

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(2705 Greenspring Valley Road)		
3 rd Election District	*	OFFICE OF
2 nd Council District		
Russell Carter & Tiffany Stearns	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
Follow My Lead, LLC	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2019-0168-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 Russell Carter & Tiffany Stearns, LLC, legal owners and Follow My Lead, LLC, lessee (“Petitioners”). The special exception petition was filed pursuant to Sections 502.1 and 1A01.C.2 of the Baltimore County Zoning Regulations (“BCZR”) to approve a commercial kennel in an RC 2 zone.

Tiffany Stearns and landscape architect David Martin appeared in support of the petition. Adam M. Rosenblatt, Esq. represented the Petitioners. Frederic Smalkin, Esq., on behalf of numerous community members, opposed the request. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), the Bureau of Development Plans Review (“DPR”), the Department of Environmental Protection and Sustainability (“DEPS”) and the Maryland State Highway Administration (“SHA”).

The site is approximately 2.61 acres and zoned RC-2. The property is improved with a single-family dwelling constructed in 1931. The building was originally a school attended by children from the African American enclave of Chattolane. Though listed on the Maryland Historical Trust inventory the school is not designated as a Baltimore County landmark. The building has for many years been used for residential purposes. Petitioners purchased the building

in 2018 and propose to operate therein a commercial kennel, a use permitted by special exception in the RC-2 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.

Landscape architect David Martin, who was accepted as an expert, described the two-sheet site plan and the proposed layout of the kennel operation. Mr. Martin described the mature vegetation on the property and testified there are no setbacks required for a commercial kennel in an RC-2 zone. Mr. Martin (and Ms. Stearns) testified the proposed kennel operation would be very different from the typical boarding kennel, and after reviewing the factors enumerated in BCZR §502.1 he opined the use at this location would not have a detrimental impact greater than it would at any other RC-2 zone site.

Community witnesses expressed numerous concerns with the proposal. Foremost were concerns with barking dogs, animal waste, traffic and the potential for a negative impact on property values. In my opinion, these detrimental impacts are inherent in the operation of any commercial kennel. Maryland's highest court has held a special exception cannot be denied on this basis. *See, e.g., Montgomery County v. Butler*, 417 Md. 271, 297 (2010) ("Most [uses for which a

special exception is required] are regarded as potentially troublesome because of noise, traffic, congestion, or other associated problems”).

Several other witnesses expressed concern a dog kennel would be operated in a former African American school house. They believed the proposed use was incongruous with the historically significant nature of the site. Three former students who attended the Chattolanee school testified and stated they were upset by the proposal and “could not conceive” how the former school could be used as a kennel. While I understand and am sympathetic to these concerns, I cannot deny the special exception on this basis. The court of appeals, in a recent case involving the proposed construction of a funeral home, held the neighboring “Asian community’s deep-seated cultural aversion to the death industry” or other “cultural sensitivities” cannot justify the denial of a special exception. *Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties*, 453 Md. 516 (2017).

In addition, a special exception can be denied only upon a finding of a non-inherent adverse effect “upon adjoining and surrounding properties,” not on-site impacts. *Butler*, 417 Md. at 276-77 (opponent must show “non-inherent adverse effect” to “undercut the presumption of compatibility enjoyed by a proposed special exception use”). Petitioners own the property and are entitled to use it as they see fit, provided all legal (including zoning) requirements are satisfied. The result might be otherwise if the property was designated as a Baltimore County “landmark” under Article 32, Title 7 of the Baltimore County Code (“BCC”). If that were the case, the owners would be required to obtain from the Landmarks Preservation Commission (“LPC”) following a public hearing a “Certificate of Appropriateness” prior to completing improvements of any kind (including fencing) at the site. BCC §32-7-405.

Other community members, referring to the DOP's ZAC comment, contended the property's zoning classification was wrong, and that it made no sense a 200 foot setback was imposed for private kennels in residential zones, but not for commercial kennels. *See* BCZR §421. Both of these points are valid, but I am obliged to enforce the law as written. While the subject property and neighboring lots are small when compared to large RC-2 agricultural tracts, the reality is there are many RC-2 lots throughout the County improved with single-family dwellings situated on three acres or less. As such, I do not believe the use would have any unique or non-inherent adverse impact upon these smaller RC-2 lots.

THEREFORE, IT IS ORDERED this 4th day of **March, 2019**, by this Administrative Law Judge, that the Petition for Special Exception to approve a commercial kennel in the RC-2 zone, 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. The special exception granted herein shall be personal to Tiffany Stearns and Follow My Lead, LLC, such that when Ms. Stearns sells the subject property or no longer retains an interest therein, or sells or no longer retains an interest in Follow My Lead, LLC, the special exception will terminate automatically.
3. No more than ten (10) dogs may be in the outside fenced-in areas at the same time.
4. No more than eight (8) dogs may be kept overnight at the premises.
5. Animal waste must be promptly and properly disposed of and Petitioners must have a contractor retrieve not less than twice a week the receptacle housing dog waste.
6. Within 15 days of the date hereof a revised site plan must be submitted to Baltimore County reflecting that the fenced enclosures on the property are a minimum of 50 feet from any property

boundary line, and the exact fence setbacks must be shown on the amended plan.

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