free-standing sign (10 ft. required/4 ft. proposed; Departure of 6 ft. requested).

The Bowie Advisory Planning Board (BAPB) conducted a public hearing on this case on July 28, 2009, and voted unanimously to recommend approval of the requested Departures.

The City Council is authorized to adopt this Resolution via the Variance and Departure procedures granted to the City.

No appeal or oral argument has been filed with the City, nor has any City Council member called up the action of the BAPB recommending approval of the Departure.

II. Recommendation

It is recommended that the City Council approve the attached Resolution #R-57-09.

Attachment

**RESOLUTION
OF THE COUNCIL OF THE CITY OF BOWIE, MARYLAND
ADOPTING THE RECOMMENDATION OF THE
BOWIE ADVISORY PLANNING BOARD IN THE
CASE OF #BD-03-09**

WHEREAS, the City of Bowie (hereinafter the “City”), pursuant to Ordinance O-24-98 (hereafter the “Ordinance”), is authorized to hear requests for Departures from the terms of the Prince George’s County Zoning Ordinance (hereafter the “Zoning Ordinance”) with respect to, among other things, Design Standards and Parking and Loading Standards; and,

WHEREAS, the City is authorized by the Ordinance to grant an application for a Departure from Design Standards if the Bowie Advisory Planning Board (hereinafter “BAPB”) makes the following findings pursuant to Section 27-239.01 of the Zoning Ordinance:

- (1) The purposes of the Prince George’s County Zoning Ordinance (Section 27-102) will be equally well or better served by the applicant’s proposal; and,
- (2) The Departure is the minimum necessary, given the specific circumstances of the request; and,
- (3) The Departure is necessary in order to alleviate circumstances which are unique to the site or prevalent in areas of the County developed prior to November 29, 1949; and,
- (4) The Departure will not impair the visual, functional or environmental quality of the site or of the surrounding neighborhood; and

WHEREAS, the City is authorized by the Ordinance to grant an application for a Departure from Parking and Loading Standards if the BAPB makes the following findings pursuant to Section 27-588 of the Zoning Ordinance:

- (1) The purposes of Section 27-550 of the Prince George’s County Code will be served by the applicant’s request; and,
- (2) The Departure is the minimum necessary, given the specific circumstances of the request; and,
- (3) The Departure is necessary in order to alleviate circumstances which are special to the subject use, given its nature at this location, or alleviate circumstances which are prevalent in older areas of the County which were predominantly developed prior to November 29, 1949; and,

- (4) All methods for calculating the number of spaces required (Division 2, Subdivision 3, and Division 3, Subdivision 3, of the Prince George's County Code) have either been used or found to be impractical; and,
- (5) Parking and loading needs of adjacent residential areas will not be infringed upon if the Departure is granted.

WHEREAS, on July 8, 2009, Mr. Galen W. TeSelle, Owner and Resident of 12427 Sadler Lane, Bowie, Maryland, submitted an application, requesting the following Departures from the Prince George's County Zoning Ordinance:

- (1) A Departure of Design Standards (DDS) from Section 27-563 of 3.7 ft. to permit an existing driveway connection to a street to remain at a width of 18.3 ft.; and,
- (2) A Departure from Parking and Loading Standards (DPLS) from Section 27-568 (a) of two (2) on-site parking spaces; and,
- (3) A Departure from Design Standards (DDS) from Sections 27-614 (a) (1) (2) and (4) regarding the location of a building associated with a free-standing sign (building setback of 40 ft. required/33 ft. & 34 ft. exist; Departure of 6 ft. & 7 ft. requested); Departure for the sign proposed within 50 ft. of a residential zone (proposed sign is in a residential zone); and location of a free-standing sign (10 ft. required/4 ft. proposed; Departure of 6 ft. requested); and,

WHEREAS, the advertisement of the public hearing was posted on the property in accordance with the Code on July 13, 2009 and a legal notice advertising the public hearing appeared in the local newspaper on July 16, 2009; and,

WHEREAS, the technical staff report recommended **APPROVAL**; and,

WHEREAS, on July 28, 2009, the BAPB conducted a public hearing on the merits of the application for the Departures, at which the BAPB heard testimony and accepted evidence with respect to whether it can make the necessary findings set forth in the Ordinance to grant Departures from Design Standards and from Parking and Loading Standards; and,

WHEREAS, at the conclusion of the public hearing on July 28, 2009, the BAPB voted unanimously to recommend **APPROVAL** of the application for the Departures; and,

WHEREAS, the BAPB's recommendation considered the findings and conclusions found in the technical staff report, submissions by the Applicant and testimony provided during the hearing; and,

