

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(13401 Jarrettsville Pike)
10th Election District
3rd Council District
Fiona M. Langham &
Ronald Rash
Legal Owners
Petitioners**

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BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2018-0271-XA

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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 13401 Jarrettsville Pike. The Petitions were filed on behalf of Fiona M. Langham & Ronald Rash, legal owners of the subject property. The Special Exception petition seeks to permit a commercial kennel on the property. The Petition for Variance seeks to permit a setback for any part of the use of an animal boarding place or private kennel of 0 ft. from the nearest property line in lieu of the required 200 ft. A site plan was marked as Petitioners' Exhibit 1.

Fiona M. Langham and surveyor Bruce Doak appeared in support of the petition. Edward J. Gilliss, Esq. represented Petitioners. There were no protestants or interested citizens in attendance. In fact, Petitioners submitted letters of support from several neighbors in the community. Petitioners' Ex. 5. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP") and the Bureau of Development Plans Review ("DPR").

The subject property is approximately 37,461 square feet in size and is zoned RC-6. The property is improved with a single-family dwelling with a large, fenced back yard. Petitioners purchased the property four years ago, and Ms. Langham proposes to operate a modest-sized

commercial kennel at her home. The dogs would be housed in the attached garage which Petitioners have outfitted with enclosures for this purpose. A commercial kennel is permitted by special exception in the RC 6 zone.

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. Mr. Doak testified via proffer the use would not have a detrimental impact upon the community and that Petitioners satisfied the requirements set forth in B.C.Z.R. §502.1 and the case law interpreting that provision. I agree, and in the absence of any evidence to the contrary the petition for special exception will be granted.

VARIANCES

Citing BCZR §421.1, Petitioners included a setback variance request in the petition, but added a notation that it was applicable only “if needed.” A discussion was held at the hearing and Petitioners’ counsel noted BCZR §421.1 imposes a 200’ setback requirement only for “private kennels” and “animal boarding places,” not “commercial kennels.” Having reviewed that section I concur and do not believe a variance is required in this case.

Practically speaking, Petitioners are not proposing any improvements at the site and the adjacent neighbors have indicated they “support” the requests. In addition, certain conditions

proposed by the DOP will be included below to help ensure that the operation does not have a negative impact upon the community.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 25th day of **June, 2018**, that the Petition for Special Exception to permit a commercial kennel on the subject property be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance to permit a setback for any part of the use of an animal boarding place or private kennel of 0 ft. from the nearest property line in lieu of the required 200 ft. be and is hereby DISMISSED without prejudice as unnecessary.

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. A maximum of ten (10) dogs may be boarded at the property at any one time.
3. No commercial signage shall be permitted in connection with the kennel.
4. No more than three (3) unattended/unaccompanied dogs may be in the rear yard of the property at the same time.

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