

001011

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Benchmark

1

**Alaska
Bar Examination**

**JULY
2005**

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2)

TO: Zoning Board of Adjustment

From: Stubbs, Friedland & Oglethorpe P.C.

Re. Requested Brigham variance

Date: July 26, 2005

To Whom it May Concern,

Dr. Barbara Brigham, a local dentist and her husband Len respectfully seek a zoning variance to allow them to run a very small and crucial dental office from their home. As you are aware, a new low income/elderly housing development is going in very near to the Brigham's home. This as well as other factors have brought the Brigham's to the conclusion that it would be most desirable for her and the surrounding community if she could operate her small practice out of her home and in close proximity to the large elderly population that is going to be nearby. We are aware that we must show that the requested variance should be granted and we are sure that we can meet that burden sufficiently. We will address the issue along the lines that statute requires us to show.

Sec 35 states that variances will be allowed if they meet four criteria:

- 1) the variance will not create a detriment to adjacent and nearby properties;
- 2) it will not substantially alter the general character;
- 3) the effect is in harmony with the intent of the zoning codes; and
- 4) either, that unique and peculiar circumstances create practical difficulties alleviated by the hardship OR

that the public interest would be served by the variance

The variance will be a benefit to the nearby properties

The Bingham's have made every effort to determine whether this variance is good for the community and not just themselves. It must be pointed out what a valuable and unique service that Dr. Bigham provides. She specializes in Geriatric dentistry and is the only such specialist in the city but for the dental school 12 miles away. Further more than a quarter of her practice is dedicated to pro bono or free dental work to those who may not otherwise be able to afford such care. She is also the only dentist in a 3.5 mile area. In a city with known transportation problems it would be very beneficial to have her close to your neighborhood and especially so to the new development currently underway.

The Bingham's also offer the testimony of a local real estate agent who asserts that the property values in the neighborhood may benefit by up to 10% with the addition of the dental practice. They have also gone out of their way to poll neighbors and make sure that they have approval.

The variance will not substantially alter the general character of the area

The Bingham's have been careful to allow for this as well. She runs only a small office with two additional staff and another who is only in twice a week. She works about 4 hours a day and barring the occasional emergency visit, during regular hours and not on the weekends. They have no plans to expand or to run an obnoxious business. The office will only occupy 800 sq ft of their more than 5,000 sq ft home and will not alter the appearance nor greatly effect the cost or time of construction. It is certain that the office will have a far smaller impact on the

neighborhood than will the new development. The Bingham's in an attempt to address two neighbors concerns of increased traffic have undertaken to consult with the local police officer in charge of traffic control for Cooper and transportation engineers as well. They commissioned a study bourne out by the officer as well that the increase of traffic in the neighborhood was possible but that the real culprit is the new road for the development. The Bingham's have offered to pay for suggested speed bumps to be installed to maintain the current atmosphere and even reduce the speed with which traffic flows through the neighborhood creating risk.

The variance is in harmony with the overall intent of the zoning code

Codes are developed to maintain the peace and beauty of our neighborhoods. The Binghams are certainly aware of this and as residents have no wish to interfere. They have obtained 9 letters, including from all adjoining landowners that approve of the variance. The exterior of the home will not be altered and there is more than enough allowances made to parking and traffic concerns.

The variance serves the public interest

It is essential that the board recognize the benefit of the relationship that arises if they allow this variance to Dr. Bingham. As a specialist in her field she will be in walking distance to the largest population of elderly and poor that need her assistance in the city. Through no fault of her own she will be forced to move her practice farther away if the variance is not granted and one of the cited reasons of the new development is that it is the "geographic center of services needed by senior citizens" according to one member of this very board (Daily News). One of those services is in jeopardy of being lost to the population that is being brought in to

benefit from it.

Other neighbors in this area have been granted variances for diverse purposes. While we are aware that the prior grants of variances are not an absolute determination that others will issue we urge the board to consider that the Bingham's have consistently looked for what was required in the past and present and attempted to exceed all of them. They have provided nine "no objection" letters as well as another from the officer and the two neighbors that had concerns agreed also that if those concerns were met that they would have no objection either. They then hired engineers to address those concerns and offered to make the suggested changes.

The Bingham's have made every effort to meet the demands of the zoning ordinance and they have exceeded those requirements. Dr. Bingham in her professional capacity is a desirable neighbor to have and it would actually be a harm to the new and changing community to not allow her to operate her practice from home. This city and this board have allowed for change, they have recognized the need of the elderly and poor and allowed a new low income development near to convenient services. In doing so they changed the nature of the surrounding area. Section 276 states that "residential districts are intended to provide a variety of residences and *complimentary uses...*" This is just such a complimentary use. It will benefit the Bingham's, the neighbors and the public interest as well. We are grateful for your consideration of this variance and are certain that you will agree that it is in order. If we can provide any more information useful to your decision please do not hesitate to contact us.

