

IN RE: PETITIONS FOR SPECIAL HEARING, *	BEFORE THE
SPECIAL EXCEPTION, & VARIANCE	
NW side of Cockeysville Road, 376' NE of *	OFFICE OF
the c/line of Beaver Dam Road	
(246 Cockeysville Road) *	ADMINISTRATIVE HEARINGS
8 th Election District	
3 rd Council District *	FOR
246 Cockeysville Road Partnership *	BALTIMORE COUNTY
(Richard Clarke), <i>Owner</i>	
Best Friends Fur-Ever, Inc., (Kelly Cullum) *	Case No. 2012-0196-SPHXA
<i>Contract Purchaser/Lessee</i>	
Petitioners *	

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing, Special Exception, and Variance filed by Richard Clarke, 246 Cockeysville Road Partnership, Legal Owner, and Kelly Cullum, Best Friends Fur-Ever, Inc., Contract Purchaser/Lessee, (the “Petitioners”). Special Hearing relief is requested as follows:

1. Request that the conditions for the proposed commercial kennel (special exception), as provided in Section 253.2.C of the Baltimore County Zoning Regulations (B.C.Z.R.) be waived;
2. To permit exercise areas and dog runs in a riverine floodplain pursuant to Section 500.6 of the B.C.Z.R., Sections 3112.00 and 3112.2 of the Baltimore County Building Code, and Sections 32-4-107, 32-4-404, 32-4-414 and 32-8-301 of the Baltimore County Code (B.C.C.);
3. A modified parking plan pursuant to Section 409.12 of the B.C.Z.R., and
4. For such other and further relief as may be deemed necessary by the Administrative Law Judge.

In addition, Petitioners request Special Exception relief for a commercial kennel pursuant to Section 253.2.C.3 of the B.C.Z.R., and for such other and further relief as may be deemed necessary by the Administrative Law Judge.

Variance relief is also being sought pursuant to Section 421.2 of the B.C.Z.R. to permit the use within zero (0) feet of the nearest property line or lease line in lieu of the 200 feet minimum requirement, and for such other and further relief as may be deemed necessary by the Administrative Law Judge.

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

Appearing at the public hearing in support of the requests were Richard Clarke, owner, Kelly Cullum, contract purchaser/lessee, and Kenneth James Wells with kj Wells, Inc., the land surveying and site planning company who prepared the site plan. Jason T. Vettori, Esquire with Smith, Gildea & Schmidt, LLC appeared as counsel and represented the Petitioners. Two interested citizens attended the hearing: Barbara Alderson (1443A East Piney Hill Road, Monkton) and Howard Conaway (100 West Padonia Road, Timonium).

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. A comment was received from the Department of Environmental Protection and Sustainability (DEPS) dated March 14, 2012, which states that the 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 (B.C.C.) as well as comply with Forest Conservation Regulations (Sections 33-6-101 through 33-6-122) of the B.C.C. A ZAC comment dated March 2, 2012, was also received from Edward Adams, Director of the Department of Public Works, wherein that agency recommended approval of the floodplain waiver. Finally, a comment dated April 3, 2012, was received from the Department of Planning. That agency opined that the special exception relief would not be

detrimental to the community's health, safety and general welfare, but it believed certain landscaping requirements should be imposed to provide "visual buffering."

Petitioners presented three witnesses in their case. First was Kelly Cullum, who would operate the proposed facility. Ms. Cullum currently operates a "doggy day care" facility in Harford County, and has done so for the past 11 years. Ms. Cullum testified she cares for approximately 80 dogs at that location, and she has approximately 30 employees. Ms. Cullum explained that clients drop their pets off in the morning and return in the evening after work to pick them up. She explained that the customers are usually in a hurry and do not "linger", so that parking has never been a problem. Ms. Cullum presented a book of photos depicting her current operation (Exhibit 2) as well as brochures outlining the services she performs (Exhibits 5A – D).

Richard Clarke was the next witness, and he testified that he has owned the subject premises since 1983. He explained, with regard to the floodplain issue, that there is a berm at the rear of the building which causes the property grade to rise for approximately 5 or 6 feet from the building, at which point the grade then begins to slope downward toward what was referred to as a "swamp". In response to Ms. Alderson's statement that the area is frequently inundated with rain water, Mr. Clarke testified that he has never had flooding or water inside the building in all the time that he has owned the property.

