

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(9405 Flagstone Drive)
9th Election District
3rd Councilmanic District
Joseph and Angelica Grant
Petitioners**

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
*
* **Case No. 2013-0252-XA**

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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 9405 Flagstone Drive. The Petitions were filed by Joseph & Angelica Grant, the legal owners of the subject property. The Special Exception Petition seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) to permit animal boarding (dog rescues) in a residential zone. The Petition for Variance seeks relief under B.C.Z.R. Sections 421.1, 101.1 and 400.1: (1) to permit animal boarding on a residential property where dog runs/exercise area, etc. will be within 0 ft. of the nearest property lines in lieu of the required 200 ft; (2) to permit a private kennel in a residence for housing 5 dogs in lieu of the maximum allowed 3 dogs; and (3) to permit an existing shed to remain in the side yard in lieu of the required rear yard placement. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the hearing in support of the Petitions were Joseph and Angelica Grant. There were no Protestants or interested citizens in attendance. In fact, the Petitioners submitted a Petition signed by all of the neighbors in the vicinity, expressing support. Exhibit 3. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The only substantive ZAC comment was received from the Department of Planning (DOP) dated May 7, 2013, indicating that the Petitioners should provide landscaping to shield the animal boarding operations from the neighboring properties.

Testimony and evidence offered at the hearing revealed that the subject property is .459 acres and is zoned DR 2

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 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. In this case, there was no evidence submitted that would tend to rebut this presumption, and thus the Petition for Special Exception will be granted.

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).

Petitioners have met this test. The Petitioners' lot (#3) is included within the Harrington Manor subdivision, and is bordered by a very large wooded tract used as a tree farm. Thus, it is unique for zoning purposes.

If the B.C.Z.R. were strictly enforced, the Petitioners would suffer a practical difficulty, in that they would be unable to keep on their property dogs rescued from shelters and offered for adoption. 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 demonstrated by the lack of County opposition and the strong support of the neighborhood.

One final note is in Order concerning DOP's ZAC comment. After reviewing the many photographs (Exhibit 2) and considering the testimony of the Petitioners, I do not believe that additional landscaping is required at the site. The large (1/4 acre) rear yard is enclosed with a 5' wooden fence. The property is zoned DR 2, and the lots in the vicinity are 1/2 acre and larger. In addition, the Petitioners are seeking to house only five dogs, and they indicated they always accompany the dogs when they are in the yard; i.e., the dogs are not let out by themselves and do not bark incessantly. In these circumstances, I believe that the existing fence and lush vegetation shown in the photos will be more than sufficient to screen the Petitioners' rear yard area from the adjoining homes at 9403 & 9407 Flagstone Drive.

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 Petitioners' Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 21st day of June, 2013, that Petitioners' request for Special Exception relief under the B.C.Z.R., to use the herein described property to permit animal boarding (dog rescues) in a residential zone, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioners' request for Variance relief from B.C.Z.R. Sections 421.1, 101.1 and 400.1: (1) to permit animal boarding on a residential property where dog runs/exercise area, etc. will be within 0 ft. of the nearest property lines in lieu of the required 200 ft; (2) to permit a private kennel in a residence for housing 5 dogs in lieu of the maximum allowed 3 dogs; and (3) to permit an existing shed to remain in the side yard in lieu of the required rear yard placement, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners may apply for appropriate permits and/or licenses and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The Petitioners must utilize the Special Exception granted herein within two years of the date hereof.
3. The Petitioners shall be permitted to own, harbor and/or keep on the premises a maximum of five (5) dogs.

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/sln