

IN RE: PETITIONS FOR SPECIAL EXCEPTION	*	BEFORE THE
AND VARIANCE		
S side of Glen Alpine Road; 300' E of	*	OFFICE OF
Nantucket Garth		
11 th Election District	*	ADMINISTRATIVE HEARINGS
3 rd Council District		
(27 Glen Alpine Road)	*	FOR BALTIMORE COUNTY
Robert H. Rueter, Sr.	*	Case No. 2012-0291-XA
Petitioner		

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 27 Glen Alpine Road. The Petitions were filed by Robert H. Reuter, Sr., the legal owner of the subject property. The Special Exception Petition seeks relief from § 1A07.3.B.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for a private kennel in an RC 6 zone. Petitioner is also requesting Variance relief from § 421.1 of the B.C.Z.R. to permit a dog run within 30' of the property line in lieu of the required 200'. 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 hearing was Petitioner’s daughter-in-law and her sister, Deborah Shultz. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R. There were no Protestants or interested persons in attendance, and the file does not contain any letters of protest or opposition.

This matter is currently the subject of a violation case (Case No. CO-0109780) before the Office of Administrative Hearings, and a copy of the Code Enforcement file was made a part of the zoning hearing file. It should be noted that the fact that a code violation is issued is generally not considered in a zoning case. Zoning enforcement is conducted by the Department of Permits,

Approvals, and Inspections, which has the authority to issue Correction Notices and Citations and to impose fines and other penalties for violation of law. On the other hand, the role of the Administrative Law Judge in this matter is to decide the discreet legal issue of whether the Petitioner is entitled to the requested zoning relief.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Planning dated June 7, 2012, which state:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The Department of Planning **does not** support the petitioner's request for a special exception for a private kennel and variance for a dog run within 30 feet of the property line. The petitioner has requested the above relief in response to a zoning/code violation cited in February of 2012.

This is not the petitioner's primary residence and they do not have to live with the violation or implications thereof on a day-to-day basis. The subject community is suburban in nature and layout despite most lots being about 1.5± acres. This department feels that the surrounding neighbors should not have to live in close proximity to a large number of dogs, which can result in excessive noise and if not properly looked after, has the potential to be unsanitary.

Therefore, the Department of Planning is of the opinion that this is not an appropriate avenue for a private kennel and a dog run and that this request will be detrimental to the health, safety, or general welfare of the surrounding community.

Testimony and evidence offered at the hearing revealed that the subject property is 1.63 acres and is zoned RC 6 and is located in the Windemere subdivision in the Phoenix area of Baltimore County. The property is approximately 1.63 acres in size, and is improved by a single family dwelling. The Petitioner's son, his wife and two children live on the property, and the family owns six dogs, all of which are small breeds and less than 25 pounds.

SPECIAL EXCEPTION

As noted above, Petitioner seeks special exception relief from § 1A07.3.B.2 of the Baltimore County Zoning Regulations ("B.C.Z.R.") for a private kennel in an RC 6 zone. 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 People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that 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.

Here, there was no evidence presented that the adverse effects from the operation of the private kennel would be any greater at this location than in any other locations in the zone where the use is permitted by special exception. I am mindful of the Department of Planning's comment, but do not believe that the possibility of noise (which would seem to be inherent in the operation of a kennel) is sufficient to overcome the presumption in favor of the special exception. The Petitioner has lived at the premises with their dogs for almost a year, and yet there were no letters of opposition in the file, and no one from the community attended the hearing. Petitioner presented photos of the dogs and the environs, and it is apparent the animals are well cared for, and the house and grounds are attractive and clean.

VARIANCE

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioner has met this test. As noted by Ms. Shultz, the Petitioner's lot is one of the largest in the community, and it also surrounded by trees and dense vegetation. The Petitioner's home (unlike the other homes in the neighborhood) sits well below street-level grade, and Ms. Shultz said you

cannot even see the Petitioner's home when you are driving on Glen Alpine Road. These factors, as well as the dwelling's unusual orientation on the lot (See Exhibit 1) render the property unique.

If the B.C.Z.R. were strictly enforced, the Petitioner would suffer a practical difficulty and/or hardship. Indeed, Petitioner would need to relinquish three of her dogs. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is amply demonstrated by the lack of opposition from neighbors or area community associations.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions, and after considering the testimony and evidence offered, I find that Petitioner's Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 9 day of July, 2012 that Petitioner's request for Special Exception relief under § 1A07.3.B.2 of the Baltimore County Zoning Regulations ("B.C.Z.R.") for a private kennel in an RC 6 zone, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's request for Variance relief from § 421.1 of the B.C.Z.R. to permit a dog run within 30' of the property line in lieu of the required 200', be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his 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.

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/pz