The final witness was Kenneth Wells, who was accepted as an expert in Baltimore County zoning and land use matters. Mr. Wells prepared the site plan, and explained the layout of the proposed facility, and the redlined plan which shows the boundaries of the 100 year floodplain. Mr. Wells opined that the proposal satisfied the special exception test set forth at B.C.Z.R. § 502.1. Finally, he testified that under the B.C.Z.R., 19 parking spaces were required, while Petitioners' plan shows 16 spaces on site. Even so, Mr. Wells explained that Petitioners

have an easement or joint use agreement with the adjoining property owner, allowing them to use the five stacked parking spaces shown on Exhibit 1, for employee parking. Mr. Wells testified that, based on Ms. Cullum's testimony regarding the nature of her business, more than sufficient parking would be provided to support the proposed facility.

At this juncture, Ms. Alderson asked Mr. Wells to explain in detail the 100-year floodplain waiver sought by Petitioners. Ms. Alderson indicated that her primary concern with the proposal was this issue, and she feared that development activities can destroy such environmentally sensitive areas quickly, and yet it is all but impossible to restore such features. Mr. Wells explained that Petitioners' proposed only a very modest encroachment upon the floodplain with a fence and dog run, and that no structures or improvements would be constructed in that area, which would be forbidden by County law. *See* Baltimore County Council Bill No. 47-10. Mr. Wells pointed to the plan and explained that almost the entire width of Cockeysville Road traverses the floodplain, and that Petitioners' incursion would be negligible by comparison. Finally, Mr. Wells testified that the Baltimore County Department of Public Works also supported the requested floodplain waiver (Exhibit 7).

Special Exception Standards

Special exception uses are presumptively valid and consistent with the comprehensive zoning plan, People's Counsel v. Loyola College, 406 Md. 54, 77 n. 23 (2008), and no evidence was offered here to rebut the presumption. Petitioners' expert, Kenneth Wells, testified that the project would satisfy Section 502.1 of the B.C.Z.R., and I concur, based upon the same factors Mr. Wells recited in his testimony. In addition, the Department of Planning also believed that the project would not be detrimental to the surrounding community. Ms. Alderson raised a concern with the noise (i.e., dog barking) and it is obvious that the "doggy day care" operation

will produce a certain amount of noise. But, the County Council is presumed to be aware of this reality, and it nonetheless permitted these facilities in the ML zone by special exception. The legal test is whether the noise and disruption generated by such a use would have a greater impact at the subject site than at other locations where permitted by special exception. Id. There was no testimony or evidence supporting that proposition, and I believe that the petition should therefore be granted.

Special Hearing

Petitioners have also requested special hearing relief asking that the conditions for operation of a commercial kennel as provided in B.C.Z.R. Section 253.2.C, be waived. Again, no evidence was presented to suggest that such a waiver would be detrimental to the community, and I therefore believe the special hearing relief should be granted.

Variance Relief

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners.

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.

Ms. Cullum is proposing to “breathe life” into a largely vacant office building that is situated on a busy corner in the industrial park portion of Hunt Valley. Petitioners are

constrained by existing site conditions, which renders the property unique from a zoning perspective. Ms. Cullum indicated she has been looking in the area for over 4 years to locate a suitable site, and her market research indicates a strong need for her services. As such, Petitioners would experience a hardship if they were unable to open and operate the proposed facility which will serve the community's needs in this busy and dynamic part of the County.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception, Special Hearing, and Variance requests should be granted, subject to the comments and conditions which follow.

THEREFORE, IT IS ORDERED this 9th day of April, 2012, by this Administrative Law Judge, that Petitioners' request for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows:

1. Request that the conditions for the proposed commercial kennel (special exception), as provided in Section 253.2.C of the B.C.Z.R. be waived;
2. To permit exercise areas and dog runs in a riverine floodplain pursuant to Section 500.6 of the B.C.Z.R., Sections 3112.00 and 3112.2 of the Baltimore County Building Code, and Sections 32-4-107, 32-4-404, 32-4-414 and 32-8-301 of the Baltimore County Code (B.C.C.);
3. A modified parking plan pursuant to Section 409.12 of the B.C.Z.R., and
4. For such other and further relief as may be deemed necessary by the Administrative Law Judge,

be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioners' Special Exception request for a commercial kennel pursuant to Section 253.2.C.3 of the B.C.Z.R., and for such other and further relief as may be deemed necessary by the Administrative Law Judge, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioners' Variance request pursuant to Section 421.2 of the B.C.Z.R. to permit the use within zero (0) feet of the nearest property line or lease line in lieu of the 200 feet minimum requirement, and for such other and further relief as may be deemed necessary by the Administrative Law Judge, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for their building permit 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. Petitioners must comply with the environmental regulations set forth in the Department of Environmental Protection and Sustainability's comment dated March 14, 2012, a copy of which is attached hereto and incorporated herein by reference.
3. Petitioners must comply with the landscaping requirements set forth in the Department of Planning's comment dated April 3, 2012, which is attached hereto and made a part hereof.

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/dlw