

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(4231 Wards Chapel Road)		
2 nd Election District	*	OFFICE OF
4 th Council District		
Carolyn Whittington	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Paulette Ringley t/a Humane Domain	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2018-0268-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Carolyn Whittington, legal owner, and Paulette Ringley, lessee (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) as follows:

1. To approve an amended site plan to include a new agriculture building;
2. To confirm the special exception area may also include RC 2 uses by right;
3. To amend the prior Special Exception Order dated November 9, 2006 in Case No. 06-437-X to allow the agricultural use of the barn in the special exception area;
4. To amend Condition 2 of the Order, Case No. 06-437-X:
 - a. To allow the facilities within the special exception area to be utilized for private parties and to allow the advertising of such events; and
 - b. To allow a farmer's roadside stand to sell farm products to customers inside and outside the special exception area;
5. To amend Condition 4 of the previous Order to eliminate the restrictions for use of the stables;
6. To amend Condition 5 of the previous Order:

- a. To eliminate the limit to the number of dogs that can attend commercial kennel (dog training classes);
 - b. To amend the hours to Monday through Sunday, 9:00 a.m.-9:00 p.m.;
 - c. To allow outside training of dogs in the outdoor riding ring area in addition to the outdoor riding ring uses provided in Condition 8 of the previous Order, and;
7. To confirm the by-right commercial agricultural uses of the subject property, including farmer's roadside stand, field crops, animal husbandry, raising/keeping of animals, riding stables and horse training.

A site plan was marked and admitted as Petitioners' Exhibit No. 1.

Paulette Ringley and Bernadette Moskunas appeared in support of the petition. J. Neil Lanzi Esq., represented the Petitioners. Several neighbors attended the hearing to obtain additional information and to express concern regarding certain aspects of the operation. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency opposed several of the special hearing requests.

SPECIAL HEARING

Petitioners in 2006 (No. 2006-437-X) were granted special exception approval to operate a "commercial kennel" on the subject property, a 19.9 acre tract zoned RC-2. Ms. Ringley testified she has worked at the farm for 12+ years, and she described the types of animals, crops and flowers that she raises at the site. The kennel business, known as the Humane Domain, provides dog training classes, educational seminars and other learning experiences for children, students, veterans and other special needs groups. Dog boarding is not offered at the site. The business has been successful and has grown since it was approved in 2006. But also during that

time friction and disagreements have arisen with certain neighbors. This had led to numerous complaints filed with the County's Code Enforcement bureau. Petitioners seek through this special hearing to amend certain of the restrictions imposed in the 2006 order and to obtain clarification of exactly what activities/uses are permitted at the subject property.

An owner/lessee may seek to modify a zoning order, provided she can show there has been a change in circumstances which justifies reconsideration of the original order. *Seminary Galleria, LLC v. Dulaney Valley Improv. Ass'n.*, 192 Md. App. 719 (2010). In this case the commercial kennel and other activities at the property have increased in scale, which I believe justifies revisiting the earlier Order which is now 12 years old. In addition, Petitioners are not seeking variances or additional special exceptions. Rather, the petition for special hearing is in essence a declaratory judgment, which is specifically permitted under B.C.Z.R. §500.7. *Antwerpen v. Balto. Co.*, 163 Md. App. 194, 209 (2005) ("A request for special hearing is, in legal effect, a request for a declaratory judgment"). Such a petition seems especially appropriate in this case, since it will hopefully clarify the terms under which the property must operate and impose clear restrictions which should eliminate the need for code enforcement officials to make judgment calls when interpreting the 2006 Order.

As noted above, the subject property is zoned RC-2 and is actively farmed by Petitioners. Petitioners also raise farm animals at the property. These uses are favored in the RC-2 zone. Owners of agricultural land in Baltimore County often struggle to generate sufficient income from their property, and frequently seek to offer additional services or products to increase their rate of return. This is not an unreasonable goal, but an owner cannot be given carte blanche authority to use her property as she sees fit.

The zoning regulations specifically require that a special exception use (i.e., commercial

kennel) not have a detrimental impact upon the community. BCZR §502.1. The subject property is located in a rural section of Baltimore County, but there are also single-family dwellings within the immediate vicinity. Petitioners must operate the property in such a manner that, while enabling them to obtain a reasonable rate of return on their investment, preserves the rural nature of the community.