WHEREAS, pursuant to the City Code, within 15 days of the BAPB's decision, persons of record may file an appeal or a member of the City Council may request oral argument if the BAPB's recommendation either fails to comply with the criteria for approval, or if the recommendation is not unanimous; and,

WHEREAS, no appeal or oral argument has been filed with the City within the 15 day period; and,

WHEREAS, the City Council accepts the following findings of fact recommended by the BAPB, specifically as follows:

1. The Applicant is the owner of certain real property consisting of 13,821 sq. ft., known as and located at 12427 Sadler Lane, Bowie, Maryland (the "Subject Property").
2. The Subject Property is located in the R-55 (One-Family, Detached Residential) Zone.
3. The Applicant is proposing to use an existing portion of his detached single family dwelling as a real estate sales office. This same portion of the Applicant's residence was, in the past, used as a dental office and later as a lawyer's office.
4. Section 27-441 (b) of the Zoning Ordinance permits a Real Estate Sales Office as an Accessory Use in a Dwelling as a Special Exception.

WHEREAS, the City Council accepts the following conclusions of law, recommended by the BAPB, specifically as follows:

Departure from Design Standards from Section 27-563:

1. The purposes of Subtitle 27 of the County Zoning Ordinance will be equally or better served by the applicant's proposal. While there are 15 purposes of the County Zoning Ordinance, the most applicable in this case are to protect and promote the health, safety, convenience and welfare of current and future County residents, guide the orderly growth and development of the County, encourage economic development activity and prevent the overcrowding of land. The present driveway is sufficient in width to accommodate the parking of two (2) vehicles side-by-side, and in length to park one (1) vehicle behind another. Being able to provide this off-street parking with the current driveway condition to accommodate the residential use and the proposed accessory use (real estate sales office) results in encouraging economic development activity and preventing the overcrowding of land (by not having to increase the amount of impervious lot coverage). The purposes of the Ordinance are further met by the convenience of using an existing portion of a residence re-used/re-occupied for an office use. The orderly growth of the County will also continue by re-occupying the space in the residence that was converted to office use in 1968 on a lot that is immediately across the street (west of) C-S-C-zoned property. By granting the Departure requested, the purposes of the Zoning Ordinance will be equally or better served by the applicant's proposal.

2. The Departure is the minimum necessary, given the specific circumstances of the request. The requested Departure width of 3.7 ft. (18.3 ft. current driveway width) is the minimum necessary, since widening the driveway will increase the existing lot coverage of 28.7% to over the maximum permitted in the R-55 zone of 30%, by approximately 181 sq. ft. This would trigger the need for a variance. The present width of the driveway is capable of accommodating the parking of two (2) vehicles, side-by-side, without any widening. Therefore, granting the Departure is the minimum necessary, given the specific circumstances of this request.
3. The Departure is necessary in order to alleviate circumstances which are unique to the site or prevalent in areas of the County developed prior to November 29, 1949. The site was not developed prior to November 29, 1949; the property was developed in 1962. A unique factor of this site/structure is that the property is a corner lot, with driveway access from Sadler Lane, and a portion of the structure had been converted to an office use in the past. The garage portion of the structure was converted to a dental office in 1968, following the approval of a Special Exception (#SE-1810) for that use. Beginning in 1976, and for approximately 30 years, an attorney's office occupied the former garage portion of the structure. The existing driveway was never widened, nor were requirements ever imposed to widen the driveway to provide for two (2) 11-foot wide lanes. The applicant intends to use the existing driveway, at the same width, as it had been used in the past by two (2) prior businesses. Therefore, granting the Departure requested is necessary to retain the existing circumstances/conditions of the property/structure.
4. The Departure will not impair the visual, functional, or environmental quality or integrity of the site or the surrounding neighborhood. Approval of the Departure will result in a visually and functionally improved site and parking layout, and enhanced environmental quality. Conversely, if the Departure is not granted, and the impervious driveway width has to be increased, potential negative effects on the visual and environmental quality of the site and surrounding neighborhood resulting from additional impervious coverage include impacts on drainage and stormwater runoff. Therefore, granting the Departure will not impair the site or surrounding neighborhood.

