

APPLICANTS:
Donald & Patricia Webster

REQUEST: Special exception and
variance to permit a kennel in the Agricultural
District

HEARING DATE: November 30, 2011

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5754

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Donald & Patricia Webster

LOCATION: 1428 Heaps Road, Whiteford
Tax Map: 11 / Grid: 2D / Parcel: 164
Fifth (5th) Election District

ZONING: AG / Agricultural

REQUEST: Special exception pursuant to Section 267-88H(5) of the Harford County Code to allow a kennel, and a variance, pursuant to Section 267-88H(5)(b), to allow a shelter and runway within the required 200 foot setback from all lot lines in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject parcel is a 5 acre lot located on Heaps Road and improved by a two-story single family Colonial-type dwelling, a detached garage, two sheds and three dog pens. A large portion of the rear yard is fenced. The property is relatively flat and contains mature vegetation.

Co-Applicant Patricia Webster testified that she has owned and resided at the subject parcel for approximately 24 years. She described her property as surrounded by large residential lots. Also located adjacent to her property is a large farm.

Mrs. Webster testified that she has 7 cats, most of which have been dropped off at her house. She also has 14 dogs on site, including a large Husky, a Bassett Hound, and two Terriers. The remaining dogs are smaller, weighing from 3 – 5 lbs. each. She has housed cats and dogs for at least the last 7 years. According to the witness, the animals are therapeutic for her son, who suffers from Asperger's Syndrome.

Mrs. Webster testified that most of the time the animals stay inside the house. Generally, when they go outside it is only for brief periods of time. The sheds on the property are not used for animal-related purposes.

Case No. 5754 – Donald & Patricia Webster

All the animals belong to the Applicants. The Applicants do not operate a commercial kennel. They do not board animals for hire, nor will they increase the number of animals on-site. No retail business is conducted on-site, and there is no cause for other individuals to come onto the property to care for, look at, or otherwise be involved with the animals. Animal waste is disposed of daily. No unusual outdoor lighting is on-site, and the Applicant believes the impact on the neighborhood by the animals to be negligible.

Generally, 4 dogs go outside together. They are outside for a few hours within the fenced area. No unusual noise is generated by the dogs. No unusual barking or other activities occur.

Mrs. Webster testified that if her request to maintain her animals is denied, her son would suffer as he is very much attached to the animals.

The Applicant understands that at least one family in the neighborhood has objected to the use. According to the Applicant, Harford County Animal Control has determined that all the animals are properly maintained.

On cross-examination, the Applicant stated that her son does not reside at their home. Instead, he has an apartment in which two dogs reside. Children gather at the bus stop at the end of the lane which is adjacent to the southwest side of the Applicant's parcel. At least on one occasion in the past, the Applicants' Husky barked at children gathered at the bus stop.

Next for the Applicant testified Mitch Ensor, who identified himself as a land planner with Bay State Land Services. Mr. Ensor was accepted as an expert land planner. Mr. Ensor and his office prepared the site plan for the Applicants. Mr. Ensor described an existing farm as being located to the west of the Applicants' parcel. Across Heaps Road, and generally surrounding the subject parcel, are large agricultural, residentially used lots. The subject property is generally flat, with an 8% slope from the front to the rear.

Mr. Ensor testified that the kennel use is consistent with the Harford County Master Land Use Plan. The fenced area on the subject parcel is about 17,900 square feet. The home is about 2,000 square feet in size. The existing fence is post and rail and is architecturally compatible and consistent with the surrounding areas. Mr. Ensor described the property was a typical residentially used lot in this Agricultural District.

In Mr. Ensor's opinion the request meets all requirements of the special exception provision contained at Section 267-88H, with the exception that the kennel is located less than 200 feet from any lot line. As the total lot is only about 380 feet wide, Mr. Ensor stated that this provision simply cannot be met without a variance to the special exception provisions for a kennel. Mr. Ensor explained that the Applicants' dwelling (which would be considered the kennel), is about 285 feet from the nearest neighboring dwelling to the right, and about 125 feet from the lot line. Located to the east side of the subject parcel, Heaps Road is located about 74 feet away, and the dwelling is about 44 feet from the southwest lot line. The parcel contains mature evergreen and hardwood tree cover.

Case No. 5754 – Donald & Patricia Webster

Mr. Ensor expressed no environmental concerns if the variance and special exception are granted. No outdoor lighting is proposed.

