

**IN RE: PETITIONS FOR SPECIAL  
EXCEPTION AND VARIANCE  
(2341 York Road)  
8<sup>th</sup> Election District  
3<sup>rd</sup> Councilmanic District  
David A. Cuomo, *Legal Owner*  
Amanda E. Tyler, *Lessee*  
Petitioners**

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BEFORE THE  
OFFICE OF  
ADMINISTRATIVE HEARINGS  
FOR BALTIMORE COUNTY  
**Case No. 2014-0144-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 2341 York Road. The Petitions were filed by Justin A. Williams, Esq., on behalf of the legal owner, David A. Cuomo and Lessee, Amanda E. Tyler (“Petitioners”). The Petition for Special Exception seeks relief per § 204.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to use the property for an animal grooming facility. The Petition for Variance seeks relief under B.C.Z.R. § 409.4 to permit the use of an existing driveway 10' in width in lieu of the required 20' for two-way movements. 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 David A. Cuomo and Amanda E. Tyler. Justin A. Williams, Esq. and Christopher Mudd, Esq., of Venable, LLP represented the Petitioners. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition.

Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) dated January 15, 2014 and the Department of Planning (DOP)

dated February 20, 2014. DPR requested that a landscape plan be submitted for the site, and the DOP did not believe the proposed use would be injurious or detrimental to the community.

Testimony and evidence offered at the hearing revealed that the subject property is approximately 16,017 square feet, and is zoned DR 3.5 & R.O. The property is improved with a single family dwelling that has long been used for commercial purposes. Most recently it was a kitchen design store, and Ms. Tyler proposes to use the property for an animal grooming facility, which requires a special exception per recent County Council Bill 50-13. Exhibit 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 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, no such evidence was presented. Rick Richardson, a professional engineer accepted as an expert, opined the Petitioners satisfied the standards set forth in B.C.Z.R. § 502.1, and I concur. As such, the petition for special exception will be granted.

### VARIANCE

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 property slopes from back to front, where it intersects with York Road. As such, it is unique.

If the B.C.Z.R. were strictly interpreted Petitioners would suffer a practical difficulty, in that they would need to undertake expensive excavation in order to widen the driveway. 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 adjoining neighbors also expressed support for the petitions. Exhibit 7A – 7C. Finally, Mr. Richardson noted that a widened driveway would not only create additional impervious surface, but would also in some ways intensify the activity at the location, which is antithetical to the goals of the R.O. zone.

Photos submitted at the hearing show that the property is attractive and well maintained. Exhibit 6A - 6F. Mr. Cuomo testified he has owned the property since 1996, and that he retained all existing shrubbery and vegetation on the site. Counsel requested that in these circumstances the landscape plan requirement be waived, especially since the additional cost would create a financial hardship for Ms. Tyler, who has already incurred significant expenses in attempting to launch this new venture. I believe counsel's argument has merit, and I will not require a landscape plan to be submitted.

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 27<sup>th</sup> day of March, 2014, that the Petition for Special Exception per B.C.Z.R. § 204.3.B.3 of

the Baltimore County Zoning Regulations (B.C.Z.R.) to use the property for an animal grooming facility, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance from B.C.Z.R. § 409.4 to permit the use of an existing driveway 10' in width in lieu of the required 20', for two-way movements, be and is hereby GRANTED.

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

- 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.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/dlw