Departure from Parking and Loading Standards from Section 27-568 (a):

1. The purposes of Section 27-550 of the Zoning Ordinance will be served by the applicant's request. The purposes of Section 27-550 relate to the section of the County Zoning Ordinance addressing off-street parking and loading requirements. Those purposes include providing off-street parking areas to serve specific buildings/uses and protecting the residential character of residential area. The

applicant is requesting a Departure of two (2) on-site parking spaces. Section 27-568 (a) of the Zoning Ordinance requires: one (1) off-street parking space for the residential use (per Park and Planning, only one (1) off-street space is required for single-family dwellings constructed prior to 1970); two (2) off-street spaces for the office use; and, one (1) handicap on-site parking space. The applicant is proposing one (1) on-site parking space and one (1) on-site handicap parking space. Since vehicular access to/from the handicap space must be unrestricted, allowing one (1) vehicle to be parked on the site when the handicap space is occupied, a Departure of two (2) parking spaces is necessary. During non-business hours, and when the handicap space is not being used, spatially, there is enough room in the existing driveway to park four (4) vehicles.

The Justification Statement submitted with the application makes the case that, given the way in which the office will operate, the total number of employees, and the designation and arrangement of on-site parking, there will be sufficient parking on the premises to serve the existing and proposed uses. On-street parking is permitted along Sadler Lane, and the potential exists for vehicles accessing the subject site/property to park on that roadway. However, given the circumstances of the proposed use stated in the Justification Statement, the occasional parking of a vehicle on Sadler Lane would not be unlike residents parking their own private vehicles on the street in front of their dwelling. On the other hand, increasing the area of the existing driveway to accommodate additional on-site parking would detract from the residential appearance of the property, increase impervious lot coverage (requiring a variance) and have an impact on site and stormwater runoff. Therefore, granting the Departure of two (2) on-site parking spaces will meet the purposes of Section 27-550 and not detract from the residential character of the property or the surrounding neighborhood.

2. The Departure is the minimum necessary, given the specific circumstances of the request and property. Under the County's application of the Zoning Ordinance, since there is a change in use/occupancy in the office portion of the structure, the current Zoning Ordinance standards must be met. County staff has interpreted Section 27-551 (e) of the Zoning Ordinance to not allow the parking of a vehicle behind the handicap parking space when that space is in use. As a result, the need for a Departure of two (2) parking spaces arises, which is the minimum necessary. Physically, there is presently enough driveway parking surface area to park four (4) vehicles during off business hours and when the handicap parking space is not occupied. Piggy-back parking (one (1) vehicle parked behind another) is permitted under Section 27-551 (e) of the Zoning Ordinance for single-family dwellings only. Based on the above factors, granting the Departure of two (2) parking spaces is the minimum necessary.

3. The Departure is necessary to alleviate circumstances which are special to the proposed use, given its nature at the subject location. Pursuant to the Justification Statement and accompanying plans, a portion (approximately 497 sq. ft., or 17% of the floor area of the structure) of the dwelling has been, in the past, devoted to an office use. The proposed real estate sales office is the re-introduction of an office/commercial use in a portion of the subject structure. In the past, the same space proposed for the real estate office, created in 1968, had been used for a dental office and an attorney's office. The dental office located within the structure as the result of a Special Exception granted in 1968; according to the County Zoning Ordinance, a lawyer's office is permitted as an accessory use in a dwelling located in the R-55 zone, subject to five (5) criteria, four (4) of which are either identical to or similar to the Special Exception conditions needed to be met to grant approval of a real estate office. The prior two (2) office uses are different from the proposed use in terms of operation and parking. With the dental and attorney's offices, patients/clients came to the subject property, most likely parking in the driveway and on Sadler Lane. Per the Justification Statement submitted, the operation of the proposed real estate office will result in "usually less than two clients per week and this would have very minimal impact on adjoining properties or the surrounding community. Most of the real estate sales work is done in the various residential neighborhoods or at the client's location." As a result, the low impact operation of the real estate sales office and the property's past history of business uses are circumstances warranting the alleviation of the required on-site parking; the granting of a Departure of two (2) on-site parking spaces is necessary.
4. All methods for calculating the number of spaces required (Division 2, Subdivision 3, and Division 3, Subdivision 3, of Section 27-568 (a) have either been used or found to be impractical. Division 2/Subdivision 3 regards Parking Facilities/Minimum Parking Requirements. Division 3/Subdivision 3 relates to Loading Facilities/Minimum Loading Requirements. Under Division 3/Subdivision 3, no loading facilities are required for the proposed real estate office use, and none are proposed. The requirements of Division 2/Subdivision 3 have been applied to this site. The County has determined that, since the structure was constructed prior to 1970, only one (1) parking space is required for the residential use. For the office use, the Parking Schedule in the Zoning Ordinance requires one (1) on-site parking space/250 sq. ft. of office space, or two (2) on-site spaces. The Zoning Ordinance also requires the presence of an on-site handicap space, which is being proposed. Since that space and the accompanying area needed to maneuver around a vehicle parked in that space, occupy the entire existing width of the driveway, and since the County is requiring that access to the handicap space be kept free and clear (i.e., no vehicle is permitted to park behind that space (piggy-back parking), driveway area exists for the on-site parking of only one (1) vehicle.