Respectfully,

Jan Stubbs,

Esq.

Stubbs,

Freidland & Oglethorpe

END OF EXAM

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~~1/2~~

We are the attorneys working for the Bryghams and we would like to request a variance with permission from the ZBA for a small dental clinic to help benefit the elderly/protection ^{clients} in the community. The clinic would be 800 ft and wheelchair accessible and would especially help seniors in the new apartment garden complex in the area. The Brigham home is currently zoned R-1 single-family residential, but ^{they} would like a variance to allow them to build and operate a dental practice at 2050 Maple Street.

The Cooper City Zoning Code §35 lists the criteria for granting a variance. The

2/3

party must satisfy the criteria by a preponderance of the evidence: ① the variance will not create a detriment to adjacent and nearby properties; ② the variance will not substantially alter the general character of the area; ③ the effect of the variance is in harmony with the provisions and the overall intent of the zoning code; and ④ the variance meets one of the following criteria:

- (a) unique and ~~and~~ peculiar circumstances creates practical difficulties or unnecessary hardship that would be alleviated by the variance; or
- (b) the public interest will be served by the variance $\frac{2}{3}$ of the full membership of the ZBA.

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~~It~~ It is clear that the Brighams can meet the aforementioned standards: First, the variance will not create a detriment to adjacent and nearby properties. In fact, according to Rob Zuker (Cooper City Realty) the ~~states~~ remodeling done on the Brigham home will have a positive impact on neighbor property values. Property values will rise 10% with only a marginally increase on property taxes. Second, the variance will not alter the general character of the neighborhood: The diagram on ~~page 6 of the~~ ~~map~~ showcasing the neighborhood shows that the overall character of the area will remain ~~substantially~~ overwhelmingly residential. Especially w/ the forthcoming

4/6

apartment complex. Third, the effect of the variance is in harmony with the provisions and overall intent of the zoning code:

§ 276 states that residential districts are intended to provide a variety of residences and complementary uses. Additionally, the code is designed so as

to maintain the harmony ~~and~~ between neighborhood residents, ~~therefore~~ The harmonious nature of the

Brigham's intent is illustrated by the fact that an overwhelming majority of neighbors have consented with absolutely no objections to their addition of a dental office on their home. See

Brigham Variance Petition ~~Section~~ (2). It is quite evident that this residential area is supportive of Brigham's plan. Next, the Brigham's

must satisfy the fourth requirement. Either
~~(a)~~
 (a) unique and peculiar circumstances create practical
 difficulties or unnecessary hardship that would be
 alleviated by the variance; OR (b) the public
 interest will be served by the variance. A variance
 under this subsection, (D)(4)(b), shall be granted
 only by the affirmative vote of $\frac{2}{3}$ the full
 membership of the ZBA. According to Anton
 you can meet the requirements by satisfying
 either (A) or (B). Here, the Brighams satisfy (B)
 because the public interest will be served
 by this variance. It is known that a
 new "Elder Endorse" will be entering the area
 soon. See article "Council Surprise Move Creates New Elder
 Endorse" The complex will be built on an

6/8

area that will help tend to their needs.
By passing this variation ^{we are} helping
~~what better way to~~ ~~serve~~ our seniors
and providing
~~the~~ ~~by~~ ~~providing~~ a dentist who specializes
in senior care right next to the complex.

A public interest will be served because our
seniors are provided the care they deserve
without forcing them to travel unnecessary
distances.

Opponents cite an increase in traffic due
to customers traveling in and out of the
Brigham home. They argue that a bigger
public interest is keeping traffic low and
speeds to a minimum. However Paul Horz
of TrafficControl, Inc. states that traffic
will be low due to limited access and

will only increase to light moderate with the new access road to Palm Avenue. In addition, children will still be ~~at~~ free to play safely because of the speed bumps being added on Maple, 20th, 21st streets which is actually projected to lower the average speed than there is now. See Traffic Control Report.

It is safe to say that the public interest is being served. Easy access for seniors to much needed dental care, ~~and lower speeds for traffic~~ and lower speeds for traffic (resulting in safer children) equal a satisfied public interest. The ZBA need satisfy their duty by allowing Brigham to be dental office by a 2/3 vote. It is our hope that you do

The Brighams have generally offered to pay for the bumps.