Mr. Ensor does not believe the property to be unique;

“The property is in my opinion not very unique. It is a rectangular shape, very typical for what most people would see as a residential lot.”

He believes the Applicants would suffer practical difficulty, but not extreme hardship if the variance is not granted. Mr. Ensor further stated that the proposal has the potential to have an adverse impact on surrounding properties, and that a kennel at this location may have a greater impact than the impact associated with a kennel regardless of its location in the Agricultural zone.

On cross-examination, Mr. Ensor described the parcel as being zoned Agricultural. The property is in an area with a substantial amount of residential subdivisions. The subject property itself is part of a residential subdivision, and there is a fair amount of residential activity in this area. Mr. Ensor noted that the use may have an adverse impact on neighboring properties.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune, Deputy Director. Mr. McClune testified that the Department can find no unique aspect of this property which would justify the granting of the variance. The Staff Report notes:

“The Applicants are requesting a special exception to have a kennel on their property to care for 16 dogs and 7 cats. The dogs and cats are owned by the Applicants and they are not proposing a commercial kennel. However, the Applicants cannot meet the required 200 foot setback from any lot line for shelters and runways. One of the existing runways is located within 45 feet of a lot line. The number of dogs and the noise generated may adversely impact neighbors on adjacent properties and properties on the east side of Heaps Road. The Applicant has not provided any justification related to the uniqueness of the property that would warrant the granting of a variance to the 200 foot setback for the runways and shelter. The subject property is rectangular in shape and the topography is gently sloping. Without the variance, the Applicants cannot meet the specific requirements of the special exception for kennels. Therefore, the Department of Planning and Zoning recommends that the requested special exception and variance be denied.”

Next, in opposition, testified Timothy Hammond, an adjacent neighbor for approximately seven years. Mr. Hammond and other neighbors share the driveway which adjoins the Applicants' parcel. Some screening which previously existed between the subject parcel and the driveway has been removed by the Applicants. The property is not maintained, according to Mr. Hammond. The dogs are always outside and they do not look well cared for. Mr. Hammond has 3 and 5 year old daughters who use the driveway and he is concerned about the dogs on the Applicants' property affecting their safety. Mr. Hammond can hear dogs barking from his house and he resides about 700 yards away. He cannot hear any other dogs in the neighborhood except those that belong to the Applicants.

Case No. 5754 – Donald & Patricia Webster

Next testified Sheryl Hoffman, another neighbor. Ms. Hoffman has found the Bassett Hound owned by the Applicants running loose in the neighborhood. The Bassett Hound was not well taken care for and was infested with ticks. This dog appears to live outside of and not within the Applicants' dwelling. Other dogs owned by the Applicants have also been loose in the neighborhood on occasion. She and the other neighbors find the use to be very objectionable.

In rebuttal, Mrs. Webster testified that the dogs are not outside at 5:00 a.m., as testified by Ms. Hoffman. The dogs do not go out until 8:00 a.m. and they are inside by 6:00 p.m.

Offered by the Applicants' counsel were three letters of support from various neighbors.

Subsequent to the hearing, a faxed letter was received from Donald and Patricia Webster, dated December 9, 2011. The letter, which was accepted and is contained in the file, states, among other things, that no complaints had been received by the Applicants for seven years, that is, since the homes have been built surrounding the Applicants' parcel. It would be devastating for the Applicant's son to "lose the animals that he loves". Most of the dogs are very small, and the 5:00 a.m. barking attested to by Miss Hoffman does not come from the Applicants' house but from the house across the street. The Applicants will install sound-proofing and do whatever else is required to keep the dogs.

Attached to the faxed December 9, 2011 letter from the Applicants is also what appears to be a handwritten letter from Joseph Webster, son of Donald and Patricia Webster.

APPLICABLE LAW:

The Applicants request a special exception pursuant to Section 267-53H(3) as follows:

"(3) Kennels. These uses may be granted in the AG, VR, B1 and B2 Districts, provided that all buildings for shelters of animals and all runways shall be located at least two hundred feet from any lot line."

"Kennel" is defined as:

"An establishment, not part of an agricultural use, in which six or more domestic animals such as cats, dogs and other pets more than six months old are kept, groomed, bred, boarded or trained in return for remuneration or sale."