Application of zoning regulations are impractical when the handicap space is not in use. When that is the case, the potential exists for up to four (4) vehicles to park on the existing driveway surface area. As a result, all methods for calculating the number of spaces have been used or found impractical, and granting the Departure is warranted.

5. Parking and loading needs of adjacent residential areas will not be infringed upon if the departure is granted. Since no loading facilities are required by the Zoning Ordinance for the proposed real estate sales office use, and the nature of the use is not one that requires regular and constant deliveries, adjacent residential areas will not be infringed upon if the Departure is granted. The only type of delivery envisioned by the proposed use would be by a FedEx-, U.S. Postal- or UPS-type service for correspondence, which is not unlike what is delivered to a single-family dwelling. Granting the parking Departure requested will not infringe upon the needs of adjacent residential areas due to the operation of the proposed use, and given the facts that the existing driveway is capable of accommodating a handicap parking space and one (1) standard-size parking space when the office is opened, as well as up to four (4) vehicles (if need be) when the office is closed. Therefore, granting the Departure will not infringe upon the parking and loading needs of adjacent residential areas.

Departure from Design Standards from Section 27-614 (a) (1) (2) and (4):

1. The purposes of Section 27-102 of the Prince George's County Zoning Ordinance will be equally well or better served by the applicant's proposal. The purposes of Section 27-102 include 15 items which are intended to protect and promote the health, safety, convenience and welfare of current and future County residents, promote beneficial relationship between uses of land and buildings and encourage economic development activity.

With respect to Section 27-614 (a) (1) related to the 40-foot building setback, the front setbacks of the existing structure are 33 ft. (along Stonybrook Drive) and 34 ft. (along Sadler Lane), which are an average of 84% of the distance that is required by this Section. To move or alter the existing structure to comply with the 40-foot setback requirement is impractical. With the existing building setbacks remaining, there will still be a beneficial relationship between the land and structure, and the opportunity to encourage economic development that had existed on the property will remain. The purposes of the Zoning Ordinance will continue to be served by allowing the current building setbacks to remain.

Section 27-614 (a) (2) requires that a sign for an office use not be located within 50 ft. of a Residential zone. The opportunity exists to promote economic development in a space that was previously used commercially. Installing the sign on the same property and in the

same location as two (2) previous signs will help to promote economic activity in the area. Therefore, the purposes of the Zoning Ordinance will be served by allowing the proposed sign to be located on the subject property, which is zoned Residential.

Section 27-614 (a) (4) requires that a sign advertising a real estate office in a Residential zone be set back at least ten (10) ft. from the street right-of-way line. The signs that previously existed on this property were placed in the same location where the proposed sign will be (four (4) ft. from the right-of-way). Those previous signs were illuminated by ground-mounted lighting. Since the same electrical service and lighting are still in place, four (4) ft. from the right-of-way, the applicant wishes to use those features for his sign. The applicant's proposed sign location will serve the purposes of the Zoning Ordinance.

Based on all of the above, by granting the Departure the purposes of the Zoning Ordinance will be equally or better served by the applicant's proposal.

2. The Departure is the minimum necessary, given the specific circumstances of the request. With respect to Section 27-614 (a) (1) related to the 40-foot building setback, the building setbacks of 33 ft. and 34 ft. exist, so the requested Departure of 6 ft. and 7 ft. are the minimum necessary.

Section 27-614 (a) (2) requires that a sign for an office use not be located within 50 ft. of a residential zone. The subject property is in a Residential zone (R-55), as are the adjacent properties to the north, south and west. (The property to the east is zoned C-S-C (Commercial Shopping Center), where the Community Center is located.) Since it is impractical for the applicant to seek and receive a rezoning for the subject lot as well as for all other residentially-zoned properties within 50 ft., the Departure requested is the minimum necessary.

Section 27-614 (a) (4) requires that a sign advertising a real estate office in a Residential zone be set back at least ten (10) ft. from the street right-of-way line. The applicant is seeking a Departure of six (6) ft., and is proposing to locate a sign four (4) ft. from the Stonybrook Drive right-of-way, where two (2) previous business signs had been located over the past 40 years. (The four (4) foot setback location of those two (2) signs complied with the requirements of the Ordinance at the time of their installation.) Using the same electrical service and ground-mounted lighting that were used to illuminate the two (2) prior signs, and in the same location, results in the minimum Departure request of six (6) ft.

