

**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**

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception and Variance filed by the legal owner of the subject property, Elias Rizakos.

The Petition for Special Exception requests relief pursuant to Sections 230.13 and 421 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for a Class A animal boarding place, and pursuant to Section 230.13 of the B.C.Z.R. to allow living quarters in a commercial building.

The Petition for Special Hearing requests relief pursuant to Section 500.7 of the B.C.Z.R. for a modified parking plan in accordance with Section 409.12 of the B.C.Z.R.

The Petition for Variance requests relief 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 Boarding Place within zero feet of the nearest property line or lease line in lieu of the 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 three existing freestanding enterprise signs in lieu of the maximum number permitted of one freestanding enterprise sign; and
- From Section 450.4.5(b)(v) of the B.C.Z.R. to permit 174 square feet of face area for the three existing freestanding enterprise signs in lieu of the maximum permitted 75 square feet of face area.

The subject property and requested relief are more fully described in the site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the special exception, special hearing, and variance petitions was the lessee of the subject property, Petitioner Valerie Shaffer. Jason Vettori, Esquire appeared as the attorney representing Petitioner and Kenneth Wells with K. J. Wells, Inc., appeared as the property line surveyor who prepared the site plan. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is an irregular-shaped property consisting of approximately 6.6915 gross acres, more or less, and split zoned B.L. with a C.C.C. (Commercial, Community Core) District overlay (1.2 acres), and D.R.3.5 (5.5 acres). The property is located on the east side of Main Street just north of Chatsworth Avenue and south of Butler Road in the historic Reisterstown area of Baltimore County. As shown on the site plan, the property is improved with several structures, including an existing two-story framed building with an apartment, and two side-by-side buildings, one a two-story framed building with an apartment, and the second a 2½-story brick building. There is also an existing snowball stand located at the southern end of the property near Main Street, as well as a number of accessory structures, including several sheds and a gazebo. The majority of the improvements are located toward the front of the property -- near Main Street -- on approximately half of the

1.2 acres zoned B.L.-C.C.C. The remaining acreage to the rear of the property is zoned D.R.3.5 and is taken up by amenity open space and existing woods. A stream also runs through the rear of the property.

Further evidence revealed that Petitioner Valerie Shaffer operates a non-profit rescue center for animals at the subject location known as the Association for Animal Rights, Inc.'s "Adopt a Pet" Center. Petitioner has operated the rescue center for approximately 20 years and has operated at the subject location for the last 10 years. Petitioner keeps mostly cats and dogs that have been abandoned or given away by their owners. The center keeps and cares for the animals as long as it takes for the animals to be adopted by an individual or family. There are usually between 20 and 30 animals at the center at any one time. In addition, the center operates on a limited schedule and is open from 3:00 PM to 7:00 PM Thursdays and Fridays, 10:30 AM to 5:00 PM Saturdays, and 12:00 PM to 5:00 PM Sundays.

Petitioner's attorney, Mr. Vettori, pointed out that animal rescue centers like the one referenced in this case are regulated by Article 12 of the Baltimore County Code ("B.C.C.") entitled "Animals." Section 12-1-101(r) of the B.C.C. defines a "holding facility" to include ... "any animal shelter, commercial kennel, commercial stable, grooming parlor, humane animal shelter, or pet shop." In addition, Section 12-2-101, et seq. sets forth the provisions dealing with licenses and requires a person operating a holding facility to obtain a license from the Department of Permits and Development Management, and also requires the Department to refuse to issue a license to a person who is in violation of any provision of the B.C.Z.R. Presently, the conditions noted on the site plan are existing conditions, some of which may not be in strict compliance with the current zoning regulations. Petitioner was recently notified by the County's Animal Control Board that in order for its operating license to be renewed, the

center would have to apply for and obtain the necessary zoning relief to legitimize the existing conditions and uses associated with the property. Thus, the instant zoning petitions were filed.

