

**IN RE: PETITIONS FOR SPECIAL HEARING,
SPECIAL EXCEPTION AND
VARIANCE**

W side of Main Street, 225 feet N of c/l of
East Chadsworth Avenue
4th Election District
3rd Councilmanic District
(67 Main Street)

Elias Rizakos
Legal Owner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
*
* **Case No. 2009-0051-SPHXA**

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REMAND ORDER

This matter comes before this Deputy Zoning Commissioner on remand from the Baltimore County Board of Appeals (“Board”) for consideration of Petitions for Special Hearing, Special Exception and Variance (“Zoning Petitions”) filed by the legal owner of the subject property, Elias Rizakos. On December 11, 2008, People’s Counsel noted a timely appeal from a decision of the Deputy Zoning Commissioner dated November 25, 2008. The Board, on September 8, 2009, unanimously decided to remand the case back to the Zoning Commissioner for consideration of a Revised Plan to Accompany the Zoning Petitions, which purports to, among other things, change the existing signage and limit the Variance and Special Exception approval of the Class A animal boarding place use to the current operator or a future operator, so long as it remains consistent with the character, size and intensity of the current use.

On November 6, 2009, Jason T. Vettori, Esquire, on behalf of the Petitioner, and Peter Max Zimmerman, People’s Counsel for Baltimore County, appeared before this Deputy Zoning Commissioner for consideration of the revised relief requested under the Petitions for Special Hearing, Special Exception and Variance along with the Revised Plan to Accompany the Zoning Petitions (the “Plan”). The Plan, dated June 25, 2008, as revised on October 14, 2009, was marked and accepted into evidence as Petitioner’s Remand Hearing Exhibit 1A.

No other interested persons have appeared in the proceedings. Accordingly, no additional notice of this remand hearing was required to be posted or advertised as is customary for public hearings. All parties of record were present at the remand hearing.

As indicated by the Board in its Ruling and Order on Joint Motion for Remand, the parties mutually agreed to remove the Existing Sign No.1, remove and replace Existing Sign No. 4 with a higher quality, smaller version, and limit the Special Exception approval regarding a Class A animal boarding place to the current user or a future operator whose use would be limited in character, size and intensity to the Adopt-A-Pet Center's use. This Deputy Zoning Commissioner, having already found that the property was unique, adopts and incorporates herein those findings to be applied to the revised requests to relief. Having described the process and rationale behind how this matter was remanded to this Deputy Zoning Commissioner for additional findings, it is perhaps most appropriate to discuss the specific changes and then the modifications to the relief requested and additional notes added to the Plan.

The Plan was redlined for several reasons. First of all, the Zoning Petitions and the original Plan to Accompany list Section 230.13 of the B.C.Z.R. as the section from which the Special Exception approval of a Class A animal boarding place as well as living quarters in a commercial building is being sought. However, there is no Section 230.13. Both of these uses are listed as uses permitted by Special Exception under Section 230.3 of the B.C.Z.R. As a result, the Plan was redlined to properly note the section of the B.C.Z.R. from which Special Exception approval was being requested.

Secondly, as evidenced by Petitioner's Remand Hearing Exhibit 1A, Existing Sign No. 1 is to be removed. Existing Sign No. 4 is also to be removed; however, Proposed Sign No. 4, as shown on Petitioner's Remand Exhibit 1A, is going to replace Existing Sign No. 4. While Existing Sign No. 4 currently stands 10 feet tall and 5 feet wide, Proposed Sign No. 4 will stand

6 feet tall and 4 feet wide (these figures include the posts and empty space which is not considered when calculating square footage of the face area of a sign -- see Section 450.3 of the B.C.Z.R. regarding the definition of "AREA."). In addition, higher quality materials will be used for the framing of Proposed Sign No. 4. In accordance with the modifications to the existing signage being proposed by Petitioner and agreed to by People's Counsel, the relief requested under the Petition for Variance has been revised. Variance Request No. 5 has been revised to reflect the fact that two freestanding enterprise signs (originally there were three requested) are being proposed in lieu of the maximum permitted one freestanding enterprise sign under Section 450.4.5(b)(vi) of the B.C.Z.R. Variance Request No. 6 has been deleted. Petitioner is no longer requesting relief from Section 450.4.5(b)(v), because no relief is needed regarding the face area for the two freestanding enterprise signs (Existing Sign No. 2 and Proposed Sign No. 4). The maximum permitted face area under Section 450.4.5(b)(v) is 75 square feet. Existing Sign No. 2 has 9 square feet of face area on each side. Proposed Sign No. 4 has 15 square feet of face area on each side. For this reason, Variance Request No. 6 is to be dismissed as moot. In addition, Variance Request No. 7, Petitioner's request for such other and further relief as may be deemed necessary by the Zoning Commissioner of Baltimore County, is also dismissed as moot as no additional relief is requested. Note Nos. 4, 5 and 6 have been added to the Revised Plan regarding the proposed signage. Those notes read as follows:

4. Original variance request No. 6 has been removed as it is moot. The requested relief is no longer needed as existing sign nos. 1 and 4 are to be removed and existing sign no. 2 and the proposed sign do not exceed the maximum permitted 75 feet of face area (BCZR § 450.4.5(b)(v)).
5. Original variance request No. 5 has been revised to request relief from BCZR § 450.4.5(b)(vi) to permit two freestanding enterprise signs in lieu of the maximum number permitted of one freestanding enterprise sign (as opposed to the three signs which were originally requested).

6. The removal of Existing Sign No. 1 is without prejudice to a future request for variance relief for another sign subject to BCZR § 450.

The location of Existing Sign No. 2, Existing Sign No. 3 and Proposed Sign No. 4 are more fully illustrated on the Revised Plan and described under each caption showing a picture of those signs.

Thirdly, as previously indicated, the Special Exception approval for the Class A animal boarding place use, under Section 230.3 of the B.C.Z.R., has been operating from this location for approximately ten years. Due to the fact that the use can be included within this broadly defined use, but is more of a niche within this defined use, is of a limited size and has limited hours of operation and lacks a dog run, Petitioner and People's Counsel felt it would be more appropriate to limit the Special Exception approval to the existing operator, or a future operator whose use would be limited in character, size and intensity to the Adopt-A-Pet Center's use. It should also be noted that the structure that houses the Adopt-A-Pet use has another tenant on a separate floor. As a result, the setback from the lease line is zero feet. Due to the Variance relief from Section 421.2 of the B.C.Z.R. to permit any part of a Class A animal boarding place within zero feet of the nearest property line or lease line in lieu of the minimum required 200 feet, Petitioner and People's Counsel felt it was appropriate to limit the Special Exception use to the instant operator or one similar in character, size and intensity. To reflect this limitation, Note 1 has been added to the Revised Plan. Note 1 reads as follows:

A Class A Animal Boarding Place is permitted by special exception in the B.L. zone, BCZR § 230.3. The Adopt A Pet Center lies in the B.L. zone. Class A Animal Boarding Places are further regulated by BCZR § 421, which subjects the instant use to setback requirements from which the Adopt A Pet Center necessitates a variance. As noted by the property owner and the Adopt A Pet Center, the request for variance relief from Section 421.2 of the BCZR to permit any part of a Class A Animal Boarding Place within zero feet of the nearest property line or lease line in lieu of minimum required 200 feet of the nearest property line or lease line is for the current operator or a future operator whose use would be limited in size and intensity to the Adopt A Pet Center's use. The

property owner leases to more than one tenant. As a result, the setback from the lease line is zero feet. Similarly, the special exception relief is being granted for the existing operator's use, so long as it remains consistent with the size and intensity of the current use, or a future operator whose use would be limited in size and intensity to the Adopt A Pet Center's use. Any material increase to the character, size and intensity of the current use of the site as an animal rescue would be subject to new petitions for variance and special hearing.

The limitation of the operator applies both to the Variance and to the Special Exception approval of the Class A animal boarding place use, under Sections 230.3 and 421.2 of the B.C.Z.R.

It should also be noted that Site Data Note 21 has been added to the revised Plan. Site Data Note 21 states "a request to change the current zoning from BL-CCC and DR 3.5 to BL-CCC was made in the 2008 CZMP (Issue No. 3-42). The request was denied." This note is for informational purposes only.

Adopting and incorporating the previous findings in regard to the variance request, I once again find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the Variance requests. The property's irregular shape and split zoning, the extensive non-tidal wetlands adjacent to a Use III trout stream on site, as well as the property's listing on the National Historic Trust Inventory, renders the property unique in a zoning sense. In addition, with the CCC district overlay in this BL zone, I find that the requirements of the zoning regulations disproportionately impact the subject property compared with others in the district. Once again, I further find that strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship. If the zoning relief were not granted, Petitioner would be denied use of the property that is otherwise permitted by the zoning regulations. Moreover, I agree with the Office of Planning that Petitioner is providing a reasonable service to the community and surrounding area that is beneficial to all without negatively affecting other businesses in the area or the nearby residential community. Finally, I find that the Variance request can be granted in strict harmony with the

spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. Pursuant to the Board's Ruling and Order on Joint Motion for Remand and the public hearing on a Revised Plan to Accompany a Petition for Special Exception, Special Hearing and Variance, I find that Petitioner's request for Special Exception and Special Hearing relief should be granted, and the request for Variance should be granted as well.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 1st day of December, 2009, that Petitioner's request for Special Exception pursuant to Sections 230.3 and 421 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a Class A animal boarding place, and pursuant to Section 230.3 of the B.C.Z.R. to allow living quarters in a commercial building, be and are hereby GRANTED, consistent with the Site Plan accepted into evidence as Petitioner's Remand Hearing Exhibit 1A and subject, as stated, to the following condition identified as Note 1 on the Revised site plan:

A Class A Animal Boarding Place is permitted by special exception in the B.L. zone, BCZR § 230.3. The Adopt A Pet Center lies in the B.L. zone. Class A Animal Boarding Places are further regulated by BCZR § 421, which subjects the instant use to setback requirements from which the Adopt A Pet Center necessitates a variance. As noted by the property owner and the Adopt A Pet Center, the request for variance relief from Section 421.2 of the BCZR to permit any part of a Class A Animal Boarding Place within zero feet of the nearest property line or lease line in lieu of minimum required 200 feet of the nearest property line or lease line is for the current operator or a future operator whose use would be limited in size and intensity to the Adopt A Pet Center's use. The property owner leases to more than one tenant. As a result, the setback from the lease line is zero feet. Similarly, the special exception relief is being granted for the existing operator's use, so long as it remains consistent with the size and intensity of the current use, or a future operator whose use would be limited in size and intensity to the Adopt A Pet Center's use. Any material increase to the character, size and intensity of the current use of the site as an animal rescue would be subject to new petitions for variance and special hearing.

IT IS FURTHER ORDERED that Petitioner's request for Special Hearing relief in accordance with Section 500.7 of the B.C.Z.R. for a modified parking plan pursuant to Section 409.12 of the B.C.Z.R., consistent with the Revised site plan accepted into evidence as Petitioner's Remand Hearing Exhibit 1A, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petitioner's requests for Variance as follows:

- From Section 232A.2 of the B.C.Z.R. to permit an apartment to retain an existing setback for a window facing a property line other than a street line of three feet in lieu of the minimum required 25 feet; and
- From Section 232A.2 of the B.C.Z.R. to permit a distance of 32.5 feet between windows of different apartments of the same lot which face one another in lieu of the minimum required distance of 50 feet; and
- From Section 421.2 of the B.C.Z.R. to permit any part of a Class A animal board place within zero feet of the nearest property line or lease line in lieu of minimum required 200 feet of the nearest property line or lease line; and
- From Section 232A.4 of the B.C.Z.R. to permit a minimum amenity open space ratio of 0.02 in lieu of the required minimum permitted amenity open space ratio 0.20; and
- From Section 450.4.5(b)(vi) of the B.C.Z.R. to permit two freestanding enterprise signs in lieu of maximum number permitted of one freestanding enterprise sign

be and are hereby GRANTED, consistent with the Revised site plan accepted into evidence as Petitioner's Remand Hearing Exhibit 1A and subject to the following conditions and provisions:

1. Petitioner and/or his lessee may apply for permits and be granted same upon receipt of this Order, however, Petitioner is hereby made aware that proceeding at this time is at risk until such time as the 30-day appellate process from this Order has expired.
2. The limitation of the operator in Condition 1 above applies to the Variance from § 421.2 as well to the Special Exception approval of the Class A animal boarding place use under BCZR §§ 230.3.
3. Original variance request No. 5 has been revised to request relief from BCZR § 450.4.5(b)(vi) to permit two freestanding enterprise signs in lieu of the maximum number permitted of one freestanding enterprise sign (as opposed to the three signs which were originally requested).

4. Original variance request No. 6 has been removed as it is moot. The requested relief is no longer needed as existing sign nos. 1 and 4 are to be removed and existing sign no. 2 and the proposed sign do not exceed the maximum permitted 75 feet of face area (BCZR § 450.4.5(b)(v)).
5. The removal of Existing Sign No. 1 is without prejudice to a future request for Variance relief for another sign, subject to BCZR § 450.
6. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
7. Development of this property must comply with the Regulations for Protection of Water Quality, Streams, Wetlands and Floodplains (Section 33-3-101 through 33-3-120 of the Baltimore County Code).

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB/pz