Based on all of the above, given the specific circumstances of the request, granting the Departure requested is the minimum necessary.

3. The Departure is necessary in order to alleviate the circumstances which are unique to the site or prevalent in areas of the County developed prior to November 29, 1949. The property that is the subject of the Departure request was not developed prior to November 29, 1949. According to the Justification Statement, the site was developed in 1962, nearly 50 years ago.

Section 27-614 (a) (1) relates to the 40-foot building setback requirement. Circumstances unique to the property are that it is a corner lot, with an existing structure that contains a residential area (83% of the floor area) and a previously-created and used office area (17% of the floor area). The office area was converted from a one-car garage; no building expansion was done to create this space. Consequently, the building setbacks were not altered to accommodate the office space, i.e., the setbacks were not at one time 40 ft. and reduced to the present distances (33 ft. and 34 ft.). The application and interpretation of this particular Section of the Zoning Ordinance are driving the need for a Departure for the building setback.

The application of Section 27-614 (a) (2) of the Zoning Ordinance, requiring a Departure because a sign is proposed the property that is within 50 ft. of (and actually is within) a Residential zone, is also a factor determining the need for a Departure. The R-55 zoning of the property has been existing at least since the 1991 Bowie Master Plan and Sectional Map Amendment (SMA), and as such, was in effect under the last owner (law office). The zoning of the property did not change under the 2006 Bowie Master Plan and SMA, which was adopted before the applicant owned the parcel.

Section 27-614 (a) (4) of the Zoning Ordinance, requires the setback of a sign in a Residential zone be at least ten (10) ft. from the right-of-way. A unique circumstance to this property, leading to the application of the Departure, is the presence of electrical service and ground-mounted lighting at a spot less than ten (10) ft., and where a sign from two (2) previous office uses within the subject structure were located.

Based on the above, granting the Departure requested is necessary in order to alleviate circumstances which are unique to the site.

4. The Departure will not impair the visual, functional, or environmental quality or integrity of the site or of the surrounding neighborhood. Granting the Departure requested from Section 27-614 (a) (1), regarding the 40-foot building setback, to allow the current building setbacks of 33 ft. and 34 ft. to remain, will not impair the visual quality or integrity of the site or surrounding neighborhood. On the contrary, altering the structure to comply with

the 40-foot setback requirement could potentially render the structure out of character with the existing dwellings in the immediate area.

A Departure from Section 27-614 (a) (2) of the Zoning Ordinance, related to the placement of an office sign within 50 ft. of a Residential zone, will not impair the visual or functional quality of the site nor surrounding neighborhood, since business signs had been installed on the same property and at the same location as the sign proposed, and the property was zoned Residential at that time.

A Departure from Section 27-614 (a) (4), requiring a 10-foot sign setback, will not impair the visual quality or integrity of the site or area. The sign is not overbearing in area (2 sq. ft.) and will be placed in the same location on the property as two (2) previous signs. The sign will not distract or impede traveling motorists, cyclists or pedestrians.

Based on the above, granting the Departure requested will not impair the visual, functional, or environmental quality or integrity of the site or of the surrounding neighborhood.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bowie hereby accepts the findings, conclusions and recommendations of the BAPB as to the Departure application, and adopts Resolution #R-57-09 for #BD-03-09, to **APPROVE** the following Departures:

Departure of Design Standards (DDS) from Section 27-563 of 3.7 ft. to permit an existing driveway connection to a street to remain at a width of 18.3 ft.; and,

Departure from Parking and Loading Standards (DPLS) from Section 27-568 (a) of two (2) on-site parking spaces; and,

Departure from Design Standards (DDS) from Sections 27-614 (a) (1) (2) and (4) regarding:

the location of a building associated with a free-standing sign (building setback of 40 ft. required/33 ft. & 34 ft. exist; Departure of 6 ft. & 7 ft. requested); and,

a sign proposed within 50 ft. of a residential zone (proposed sign is in a residential zone); and,

the location of the free-standing sign (10 ft. required/4 ft. proposed; Departure of 6 ft. requested).

BE IT FURTHER RESOLVED that approval of Departure #BD-03-09 be conditioned on the approval of the Special Exception for a Real Estate Sales Office as an Accessory Use in the Dwelling.

INTRODUCED AND PASSED on this Eighth day of September 2009, by the City Council of the City of Bowie.

G. Frederick Robinson
Mayor

Pamela A. Fleming
City Clerk