

<b>IN RE: PETITIONS FOR SPECIAL</b>	*	BEFORE THE
<b>EXCEPTION AND VARIANCE</b>		
W side of Allender Road, 1750 feet S	*	DEPUTY ZONING
of the c/l of Philadelphia Road		
11 <sup>th</sup> Election District	*	COMMISSIONER
5 <sup>th</sup> Councilmanic District		
(5711 Allender Road)	*	FOR BALTIMORE COUNTY
<b>Mary Susan Buck (formerly Engle)</b>	*	
<i>Petitioner</i>		
	*	<b>Case No. 2010-0298-XA</b>

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Exception and Variance filed by the legal owner of the subject property, Mary Susan Buck (formerly Engle). The Special Exception request is to use the property for a proposed private kennel to house seven dogs per Section 1B02.1 of the Baltimore County Zoning Regulations ("B.C.Z.R."). The Variance request is from Section 421.1 of the B.C.Z.R. to allow a fence enclosed outdoor area and dwelling area for a proposed private kennel with side yard setbacks of 0 foot and 50 feet from the property line in lieu of the required 200 feet. The subject property and requested relief are more fully described on 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 and Variance requests were Petitioner Mary Susan Buck, her husband Frank Buck, and Kelli Pavelko, a relative of Petitioner who also lives at the subject property. Lee Giroux, acting as a consultant, also appeared on behalf of Petitioner in support of the requests for zoning relief. Appearing as concerned citizens opposed to the requested relief were Francel and Darcia Smith of 5713

Allender Road and Lisa Maxwell of 5709 Allender Road. No other Protestants or interested persons attended the hearing.

Testimony and evidence presented in the case revealed that the subject property is rectangular in shape and contains 0.312 acre or 13,591 square feet, more or less, zoned D.R. 3.5. The property is located on the southwest side of Allender Road in the White Marsh area of Baltimore County. The property is improved with an existing two-story single-family dwelling, which according to the Real Property Data Search marked and accepted into evidence as Petitioner's Exhibit 3, contains an enclosed area of 2,157 square feet. The property is also improved with an above ground pool and accessory structure shed located in the rear yard. The rear yard is also enclosed on the perimeter with a six foot high, white vinyl fence abutting the property line at the rear and side yards of the subject property. The rear yard and improvements thereon can be seen in the photographs that were marked and accepted into evidence as Petitioner's Exhibits 6A through 6F. The property is lined on the north and south by two macadam private driveways that provide access to the surrounding properties. Access to the subject property is via the private driveway to the south. The outlines of these driveways are delineated on the zoning map marked and accepted into evidence as Petitioner's Exhibit 2. The property is situated in a largely residential neighborhood comprised of deep, narrow lots approximately one-quarter acre in size.

Petitioner Mary Susan Buck explained that she has resided at the subject property since 2002 when the primary structure was built.<sup>1</sup> She testified that she had three dogs when she first moved in and has only recently had another three dogs living on the property. The three additional

---

<sup>1</sup> See, Petitioner's Exhibit 3.

dogs belong to Ms. Pavelko who is living with the Petitioner due to fiscal constraints caused by the recent economic downturn. Six dogs currently are kept on the subject property, which include the following: ‘Sargent,’ a twenty-four pound miniature Doberman pinscher; ‘Killer,’ an eight pound miniature Doberman pinscher; ‘Sasha,’ a six pound Papillion/Chihuahua mix; and three Staffordshire Terriers -- ‘Jada,’ ‘Kilo,’ and ‘Tiny Tigar,’ all of whom weigh between 45-50 lbs. Pictures of the dogs were submitted after the hearing and are contained within the file. The existing fence encircling the backyard was built almost two years ago. It is worth noting that the need for zoning relief came to Petitioner’s attention as a result of a Code Inspections and Enforcement Correction Notice issued on March 8, 2010.<sup>2</sup> An Inspector from the County’s Bureau of Code Inspections and Enforcement issued the notice, marked and accepted into evidence as Petitioners’ Exhibit 4, as a result of a complaint filed by a concerned neighbor. As a result, Petitioner requests Special Exception relief pursuant to Sections 1B02.1 and 502.1 of the B.C.Z.R. to permit the use of the subject property as a private kennel and Variance relief pursuant to Sections 421.1 and 307.1 of the B.C.Z.R. to permit setbacks for a private kennel of zero feet on the sides and rear of the property and fifty feet from the street in lieu of the required two hundred feet.