8/d

50. Fulfill your obligation. Everyone benefits
from your decision if you allow the
Brigham's this variance today. Thank you

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1/11

Stubbs Friedman + Oglethorpe
2 striking pro F center
Cooper City Frank 33024

Tuesday, July 26, 2005

Cooper City Zoning Board of Adjustment

RE: Brigham Variance Request

~~is~~ Barbara Brigham, a
local ~~dentist~~ ^{Dentist} for the elderly
and her husband Len Brigham,
a local electrical engineer

Request A zoning variance ~~is~~
~~granted~~ from R-1 to B-1

for their property located
at 2050 Maple Street in the

Rollingwood neighborhood
of Cooper City. They wish to establish
a small dental office
in their home.

As per the Cooper City zoning code § 35 (D) I will discuss each element needed for a grant of ~~a~~ a variance. we must prove each element by a preponderance of the evidence which is slightly over 50%.

① variance not create detriment
to adjacent + nearby properties

we have included letters of approval from all the neighbors regarding the in home dental office. while their only concern is additional traffic, the Bighams have assured

$\frac{3}{11}$

the neighborhood of providing
off street parking for any patients
and have agreed to pay for
speed bumps to ~~reduce~~ the
potential for speeding in the area.
Both the police department and
Traffic Control have given their
opinion and approval of speed bumps
and how the small dental office
will not create a detriment to
adjacent + nearby properties.
In addition Ms. Brigham will
only have 2 full time employees
and will not ~~be~~ practice dental

work during the weekend. The Brightmans have reassured the neighborhood of the little impact the home dental office will have on the neighborhood community.

② the variance will not substantially alter the general character of the area

The dental office will be included in the main home. The dental office will not be a separate busy building w/ cars running in and out. From the outside, only the sign of the dental

office will be apparent to the unaware passerby. The small home rental office will not alter the character of the area.

③ The effect of the variance is in harmony w/ the provisions + the overall intent of the zoning code

§276 discusses the intent of Residential District to provide "variety of residences + complementary uses that conform." In this case the 134 unit elder home occupants need a good dentist that provides

mental work specifically for the elderly. The mental office next to the elder facility would "complement" the residence in the neighborhood by providing a high demand service.

In addition § 293 discusses the intent of "meeting personal + professional service needs of the local neighborhood." ~~At~~

Again, w/ the elder care facility in the back door ~~the~~ demanding mental services the Brigham home mental office would prove to

be of valuable service. The
 city council went even further
 and ~~stated~~ ^{promised} in the Daily News
 that the new elder center
 is "built on a site at the
 virtual geographic center of
 services needed by senior citizens."
 Therefore the zoning council
 should make good on their promise
 to the elderly and grant
 the Bighams a zoning variance
 so ~~they~~ Ms. Bigham can provide
 rental service on her area
 of expertise, the elderly.

8
11

In Addition to the 3 previous elements one of the following 2 elements must be met.

① unique + peculiar circumstance
create practical difficulties
or unnecessary hardship would
be alleviated by variance

The court of Appeals in Anton clarified this point. The unique + peculiar circumstance must be in the land itself not the desires of the owners.

In this case, the Bighams land has a small pond.

w/ all the wetland Regulations abounding and the need for green space - The Bighams could utilize the pond only w/ the help of the seniors. The seniors would enjoy feeding ducks at the pond or walk around the pond while awaiting their Apt. The Bighams land does hold a unique + peculiar circum which can be utilized to the fullest w/ granting the variance for the rental home office for the elderly.

② The public interest will be served by the variance

The Cooper City Council has repeatedly established to the community + the press the need + desire to care for the elderly. ^{the} Elderly population has many needs and are often limited in transportation + mobility. If this zoning council grants the Binghamms a variance, the city will be further along in the process of assisting the elderly population.

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w/ their many immediate needs

since the city at large,
the nearby neighbors, and
the Bighams themselves are
willing to utilize the property
at 2050 Maple street as a
service to the elderly population,
the zoning council should
grant the variance

sincerely

b/ Jan stubbs

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To: Cooper City Zoning Board of Adjustment (ZBA)
 FROM: Stubbs, Friedland & Colethorpe, P.C.
 RE: Requesting Variance of Zoning of
 Brigham ~~Property~~ Property, 2050 Maple Street
 DATE: July 26, 2005

Dear Zoning Board of Adjustments,

Barbara Brigham, DDS & her husband, Ken, are seeking a variance in connection with the remodeling of their family home to allow Barbara to move her dental practice into the home to meet the professional service needs of the Pollingwood neighborhood. Dr. Brigham is currently unable to do this because the property is zoned R-1 Single family residential.

