

IN RE: PETITIONS FOR SPECIAL	*	BEFORE THE
EXCEPTION AND VARIANCE	*	OFFICE OF
(18801 Spooks Hill Road)	*	ADMINISTRATIVE HEARINGS
6 th Election District	*	FOR BALTIMORE COUNTY
3 rd Council District	*	
Geraldine Auchincloss & Frank Cashin, III	*	
<i>Legal Owners</i>	*	
Petitioners	*	Case No. 2017-0343-XA

* * * * *

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 18801 Spooks Hill Road. The Petitions were filed on behalf of Geraldine Auchincloss & Frank Cashin, III, legal owners of the subject property. The Special Exception petition seeks to permit a private kennel on RC 2 zoned property. The Petition for Variance seeks to permit a private kennel to be located as close as 34 ft. and 175 ft. from the nearest property lines in lieu of the required 200 ft. A site plan was marked as Petitioners' Exhibit 1.

Appearing at the hearing in support of the petitions was Gerri Auchincloss and Frank Cashin. Several neighbors attended to obtain additional information regarding the requests. The Petition was advertised and posted as required by the B.C.Z.R. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the county reviewing agencies.

The subject property is approximately 1.73 acres and is zoned RC 2. The property is improved with a single-family dwelling constructed in 1956. Petitioners own, breed and show Wirehaired Griffons, a medium sized hunting dog. At present, Petitioners own three (3) dogs. These dogs are getting too old to show, and Petitioners would like to acquire up to three additional

dogs. Under the zoning regulations, owning more than three dogs requires an owner to seek special exception approval for a “private kennel.”

The neighbors at the hearing stated they did not oppose the request, but wanted to make sure certain conditions would be included in any order. I will include in the order below conditions (as discussed at the hearing) to ensure the private kennel operation does not have a detrimental impact upon the community.

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 *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only 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. I do not believe the private kennel will have a detrimental impact upon the community, especially since this is a rural, sparsely populated area.

VARIANCE

A variance request involves a two-step process, summarized as follows:

1. It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
2. If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

The subject property is narrow and deep (approximately 150 ft. x 500 ft.), and is therefore unique. If the B.C.Z.R. were strictly interpreted Petitioners would suffer a practical difficulty since they would be unable to own more than three dogs. Finally, I find that the variances can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 17th day of **August, 2017**, that the Petition for Special Exception to permit a private kennel on RC 2 zoned property , be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance pursuant to the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a private kennel to be located as close as 34 ft. and 175 ft. from the nearest property lines in lieu of the required 200 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. No more than six (6) dogs over the age of four months old may be kept at the premises.
3. The private kennel special exception approval shall be personal to the Petitioners herein, and shall not “run with the land.” Any future owner or lessee of the property desiring to operate a private kennel would be required to seek approval by way of a petition for special hearing or petition for special exception filed with Baltimore County.
4. The dogs shall not be left outside unattended.

5. All training and/or exercising of dogs must take place on Petitioners' property, unless other arrangements are made with adjoining property owners.

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