Case No. 5754 – Donald & Patricia Webster

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. *Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:
 - (1) *By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) *The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.**

- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*

- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants own an attractive home on a five (5) acre lot in a Rural-Residential/Agricultural area of Harford County. The Applicants' property is surrounded by other agriculturally zoned but residentially used large parcels similar in size and use. Directly adjacent to the Applicants' parcel and running perpendicular to Heaps Road is a private lane which serves a number of residential lots located to the rear of the Applicants' parcel. School children utilize that lane to meet their school bus.

All in all, this would seem to be a relatively typical rural agricultural area of Harford County, one which contains nice homes, well maintained lots, and growing families. Unfortunately, the Applicants have decided to use their home for what is defined in the Harford County Zoning Code as a 'kennel' to house up to, according to their testimony, over 20 dogs and cats. While the Applicants, perhaps surprisingly, meet most standards for a kennel, they are unable to meet the 200 foot setback requirement from adjoining lot lines and, accordingly, this variance is requested. For reasons which follow, the Applicants requests for a variance and special exception will be denied.

Case No. 5754 – Donald & Patricia Webster

The Applicants' home is located, according to the testimony of their witness, Mitch Ensor, as close as 125 feet to the property line to the right of the house/kennel, 74 feet from Heaps Road and approximately 44 feet from the opposite property line. All of these are well below the 200 foot requirement, and there is nothing the Applicant can do to meet the requirements. The testimony of Mitch Ensor was that the property is not unique. It is, in fact, a rectangular lot, relatively flat, improved by a single family residential home, typical outbuildings and typical mature vegetation. There is simply nothing unique about the property. Furthermore, Mitch Ensor testified that while the Applicants may perhaps suffer practical difficulty there is no evident hardship if the variance is denied.

Accordingly, and no testimony having been presented to the contrary, the Applicants' application for a variance must fail as there is no showing of uniqueness of the subject parcel sufficient to even begin an exploration of the second requirement of a variance review, which is whether the Applicant would suffer a practical difficulty or undue hardship as a result of the application of the zoning requirements to its unique situation.

Failing to show that a variance should be recommended, the Applicants cannot therefore meet the requirements of the kennel special exception which requires, among other things, that the Applicant's show that "all buildings for shelters of animals and all runways . . . be located at least 300 feet from any lot line." Even if such a requirement had been met, however, the special exception cannot be granted.

Testimony of the neighbors in this residentially used neighborhood is that the animals, particularly dogs, on the Applicants' property are perceived to be a nuisance in the neighborhood and an annoyance, if not an outright threat, to children walking down the private lane and waiting at the bus stop. At least one large dog has escaped from the Applicants' property and has roamed freely in the neighborhood. Testimony was presented that the dogs are not well kept. Testimony from neighbors many hundreds of feet away from the Applicants' house/kennel was that barking of the animals is disturbing to them. It is, in fact, an almost unavoidable conclusion that this dense population of animals on a residentially used parcel has the potential of creating a serious and adverse impact. That impact may be acceptable in a more rural area, perhaps on a parcel which allows a significant distance between the kennel and adjoining lot lines. However, the Applicants' home and runways are located close to adjoining neighbors and clearly those neighbors are adversely impacted by this animal population. Furthermore, the testimony of the Applicants' own witness was that such a use at the Applicants' property may very well have a greater impact at the Applicants' parcel than it would at another location within the Agricultural zone. Furthermore, while no testimony concerning property values was presented, it is easy to envision this 'kennel' as having a detrimental impact on the resale of adjoining properties.

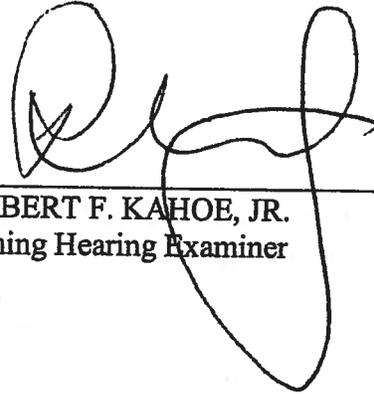
Accordingly, it is found that the Applicants cannot under any theory, based upon the evidence presented at the hearing, be found to have substantiated their need for a variance. As a 200 foot setback cannot be varied, a special exception cannot be considered. Furthermore, even if such a variance had been granted, it is found that the proposed use causes an adverse impact to the neighborhood, which because of its location, is greater at the subject parcel than it would at another location within the Agricultural zone.

Case No. 5754 – Donald & Patricia Webster

CONCLUSION:

Accordingly, it is recommended that the requested variance and special exception be denied.

Date: January 26, 2012



ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on February 24, 2012.