In support of the requested relief, Petitioner stated that the dogs residing on the property are spayed/neutered and properly registered and tagged. Evidence of registration with Baltimore County was submitted after the hearing and is contained within the case file. Petitioner further testified that the dogs sleep indoors, generally in bedrooms with their owners, and are kept in kennels as needed that are located variously throughout the home. Testimony also revealed that

---

<sup>2</sup> Case No. CO-0074465.

dog feces are promptly and regularly cleaned up from the lawn and disposed of at a nearby refuse and recycling center. Ms. Buck cited to the fact that no improvements are proposed and that the request at hand is merely to legitimize existing conditions in order to keep the dogs on the property in compliance with the Regulations, in particular until Ms. Pavelko and her family recover financially enough to move out of the subject property. Petitioner reiterated that having six dogs on the property is not planned as a permanent condition, though neither she nor Ms. Pavelko could forecast when the use might discontinue. Petitioner also noted that there have been no incidents on record of her dogs attacking or biting any individual or being a problem in the neighborhood. Petitioner submitted a petition of support signed by the resident of 5709B Allender Road, which was marked and accepted into evidence as Petitioner's Exhibit 7.

Following Petitioner's presentation, Francel Smith testified as a concerned citizen and neighbor and revealed that he and his wife live at 5713 Allender Road, directly behind Petitioner's home. Mr. Smith related that he has had various encounters with the dogs and specifically cited to the aggressiveness of the smaller miniature pinscher. Although posing no ill will toward Petitioner and not in complete opposition to the zoning relief requested, Mr. Smith did express concerns regarding the existing white-vinyl fence sitting on Petitioner's property line, which causes inadequate parking conditions along the commonly shared private driveway. Lisa Maxwell, who resides at 5709 Allender Road, adjacent to the Petitioner's property to the north, echoed Mr. Smith's concerns.

Prior to the scheduled public hearing, the undersigned received several letters of opposition to Petitioner's request for a private kennel. In a letter received on June 24, 2010, Theresa Engle, a resident of 5709A Allender Road, requested denial of the zoning requests due to concerns regarding the well being of the animals on the property and fear of the health and safety

ramifications on the surrounding neighborhood. In a letter received June 22, 2010, Kari Goodrich, a resident of 5717 Allender Road, requested denial of the zoning requests due to the detrimental effects and adverse consequences that the kennel would bring to the neighborhood. Moreover, in a letter received on June 24, 2010, Valerie R. Kozlowski, a resident of 5715 Allender Road, requested denial of the zoning requests citing to concerns regarding the safety of area children and the smell and noise that six dogs on one property brings to the neighborhood. These letters of opposition were marked and accepted into evidence as Protestants' Exhibits 1, 2, and 3, respectively.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated June 30, 2010 recommending denial of Petitioner's request. It was further noted that it appears there are multiple families residing in the subject dwelling in violation of the use and occupancy provisions of the Regulations.

Turning first to the requested special exception for a proposed private kennel in a D.R.3.5 Zone, let me first state that I am certainly understanding of Petitioner's and her relatives' plight, and the problems the current economic situation has caused them; nonetheless, I cannot grant the relief requested. Let me also state that as a person who has always loved dogs and grew up from childhood to adulthood with dogs as pets, I take no pleasure in this ruling. Moreover, I realize this ruling can and likely will have real consequences for Petitioner and her family. But legally and factually in this matter, I believe denial of the relief requested is the proper decision. Although of little consolation to Petitioner, in order to understand the reasoning behind the denial of the use of the property for a private kennel, it is necessary to determine how the Regulations govern the

special exception issue at hand. A private kennel is defined under Section 101.1 of the B.C.Z.R. as:

“Any building, structure, or land, or any portion thereof, including a dwelling, that is used, intended to be used, or arranged for the housing of more than three dogs, not including puppies less than four months old, for the purposes of show, hunting, practice tracking, field or obedience trials, *or as pets*. A private kennel does not include a pet shop or dogs accessory to a farm use.” (emphasis added).

