

**BOARD OF APPEALS**  
for  
**MONTGOMERY COUNTY**  
**Stella B. Werner Council Office Building**  
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**Rockville, Maryland 20850**  
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**Case No. A-5843**

**APPEAL OF ELIEZER TRYBUCH**

OPINION OF THE BOARD  
(Hearing held February 5, 2003)  
(Effective date of Opinion: April 17, 2003)

Case No. A-5843 is an administrative appeal in which the appellant charges administrative error on the part of the Department of Permitting Services (DPS) in its issuance of a Notice of Violation (NOV) dated September 25, 2002.

A public hearing was held pursuant to Section 59-A-4.3 of the Zoning Ordinance. Assistant County Attorney, Malcolm Spicer, represented Montgomery County, Maryland. The appellant, Dr. Eliezer Trybuch, represented himself.

Decision of the Board: Administrative appeal **denied**.

**FINDINGS OF FACT**

The Board finds by a preponderance of the evidence that:

1. Appellant operates a medical practice in Suite 1-B at 5525 Pooks Hill Road, Bethesda, Maryland, in a condominium complex known as the Promenade (the Promendade). The Promenade is located in the R-H zone.

2. Suite 1-B was originally part of a 3,654 square foot apartment located on the G-1 floor at the Promenade. The apartment served as medical offices for Drs. Ostrow, Shapiro, and Galotta, who operated their non-resident medical practices under special exception No. S-384, granted by this Board in 1975 (Exhibit 8).

3. Special Exception No. S-384 required Board approval before allowing any transfer of the special exception. The special exception holders made such a request and, on May 4, 1994, the Board issued a resolution approving transfer of the special exception from Drs. Ostrow, Shapiro and Galotta to Shapiro &

Galotta, MD. (Exhibit 9). At that time, Dr. Ostrow had retired, and Dr. Martha Kern joined the practice with Drs. Shapiro and Galotta.

4. Later Dr. Shapiro retired, and Dr. Galotta was joined by a new physician, Dr. Irene Feldman. Sometime during 2000, Dr. Galotta informed the Promenade that he no longer required a 3,654 square foot space for himself and Dr. Feldman<sup>1</sup>. As a result, the Promenade subdivided the apartment, reduced Dr. Galotta's space to 2,365 square feet and leased the remaining 1,173 square feet to Dr. Trybuch for his use (See, Exhibits 4(a), 5(a) and (b)).

5. The Board received letters from Drs. Galotta and Feldman in September and November of 2002 regarding the reduction in the special exception space and requesting that the special exception be modified to reflect the reduced square footage of the office space and a reduction from three doctors to two.

6. DPS issued an NOV to Dr. Trybuch on September 25, 2002 for operating a medical practitioner office that is not permitted in a residential zone without a special exception.

7. The Board later issued a resolution modifying the special exception to reduce the square footage from 3,654 to 2,365 square feet, and the number of doctors from three to two. The request for modification and subsequent Board resolution are not part of the record in this case, but the Board took administrative notice of these facts at the time this appeal was heard.

8. Dr. Trybuch appealed from the NOV on November 22, 2002, contending that his medical practice is a permitted use because "there were always 3 physicians permitted under S-384" and that he "should be granted a Spec[ial] Exception as part of the original grant".

## **CONCLUSIONS OF LAW**

1. Section 59-C-2.3(d) of the Zoning Ordinance does not allow a non-resident medical practitioner to operate in the R-H zone, except by special exception. While Dr. Trybuch has a lease agreement with the Promenade to operate his practice there, he does not have a special exception to operate there, and did not have one at the time DPS issued its NOV. Three physician are no longer permitted under the special exception as Dr. Trybuch contends; and, even if they were at the time the NOV was issued, Dr. Trybuch never had an interest in Special Exception S-384.

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<sup>1</sup>There is nothing in the record regarding Dr. Stern's leaving the practice, but it can be assumed that she no longer practiced there in 2000.

2. Thus, the NOV was properly issued and the appeal is, therefore, **DENIED**.

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

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

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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 17<sup>th</sup> day of April, 2003.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 2-A-10(f) of the County Code).

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.