

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(4406 Worthington Avenue)		
4 th Election District	*	OFFICE OF
3 rd Council District		
Dominique and Corey Hannah	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
Petitioners	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0211-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of Dominique and Corey Hannah, legal owners (“Petitioners”). The petition was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) to use the property for a private kennel.

Dominique and Corey Hannah appeared in support of the petition. Two neighbors attended the hearing to obtain additional information regarding the request. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Environmental Protection and Sustainability (DEPS).

The subject property is approximately 5 acres in size and is zoned RC-2. Petitioners purchased the property last year and live there with their children and six (6) dogs. A County inspector--apparently responding to a dog barking complaint--informed Petitioners they needed to seek approval for a “private kennel.” Under the BCZR a “private kennel” is any building or land that is used “for the housing of more than three dogs.” BCZR §101.1. A private kennel is permitted in the RC-2 zone by special exception. BCZR §1A01.2.C.2.

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.

Petitioners stated the dogs are not permitted to run at large and that they are current with all required vaccinations and licenses. Petitioners indicated they were aware County law requires animals to be leashed at all times, and also imposes requirements concerning food, water and shelter which must be provided for all animals. BCC §12-3-101 *et. seq.* As such I do not believe the private kennel would have a detrimental impact upon the community, especially since Petitioners own a large tract of land and the proposed enclosure for the dogs would be over 200 ft. from the property boundary.

THEREFORE, IT IS ORDERED this **8th** day of **May, 2018**, by this Administrative Law Judge, that the Petition for Special Exception to use the property for a private kennel be and is hereby GRANTED.

The relief granted herein shall be subject to 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. Prior to issuance of permits Petitioners must comply with the ZAC comment from DEPS, a copy of which is attached hereto and incorporated herein.
3. Petitioners may keep on the subject property no more than six (6) dogs.
4. Petitioners shall construct within 30 days of the date hereof a chain link fence enclosure at least 10' x 15' in size, and when outside the dogs must be secured within this enclosure. The enclosure must be constructed in accordance with Section 12-3-111(c) of the Baltimore County Code.

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