Dr. Brigham's dental practice is currently located in One Stirling Professional Center, but likely in large part, due to the conversion of the nearby 18.5 acres from ~~R-1~~ R-1 single family residential to R-2 Multifamily to accommodate the garden apartment complex catering to senior citizens. ~~The rent at the professional center~~ was increased by 35%. Barbara will not be able to maintain her customary pro bono services, amounting to 20-25% of her dental practice with the increase in rent. In order to accommodate the needs of her patients Barbara Brigham is requesting a change in

the zoning of 2050 Maple Street, allowing her to maintain a dental practice in her home.

According to the Cooper City Zoning Code, the Brighams must show

- 1) the variance will not create a detriment to adjacent & nearby properties.
- 2) it will not substantially alter the general character of the area
- 3) the effect of the variance is in harmony with the provisions & the overall intent of the Zoning Code; &
- 4) the variance serves the public interest

As to the 1st issue, ~~whether the variance~~ & the effect a variance will have on the adjacent & nearby neighborhoods, the response of landowners appears to be positive. In fact, Rob Zuker, owner of Cooper City Realty asserts the variance would have a positive impact on the neighborhood. He believes property values will increase by 10% & that property values will also increase

* please refer to end of paper for additional adjustments

In addition, the 2nd element requires that the variance will not substantially alter the general character of the area. Dr. Brigham's dental practice is small. She works only 4

hours a day & does not anticipate adding a partner. She employs 2 people full-time & one person part-time. In addition, Dr. Brigham will schedule only 3 patients per hour. On the 2 days the part-time dental hygienist works, there will be only 2 additional patients per hour. Also, except for the occasional emergency visit, the office will be closed on weekends. Research has indicated there is sufficient off-street parking available on the Brigham's property to accommodate ~~the~~ both patients & staff.

~~the~~

The 3rd element, that the variance be in harmony with the provisions & overall intent of the zoning code will not be a problem.

§ 276, citing the purpose of residential districts says the intent is to provide a variety of residential & complementary uses that conform with the density requirements, policies & objectives of the Cooper City Land Use Plan.

A home dental office will not interfere with the neighborhood, & indeed, will provide a necessary service to residents.

Additional Support of Element 1:

2 neighbors have expressed concern regarding increased traffic & potential child safety issues. However, David White, a good authority ~~was~~ as a 16 year veteran of the police department & sergeant in charge of the traffic control division has asserted if speed bumps are put in place, the problem will decrease from what it currently is because injuries are not caused by the number of autos but speed. The Brigandinos have offered to pay cost.

The final element, that the public interest will be served by the variance requires a affirmative 2/3 vote.

We are confident that the 2/3 required vote will be met because of the important public interest that will be served by the variance.

The dental office is in the public interest because

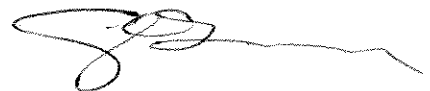
1) 20-25% of Dr. Brigham's services are provided & this variance will allow her to maintain this level

2) her existing, mostly elderly patients are used to traveling to this section of town for dental care.

In conclusion

~~Again~~, the Brighams request a variance on their zoning property as it is in the public interest.

Thank you for your consideration,



Stubbs, Friedland & Ogletwope, P.C.

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City Zoning Board of Adjustment
Address
Cooper City, FRANKLIN 33024

1
6

Dear members of the City Zoning Board of Adjustment,

We are writing to request a zoning variance on behalf of Barbara and Len Bingham, who own ^{acres} 1.2¹ located at 2050 Maple Street in Rollingwood.

Barbara Bingham, DDS is a dentist who dedicates approximately 35% of her practice to pro bono work. When she and her husband purchased their property on Maple Street there was no zoning ordinance. Since the purchase, the office building in which Barbara's office is located has given notice of a 35% rent increase and the zoning board has passed an ordinance zoning the neighborhood where Maple Street sits, as residential only.

Barbara is seeking a variance to allow her to continue her sole practitioner practice out of her home as this is the only way she can financially continue with her pro bono work. The only other alternative, which is the rental of an office in a distance more than nine miles from Barbara's current location, would cut her off from her leading client base, the elderly.

This request complies with all of the provisions required under §35 of the Zoning Code and is not only in the best interests of the Bingham family but also of the community as a whole.

§35(D) of the zoning code requires that, in order to obtain a variance, must satisfy the ZBA by a preponderance of the evidence that: (1) the variance will not create a detriment to adjacent and nearby properties; (2) the variance will not substantially alter the general character of the area; and (3) the effect of the variance is in harmony with the provisions and overall intent of the zoning code. I will discuss each of these in turn.