This definition, enacted by County Council Bill No. 87-2001, identifies the Petitioner’s current use of the property as a private kennel. The Petitioner’s dwelling and land is used for the housing of more than three dogs as pets. Specifically, Petitioner houses six dogs.<sup>3</sup> Pursuant to the chart provided in Section 1B02.1 of the Regulations, private kennels in D.R.3.5 zones are permitted with special exception approval. The standard for special exceptions is set forth in Section 502.1 of the B.C.Z.R., as interpreted in *Shultz v. Pritts*, 291 Md. 1 (1981) and more recently in *People’s Counsel v. Loyola*, 406 Md. 54 (2008).

Section 502.1 of the Regulations enumerates a number of criteria that a Petitioner has the burden to satisfy prior to the approval of a Special Exception use. *See, Id.*, at 18. The Court of Appeals in *Schultz* best explains the purpose and scope of a Special Exception use:

“The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any fact or circumstance negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.” 291 Md. at 18.

---

<sup>3</sup> At one time, Petitioner had seven dogs, although a Staffordshire terrier puppy unfortunately died recently as a result of complications from ingesting a sock.

In the instant matter, Petitioner has failed to adduce testimony showing that the use of the subject property as a private kennel prescribes to the standards promulgated in Section 502.1 of the B.C.Z.R. Insufficient testimony was presented showing that the proposed use would not be detrimental to the health, safety or general welfare of the surrounding community. Further, there was a lack of evidence showing that the proposed use would not be inconsistent with the spirit and intent of the B.C.Z.R. Although Petitioner testified that the dogs pose no threat to the community and that proper care is taken to avoid detriment to the neighborhood, Petitioner's position has little support from the surrounding neighbors. In addition to the testimony received from Mr. Smith and Ms. Maxwell, the letters received in opposition to the Petitioner's Special Exception request cite to a continuing problem with the aggressive history of the dogs and the danger that the dogs pose to the neighborhood. Moreover, the neighbors contend that the smell and noise created by the dogs adversely impacts the surrounding community. Petitioner does state that a Special Exception is needed only temporarily until Ms. Pavelko and her three dogs move out of the subject dwelling; however, I am not inclined to even grant temporary relief in this instance due to the uncertainty regarding the duration of Ms. Pavelko's residence in the subject dwelling, as well as the Office of Planning's concerns with regard to additional violations of the Regulations by having two families occupy a single-family dwelling.

Due to the lack of evidence showing that the proposed use of the property as a private kennel would be conducted without real detriment to the neighborhood and would not adversely affect the surrounding community, Petitioner has failed to meet her burden. It is noteworthy that the request at hand provides a more complete understanding of the impact the proposed use will have on the surrounding community because the request is to legitimize already existing conditions. With that backdrop and considering this evidence, I am satisfied that the facts and

circumstances show the proposed use of the subject property as a private kennel would have adverse effects at this location above and beyond those inherently associated with special exception use of a property as a private kennel irrespective of its location within the Zone. *See, Schultz*, 291 Md. at 15; *see also, People's Counsel v. Loyola College*, 406 Md. 54, 65 (2008).

As a result of the denial of the special exception, a decision by the undersigned regarding the requested variance relief is unnecessary at this time. Section 421.1 of the B.C.Z.R. is implicated only "if an animal boarding place or private kennel is allowed in a residential zone either as a special exception or as a permitted use." Since the special exception request is hereby denied, Petitioner's request for variance relief is rendered moot.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered, I find that Petitioner's Special Exception request should be denied and the Variance request is subsequently dismissed as moot.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 7<sup>th</sup> day of July, 2010 that Petitioner's request for Special Exception to use the property for a proposed private kennel to house six dogs pursuant to Section 1B02.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") be and is hereby **DENIED**; and

IT IS FURTHER ORDERED that Petitioner's Variance request from Section 421.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow a fence enclosed outdoor area and dwelling area for a proposed private kennel with side yard setbacks of 0 foot and 50 feet from the street in lieu of the required 200 feet be and is hereby **DISMISSED AS MOOT**.

IT IS FURTHER ORDERED that as a consequence of the above ruling, Petitioner shall within 60 days of the date of this Order place her property in compliance with the prohibition against housing more than three dogs as pets, enforceable by the Baltimore County Division of Code Inspections and Enforcement.

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