

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. S-2485

PETITION OF SANDY EVANS LEVINE

OPINION OF THE BOARD

(Oral Argument Date: July 10, 2002)

(Effective Date of Opinion: September 12, 2002)

Case No. S-2485 (OZAH Referral No. 02-8) is an application filed for a special exception pursuant to Section 59-G-2.29 of the Zoning Ordinance to permit a Major Home Occupation for a public relations consulting service.

By Resolution dated September 6, 2001, pursuant to the authority granted in Section 59-A-4.125 of the Montgomery County Zoning Ordinance, the Board referred the case to the Hearing Examiner for Montgomery County to conduct a public hearing and render a written report and recommendation to the Board of Appeals. The Hearing Examiner convened a public hearing on December 3, 2001, which was continued on January 7, 2002. The record in the case closed on January 23, 2002. The Hearing Examiner issued a Report and Recommendation for approval dated March 13, 2002.

The Board of Appeals received a letter, dated March 20, 2002, from Helen "Lynn" Primo, Esquire, on behalf of Reza Rakhshan. Ms. Primo's letter requested Oral Argument on the Report and Recommendation of the Hearing Examiner. Pursuant to Section 59-A-4.61(e) of the Montgomery County Code, on July 10, 2002 the Board heard Oral Argument.

Stephen Orens, Esquire, appeared on behalf of Reza and Martha Rakhshan, adjoining neighbors. Sandy Levine appeared on her own behalf.

Decision of the Board: Special exception **granted**, subject to conditions.

EVIDENCE PRESENTED

1. The Board had before it the Report and Recommendation of the Hearing Examiner, which was entered into the record as Exhibit No. 41.

2. At the Oral Argument, Mr. Orens argued that the shared driveway which provides access both to the Levines and the Rakhshan's property is a unique characteristic of the subdivision where the lots are located. Mr. Orens further argued that the covenants applicable to properties in the subdivision, which, because of the shared driveways, restrict the use of properties to residential uses, establish the strictly residential character of the neighborhood and render a home occupation inharmonious with that character. Mr. Orens stated that the shared driveway constitutes a non-inherent adverse impact of the subject property, on the basis of which the special exception can be denied.

3. Ms. Levine argued that the covenants pertaining to properties in the subdivision are not relevant to the Board's decision regarding the special exception. In addition she stated that the driveway is large enough to amply accommodate parking for four cars, in addition to the three spaces available in the garage. Ms. Levine stated that they have agreed to provide landscaping and trees to screen the driveway [Exhibit No. 36]. She reiterated that she had agreed to no more than eight deliveries to her business per month, and that her two employees would arrive and depart at staggered times to minimize traffic impact.

FINDINGS OF THE BOARD

The Board has carefully considered the Report and Recommendation of the Hearing Examiner and finds it persuasive. The Board has also considered the arguments at the Oral Argument. The Board finds that the covenants governing use of the subject property are private legal contracts not relevant to its decision on the special exception. Therefore, the Board adopts the Report and Recommendation of the Hearing Examiner and **grants** the special exception subject to the following conditions:

1. Petitioners shall be bound by their testimony and exhibits of record, and the testimony of their witnesses to the extent that such evidence and representations are identified in the Board's opinion granting the special exception. Landscaping shall be installed according to the approved landscape plan, Exhibit No. 36. No landscaping shall be installed within the easement for the shared driveway to which the Petitioner has access from her private driveway. The trees planted as specified on the landscaping plan shall be evergreen varieties. Trees planted along the north side of the driveway, near the lotline for Lot 3 shall be situated so as to provide the maximum screening feasible for Lot 3, taking into account the slope of the land between the driveway and the lot line for Lot 3. No exterior sign or lighting shall be installed in connection with the business.

Lattice-work screening shall be installed opposite the entrance used by employees, as illustrated in Exhibit 31.

2. All parking shall take place on the Petitioner's private driveway, outside the easement area for the shared driveway.
3. Business activities conducted pursuant to this special exception shall be limited to public relations consulting services, as specified in the statement of operations.
4. The Petitioner shall conduct a criminal background check on all existing employees. The Petitioner shall conduct a criminal background check on all job applicants who accept an offer of employment, prior to the time such applicants commence their employment.
5. Deliveries to the business by truck shall be made only by standard delivery services that commonly deliver to residential dwellings, and shall be limited to no more than eight deliveries per calendar month.
6. No visitors to the home office shall be permitted without an appointment. Visitors to the home office shall be limited to no more than two at any one time, on no more than one occasion every three months, and between the hours of 10:00 a.m. and 2:00 p.m. The term "visitor" shall not include the two non-resident employees working on site. The Petitioner shall maintain a written record of all visits to the home office.
7. The Petitioner shall require all employees working on site to sign a sign-in sheet or log each time they report to work.

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman in agreement, the Board adopted the following Resolution:

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

Donald H. Spence, Jr.
Chairman, Montgomery County Board of

Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 12th day of September, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

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

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