See Anton v. Cooper City Zoning Bd of Adj; §35(D) the Code.

THE VARIANCE WILL NOT CREATE DETRIMENT

The dentist's office will consist of Barbara as well as an assistant, a receptionist and a part-time dental hygienist who anticipates 2 days of work per week. She plans to schedule 3 clients per hour ^(only works 4 hrs per day). While the additional visitors to the home will potentially cause a slight increase in traffic, there is no evidence that there will be a detriment to adjacent properties. Instead, Barbara's building will likely have positive effects on the neighborhood.

Rob Zukor, the owner of Cooper City Realty believes that this office use variance will have a positive impact in property values, raising them 10%. Additionally, the accessibility of a dentist's office may also provide a benefit to neighbors and the existence of nearby pro bono services will definitely serve the needs of any low income property owners/renters in the neighborhood.

While there has been no objection from any adjacent property owners, two out of the nine submitted letters expressed concern that there would be an increase (2)

in traffic which would lead to an increase in speed, potentially posing a risk to neighborhood children. The Binghamms have taken notice of this potential detriment and taken the steps necessary to eliminate it. David White, a neighbor and a veteran of 16 yrs from the Cooper City Police Dept. Traffic Control Division, suggested a method for addressing the concern is inserting speed bumps. The Binghamms have agreed to pay for the insertion of speed bumps to be completed immediately upon granting of the variance (See TRAFFIC CONTROL, INC LETTER AND ESTIMATE). We have attached a letter from Traffic Control Inc. confirming officer white's assessment that speed bumps will eliminate the problem of speeding.

Consequently, there is no evidence whatsoever suggesting the variance will lead to anything but benefits for adjacent properties to the one in question.

The variance will not SUBSTANTIALLY ALTER CHARACTER OF THE AREA

The office will not substantially change the character of the neighborhood. The office will be a mere 800 square feet and while it will be handicap accessible there will be little else except for a sign distinguishing it from the neighboring property. The neighborhood has along with the single family residences, a church with a parking lot for 40 cars and access buildings. This church blends well despite its different varying features. In this way, the dental office will also add to the character and blending in with the neighborhood.

This blending is also evidenced by the earlier discussed increase in property values.

It is also worth noting that nine of the Bigham's neighbors have supported this project, which suggests that the neighborhood itself believes that the office's presence will blend and not substantially alter the character of Maple St. neighborhood.

(See Neighborhood Letters 1-9)

The Variance is in Harmony with the Zoning Code

This variance would provide a much needed service to the neighborhood, ensure the most efficient use of the Bigham's property, while boosting property values for neighboring properties. According to provisions 276 of the code residential uses are "intended to provide a variety of residences and complementary uses that conform to the density requirements, policies and objectives of the Cooper City Land Use Plan."

Here, the amount of increase traffic would amount to little more than a very large family which is hardly a violation of density requirements. Again the accessibility of dental care for all levels of income offered out of a tasteful in home business furthers both the policies and objectives of the Board.

The Public Interest will be Served by the Variance

In addition to the three requirements above the landowner must also show by a preponderance of

The evidence that either 1) unique and peculiar circumstances exist or 2) that the public interest will be served by the variance. It is this latter requirement that applies here. ANTON, §35(D)(4)(b) Cooper City Zoning Code.

On March 16, 2005 in Cooper City Daily News, the public was introduced to zoning ordinance re-zoning a lot in Cooper city for low income elderly housing in the Rollingwood neighborhood where the Bingham home is located. The elderly are the primary patients making up Dr. Bingham's pro bono practice. The benefit of having affordable dental care for these residents is no longer a speculative generalized benefit, but a particularized, articulate and specific public interest. Care of the elderly is an extremely important interest and difficult duty for every community to meet. The ability to provide such a fundamental service without expense to the city or those benefited is truly a great public service. See generally CDN Article.

Based upon the above arguments, the submitted documents and the general public policies legitimizing the positive impact this ordinance would have on the Rollingwood neighborhood, we respectfully request on behalf of the Bingham and the neighborhood, that you grant this variance. It should also be noted that encouraging & supporting pro bono work is also a public interest see explainer

① While the planned complex will provide many services, a dental office is not one of them, making the importance of Dr. Bingham's office an even greater concern. (B)

6/6

Thank you and please contact our office if you are in need of additional documents or information.

Sincerely,

Applicant

Handwritten signature scribbles consisting of three wavy lines.