The special exception petition requests approval of a Class A animal boarding place, which is specifically enumerated in Section 230.13 of the B.C.Z.R. Petitioner is also requesting approval of living quarters in a commercial building, which is also permitted in this section by special exception. In support of the requests, Petitioner's consultant, Mr. Wells, testified that the uses would not be detrimental to the health, safety, or general welfare of the locale, and would meet all the other criteria set forth in Section 502.1 of the B.C.Z.R. Indeed, because the use of the property as a Class A animal boarding place has been ongoing for the last 10 years, and the apartments have existed in the buildings as well, one can look historically at the uses and see that there have been no negative or detrimental impacts. Petitioner is also requesting a modified parking plan pursuant to Section 409.12 of the B.C.Z.R. in order to re-stripe the parking and change the parking configuration slightly. As noted on the site plan, the parking calculation for the rescue center is 12 spaces, for the apartments six spaces, and for the snowball stand two spaces for a total of 20 spaces. Petitioner proposes 23 spaces as illustrated on the site plan. All of the parking is behind the buildings, toward the rear of the B.L.-C.C.C. zoned portion of the property, and is not within the entrance or driveway access area for the property.

As to the variance requests, these all pertain to existing conditions related to setback requirements in the C.C.C. District, amenity open space ratio, and sign limitations. In support of the variance requests, Mr. Vettori referred to several unusual characteristics of the property that drive the need for the variances. First and foremost, the property is located in a National Historic District. This designation, as much as any other characteristics of the property, places limitations on the extent to which changes can be made to comply with the zoning regulations. The zoning

on the property also includes the C.C.C. District overlay, which places specific setback restrictions on apartments in the District, as well as floor area ratios and amenity open space ratios not present in the B.L. Zone by itself. In addition, Mr. Vettori proffered that the split zoning of the property, which leads into a residential zone, as well as its irregular shape, also makes the property unique in a zoning sense. Finally, the fact that the use and conditions, including the signage, on the property are existing and have been in place for years and have worked well within the commercial, but historic nature of the area is supportive to allow these conditions to continue unaltered. In particular, photographs of the signs are depicted on the site plan and show functional, descriptive signs that do not appear to be out of character with other commercial signs along Main Street, and which also do not appear to overcrowd the land.

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: ZAC comments were received from the Office of Planning dated October 1, 2008 which indicate that office does not oppose Petitioner's request. The subject building and the use thereof is an existing condition and has been for quite some time. It is a reasonable service to the community and surrounding area. Comments were also received from the Department of Environmental Protection and Resource Management dated September 30, 2008 and indicate that the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains, and must comply with the Forest Conservation Regulations. There are extensive non-tidal wetlands adjacent to a Use III trout stream onsite. Any future development activities requiring development plan or permit approval will be subject to the above-referenced regulations.

Based on the testimony and evidence presented, I am persuaded to grant the special exception, special hearing, and variance requests. It is obvious that the use of the property as a

Class A animal boarding place has been ongoing, and the structures shown on the site plan have existed for some time. It is also obvious that the use and the structures have not negatively impacted or been detrimental to the surrounding area. Hence, in my judgment, the requests for a Class A animal boarding place and for an apartment in a commercial building have met the special exception criteria contained in Section 502.1 of the B.C.Z.R., and as interpreted in *Schultz v. Pritts*, 291 Md. 1 (1981). As to the special hearing for a modified parking plan, Petitioner plans to provide more parking space than is required by the applicable parking regulations. In addition, Petitioner is not proposing changes to the parking other than re-striping the spaces to make the most efficient use of the space. This minor change in the layout of the spaces is an appropriate use of the available parking space on the property, and hence, the special hearing shall be granted.

In regard to the variance requests, I 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, 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 C.C.C. District overlay in this B.L. Zone, I find that the requirements of the zoning regulations disproportionately impact the subject property compared with others in the district.

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 the variance requests 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 advertisement, posting of the property, and public hearing on these Petitions held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's requests for special exception and special hearing should be granted, and the requests for variance should be granted as well.

THEREFORE, IT IS ORDERED this 25th day of November, 2008, by the Deputy Zoning Commissioner, that Petitioner's request for Special Exception pursuant to Sections 230.13 and 421 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a Class A animal boarding place, and pursuant to Section 230.13 of the B.C.Z.R. to allow living quarters in a commercial building be and are hereby GRANTED; and

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

IT IS FURTHER ORDERED that 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 class A animal boarding place within zero feet of the nearest property line or lease line in lieu of the 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 three existing freestanding enterprise signs in lieu of the maximum number permitted of one freestanding enterprise sign; and
- From Section 450.4.5(b)(v) of the B.C.Z.R. to permit 174 square feet of face area for the three existing freestanding enterprise signs in lieu of the maximum permitted 75 square feet of face area

be and are hereby GRANTED, subject to the following:

1. Petitioner may apply for her permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
3. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 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