

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(18310 Gunpowder Road)
5th Election District
3rd Council District
Carol J. Santamaria, *Legal Owner***

Petitioner

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2020-0064-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 18310 Gunpowder Road. The Petitions were filed on behalf of Carol J. Santamaria, legal owner of the subject property (“Petitioner”). The Special Exception petition seeks to permit an animal boarding place and a commercial kennel pursuant to § 1A01.2.C.2 of the Baltimore County Zoning Regulations (“BCZR”). The Petition for Variance seeks to allow the animal boarding place and commercial from kennel use (driveway) to be located 20 ft. to the nearest property line in lieu of the required 200 ft., pursuant to § 424.1. A site plan was marked and admitted as Petitioner’s Exhibit 1.

Due to the COVID-19 pandemic, a WebEx hearing was conducted virtually by computer and/or phone participation. Appearing in support of the petitions were Carol J. Santamaria and Bruce E. Doak of Bruce E. Doak Consulting, LLC. The Petition was advertised and posted as required by the BCZR. Numerous homeowners in the immediate vicinity attended and opposed the requested relief.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability. These agencies did not oppose the requested relief, subject to proposed conditions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject property is located on Gunpowder Road, a designated scenic route under the 2020 Master Plan. It is approximately 8.713 acres in size and zoned in RC 2. The area contains a mix of agriculture and rural residential. The petitioner, Ms. Santamaria, testified that it has long been a dream of hers to operate a boarding kennel for dogs. She testified that she and her family have always owned dogs but she acknowledged that she has no training or experience in dog training or kenneling. She testified that the kennel would be operated by she and her husband, and, where needed, with the assistance of one of their adult children. When questioned about how they would control the dogs' barking she stated that she or her husband would immediately go out and try to quiet the dog or dogs when they began to bark. However, not surprisingly she could not explain exactly how they would accomplish that, other than to say that they would "do the best they can." She testified that they would have no more than six dogs there at a time. However, according to the floor plan of the proposed kennel (Petitioner's Exhibit 3) there are seven dog runs in the structure. And I note that the Site Plan states that they are seeking to house up to 10 dogs there. She testified that when she inquired about whether she would be permitted to operate the proposed kennel at this site the zoning office told her that it was "potentially allowed," but that she would need to obtain the special exception and variance relief that are the subject of this case.

Mr. Doak, the property line surveyor who prepared the Site Plan, explained the Plan in some detail. He explained that they need to construct the proposed driveway within 20 feet of the adjoining property line because of the location of the septic field on the east side of the residence, which precludes it from being located closer to the residence. He explained that the other side of the residence was also not a feasible location for the driveway due to the steep grade. He

acknowledged that the BCZR requires a 200 ft. side yard setback from the driveway to the adjoining property line because the driveway is considered part of the kennel operation. He also acknowledged that the proposed kennel building itself is only 110 feet from the property to the east. He testified that they would plant a vegetative screen along the driveway to address the visual impacts but he acknowledged this would not significantly lessen the noise impacts from the kennel. He also acknowledged that the impacts of the proposed kennel at this location would potentially have a greater adverse impact than in many other locations in the RC 2 zone due to the close proximity of the surrounding neighbors, one of whom operates a horse boarding and training facility.

Each of the surrounding property owners testified and they all expressed concerns about the anticipated noise generated by the proposed kennel. They testified that the noise at this location would carry more than in the usual location due to the steep contours of the valley. Several of the neighbors testified that they have horses and are concerned that the barking of the dogs could startle and panic them. Heather Saul Rathbone testified that she operates a horse boarding and training operation nearby on Gunpowder Road. She explained that there are currently six horses boarded there and three trainers there on a daily basis training horses. She expressed concern that the younger, more skittish horses in training could be spooked by sudden barking from the kennel since dogs are natural predators of horses. Linda Cross, the adjoining neighbor to the west testified that she is an experienced dog trainer and that there absolutely will be noise when you house a group of dogs together, and that there is no magical way to stop them from barking once they start. The neighbors strenuously objected to the requested variance relief and expressed frustration that “the County” would even consider granting a setback variance from 200 feet down to 20 feet. I explained that the Petitioner had the right under the County Code to

petition for this relief and that the County agencies are required to process this petition but that it is the function of the Administrative Law Judge to decide whether the requested relief is lawful and appropriate.

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.

Based on the record evidence in this case I find that the adverse impacts of the proposed kennel at this site would in fact be greater than those inherently associated with kennels. Indeed, as noted above, Mr. Doak, acknowledged as much due to the fact that this proposed kennel would literally be surrounded by and in close proximity to numerous residences, including horse farms. Further, I find that the Petitioner has not met several of the conditions imposed by BCZR § 502.1. First, I believe this proposed kennel use *would* be detrimental to the general welfare of the locality due to the extraordinary noise impacts at this location. Second, given the proximity of the neighboring horse farms I believe there is real potential for panic or other danger to occur if a horse is suddenly startled by barking dogs. Finally, I believe a kennel at this site would overcrowd the land.

VARIANCE

The general rule is that “the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.” *Mueller v. People’s Counsel for Baltimore County*, 177 Md. App. 43, 71(2007). This is because “a variance is an authorization for that which is prohibited by a zoning ordinance.” *Cromwell v. Ward*, 102 Md. App. 691, 699 (1995). And because “citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations.” *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965). Therefore, “[t]he burden is on the applicant to show facts to warrant a variance,” and “the specific need for the variance must be substantial and urgent and not merely for the convenience of the applicant.” *Mueller v. People’s Counsel for Baltimore County*, 177 Md. App. at 70.

Under BCZR Sec. 307, and Maryland common law, in order to be entitled to variance relief the Petitioners must satisfy a two-step legal analysis, 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 is what necessitates the requested variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, supra. Finally, “unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship.” *Mueller, supra*, 177 Md. App. at 70.

The property in this case is arguably unique in that it is accessed by a panhandle drive and is irregularly shaped. Further, the location of the septic field necessitates the proposed driveway being placed within 20 feet of the adjoining property. Therefore, if this were a minor variance request I believe the equities would be in Petitioner’s favor. But here the Petitioner is seeking to construct a driveway a mere 20 feet from their neighbor’s property when the law entitles that

neighbor to 200 feet of buffer - ten times as much. Further, apart from the driveway, the kennel building itself is proposed to be only 110 feet from one neighbor, and the exercise run only 90 feet from another.

Finally, the record evidence does not support a finding that Petitioners' need for this variance is "substantial and urgent." *Mueller, supra*, 177 Md. App. at 70. While I certainly understand that Petitioner would like to operate a kennel on her property, the law does not allow me to grant the requested variances on these facts. To the contrary, the record evidence establishes that the neighboring property owners are entitled to "strict enforcement of the existing zoning regulations." *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965).

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this day **2nd** of **September, 2020** that the Petition for Special Exception to permit an animal boarding place and a commercial kennel pursuant to § 1A01.2.C.2 of the Baltimore County Zoning Regulations ("BCZR") be and is hereby DENIED; and

IT IS FURTHER ORDERED that the Petition for Variance to allow the animal boarding place and commercial from kennel use (driveway) to be located 20 ft. to the nearest property line in lieu of the required 200 ft., pursuant to § 424.1. be and is hereby DENIED.

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

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm