

<b>IN RE: PETITIONS FOR SPECIAL</b>	*	BEFORE THE
<b>EXCEPTION AND VARIANCE</b>	*	OFFICE OF
<b>(12802 Sagamore Forest Lane)</b>	*	ADMINISTRATIVE HEARINGS
4 <sup>th</sup> Election District	*	FOR BALTIMORE COUNTY
3 <sup>rd</sup> Councilmanic District	*	<b>Case No. 2014-0132-XA</b>
Jay Weinstein, <i>Legal Owner</i>		
Bonnie J. Miller D.V.M,		
<i>Contract Purchaser</i>		
Petitioners		

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 12802 Sagamore Forest Lane. The Petitions were filed by Timothy M. Kotroco, Esq., on behalf of the legal owner, Jay Weinstein and contract purchaser, Bonnie J. Miller D.V.M. (“Petitioners”). The Special Exception Petition seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) to permit a private kennel in an RC 2 zone pursuant to B.C.Z.R. § 1A01.2.C.2. The Petition for Variance seeks relief under B.C.Z.R. § 421.1 to permit any part of the private kennel use (fence) to be located as close as 5 ft. from the nearest property line in lieu of the minimum required 200 ft. from the nearest property line. The subject property and requested relief are more fully described on the redlined site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the hearing in support of the Petitions were Dr. Bonnie Miller, Jay Weinstein, Jared Block and Randy Bachtel. Timothy M. Kotroco, Esq. of Whiteford, Taylor & Preston represented the Petitioners. Several neighbors attended the hearing and opposed the petition, and their names are listed in the case file. The Petition was advertised and posted as required by the B.C.Z.R.

Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. None of the reviewing agencies opposed the petition, but both the Department of Planning (DOP) and Bureau of Development Plans Review (DPR), submitted conditions they requested if the relief is granted.

Testimony and evidence offered at the hearing revealed that the subject property is approximately 3.227 acres, and is zoned RC 2. The property is improved with a single family dwelling and other amenities including a tennis court and swimming pool. Dr. Miller, a veterinarian, is the contract purchaser, and she proposes to live in the home and keep up to twenty (20) dogs on the premises. The County deems this a “kennel” for which a Special Exception is required in the RC2 zone, but Dr. Miller stressed that all of the dogs are owned by her, and that this will not be a commercial operation. Dr. Miller explained that these are purebred “show dogs,” several of which have won national awards. She stated that the dogs are English toy spaniels, which are less than 10 pounds and are quiet and well-behaved. Dr. Miller explained the dogs would mainly be kept inside the home, and would be let out in the fenced yard (with supervision) 3 or 4 times daily for 15-30 minutes.

Several neighbors testified in opposition to the proposal, citing concerns with noise, animal waste, reduced property values and setting a dangerous precedent for the operation of such facilities in residential neighborhoods. The neighbors stressed that they believe Dr. Miller is a fine person, but they did not believe the use was appropriate in this area, and they also feared that a subsequent owner or operator could expand the nature of the kennel, and (for example) keep larger dog breeds on the premises.

#### SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest

of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. In this case, the required setbacks would be essentially non-existent, and the number of dogs at the proposed kennel could also be problematic, given that 273 single family dwellings are situated close by in the neighborhood. In these circumstances, I believe Special Exception is inappropriate.

#### VARIANCE

Given the disposition above the petition for variance will be dismissed (as moot) without prejudice.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 5<sup>th</sup> day of February, 2014, that Petitioners' request for Special Exception under the B.C.Z.R. to permit a private kennel in an RC 2 zone pursuant to B.C.Z.R. §1A01.2.C.2, be and is hereby DENIED; and

IT IS FURTHER ORDERED that Petitioner's request for Variance relief from B.C.Z.R. § 421.1 to permit any part of the private kennel use (fence) to be located as close as 5 ft. from the nearest property line in lieu of the minimum required 200 ft. from the nearest property line, be and is hereby DISMISSED WITHOUT PREJUDICE.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/sln