As listed above the zoning petition contains several special hearing requests. Many of the requests seek to relax certain restrictions imposed upon the kennel operation in the 2006 Order. Petitioners would like to be able to train dogs and conduct educational seminars in the outdoor riding ring area shown on the plan. Petitioners explained that search and rescue dogs require outdoor training and the riding ring proposed for this use is situated at the rear of the site far removed from any off-site dwellings. As such I believe this is a reasonable request which will serve the public interest and the 2006 Order (which required all dog training to be indoors) will be amended accordingly.

Other requests in the petition pertain to the hours of operation and number of dogs permitted at any one time on the property. Petitioners explained many of their clients have requested expanded hours of operation. It is of course common for service businesses to offer expanded hours of operation to cater to working clients who find it difficult to make appointments during what was heretofore “normal business hours.” I believe the kennel should be permitted to expand its hours of operation to accommodate its clientele, and I also believe the restriction on the number of dogs can be relaxed without having a negative impact upon the community. But Restriction No. 5 (i.e., “no training shall occur on Sunday”) is reasonable and will be retained. While commercial activities are appropriate in rural areas under certain circumstances, I do not believe they should be 7-day a week operations. Many service-oriented

businesses in Baltimore County do not operate on Sundays; such businesses in rural zones should be closed on Sunday as well.

Petitioners also seek to confirm that uses permitted by right in the RC-2 zone (such as a produce stand or agricultural buildings for storing agricultural equipment or products) may be conducted within the special exception area (approx. 5.5 acres) outlined on the site plan. Real property--especially an approximately 20 acre rural parcel—may be used for more than one purpose, provided the owner does not jeopardize the health, safety and welfare of her neighbors. While I am mindful of the disagreements which have arisen between Petitioners and an adjoining neighbor, I do not believe the business and agricultural activities at the subject property have had a detrimental impact upon the community. Activities and uses permitted by right under the RC-2 regulations may be conducted anywhere on the 20 acre tract, although all activities and parking for the commercial kennel must take place entirely within the special exception area.

In opposing certain of the zoning requests, the DOP cited the property's "close proximity" to Liberty Reservoir. Ms. Moskunas prepared a map (Pets. Exhibit No. 6) showing that the reservoir is approximately 1,400 feet from the subject property. As such, I do not believe the relief granted herein will have a detrimental impact upon that resource.

The DOP also noted in its ZAC comment that any increase in the number of dogs permitted on site should be considered an "accommodation" to allow dog training clients and their animals to enter and exit the site before and after class. I concur, and the modification below (permitting 20 dogs) is designed to allow Petitioners to operate the kennel without fear of receiving a code enforcement citation when there is a temporary increase in the number of dogs during the period of ingress and egress from a training session.

THEREFORE, IT IS ORDERED this 1st day of **June, 2018 by this Administrative Law**

Judge, that the Petition for Special Hearing:

1. To approve an amended site plan (marked and admitted as Petitioners' Exhibit No. 1) to include a new agriculture building in the rear yard;
2. To confirm that uses permitted by-right in the RC-2 zone may be conducted within the special exception area shown on the site plan;
3. To amend the prior Special Exception Order dated November 9, 2006 in Case No. 06-437-X (the "2006 Order") to allow the agricultural use of the barn in the special exception area;
4. To amend Condition 2 of the 2006 Order:
 - a. To allow the facilities within the special exception area to be utilized for ancillary agricultural uses (educational seminars and programs, children's educational programs, animal rescue training, animal trainer training, assistance dog training, patient therapy, rabbit rescue and to allow the advertising of such on Petitioners' website and otherwise; and
 - b. To allow a farmer's produce stand (whether inside or outside of the special exception area) to sell farm products grown on site;
5. To strike Condition 4 of the 2006 Order which imposed certain restrictions upon the use of the stables;
6. To amend Condition 5 of the 2006 Order:
 - a. To limit the number of dogs on the property at any one time to twenty (20);
 - b. To amend the hours of operation to Monday through Friday 12:00 p.m.-9:00 p.m. and Saturday 10:00 a.m.-5:00 p.m.; and
 - c. To allow training of dogs in the outdoor riding ring area in addition to the outdoor riding ring uses provided in Condition 8 of the 2006 Order; and
7. To strike Condition 10 of the 2006 Order, 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. Except as expressly amended herein, all terms and conditions set forth in the 2006 Order shall continue in full force and effect.
3. No overnight dog boarding shall be permitted on the subject property.

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

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln