

IN THE MATTER OF : BEFORE THE
VALERIE W. BORNEMANN : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 11-006C

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DECISION AND ORDER

On May 23, 2011, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Valerie W. Bornemann for an Animal Hospital Conditional Use in an RR-DEO (Rural Residential-Density Exchange Option) Zoning District, filed pursuant to Section 131.N.4 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to complying with the notice, posting, and advertising requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Andrew Robinson, Esquire, represented the Petitioner. Valerie W. Bornemann and Wendy Feaga testified in support of the petition. Patrick Coulter and Loretta Gaffney also testified but not in direct opposition to the petition.

The Petitioner introduced the exhibits as follows into evidence.

1. The conditional use petition, dated February 23, 2011
2. Aerial image of Property
3. Graphic depicting area of veterinary practice in residence
4. Photographs of ingress and egress from Property

5. Decision and order in Board of Appeals Case No. 96-55E
6. Photographs of landscaping on Property

FINDINGS OF FACT

Based upon the TSR, the petition, and site visits, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is situated on the southeast corner of the Triadelphia Road intersection with Sharp Road and is known as 14251 Triadelphia Road (the "Property.") The Property is located in the 5th Election District and is identified as Tax Map 21, Grid 18, Parcel 188, Lot 21.

2. Property Description. The Property is a 2.037[±] acre corner lot improved with a two-story, frame single-family detached dwelling sited in the northeast section of the lot and about 53 feet from the front lot line. According to the Maryland Department of Assessments and Taxation records, the dwelling was constructed in the 1860s, which makes the dwelling legally non-complying to the current 75-foot setback from Triadelphia Road.

Also on the Property are a one-story frame detached two-car garage lying to the southwest of the dwelling and a one-story shed to the dwelling's south. A paved driveway from Triadelphia Road provides access to the Property. Between this driveway and the west side of the driveway is a fenced side yard. The Property frontage and the northwest corner is predominately lawn. There are a few trees near the dwelling and garage. The existing septic area is directly south to the dwelling and the well is on the driveway's western side.

3. Vicinal Properties. All vicinal properties are zoned RR-DEO. To the Property's north, across Triadelphia Road, the properties improved with two-story single-family detached

dwellings. The parcel in the northeastern intersection corner is identified on the Howard County Historic Site listing as the Joshua Day House (MHT No. 323). The properties to the east and south are part of the Heritage Subdivision and these properties are each improved with a two-story single-family detached dwelling. A line of mature evergreen trees along the west side of Sharp Road provides screening.

4. Roads. In the Property's front, Triadelphia Road has two travel lanes, a variable with right-of-way and a variable paving width due to an eastbound acceleration lane from Sharp Road. The posted speed limit is 30 MPH. The estimated sight distance from the existing driveway entrance is about 500 feet to the east and west. There is not traffic data for Triadelphia Road in this area. There is no access from Sharp Road.

5. Water and Sewer Service. The Property is served by well and septic. Department of Health, Bureau of Environmental Health comments noted the sewerage disposal system must be sized and upgraded for the use.

6. General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Rural Residential." The General Plan Transportation Map depicts Triadelphia Road in this location as a Minor Collector. I.

7. Zoning History. In Board of Appeals Case No. 96-055E, the Petitioner was granted a special exception (1998) for an animal hospital. The use lapsed because the Petitioner did not establish it.

8. The Proposal. The Petitioner, a veterinarian, is proposing a small animal practice

within her home. She desires to downsize her practice as she prepares for retirement. The conditional use plan and petition depicts an approximately 700-square foot conditional use area on the east side of the dwelling. The general practice would include exams, spaying and neutering, and dental work. There would be no animal boarding or grooming. There may be a rare occasion when an animal is kept overnight but she would refer animals needing overnight care to a 24-hour practice on US 40. Only one patient would be served in the office at any one time. The Petitioner will soundproof the practice area and install a small sign near the driveway. With the exception of making the entrance accessible to disabled persons, no external modifications are proposed. Four parking spaces will be provided in front of the garage and two additional spaces will be provided at the end of the driveway. The hospital will employ part-time staff, with only one employee on site at any time.

The proposed hours of operation are Monday, Wednesday, Thursday and Friday: 8:30 a.m. to 6:00 p.m. and every other Saturday, 9:00 a.m. to 12:00 p.m.

9. Dr. Valerie Bornemann testified that with the exception of the front yard, there is mature landscaping around the Property's perimeter. This landscaping screens the dwelling, as depicted in Petitioner Exhibit 6, which photographically depicts existing the landscaping.

10. She further testified that there have been no accidents along this section of Triadelphia Road and no new road work. Petitioner's Exhibit 4 photographically depicts different views of Triadelphia Road near the driveway. According to the supplement to the petition, a visibility study conducted in 1997 in relation to Board of Appeals Case No. 96-55E found visibility to be adequate. The supplement also states there is adequate turnaround space

on the Property to allow all vehicles to enter the traffic lane moving forward (no backing out).

11. During cross-examination, Dr. Bornemann testified the Property had been approved previously for a 2000-square foot facility to be attached to the back of the garage. She did not establish the use due to medical problems. She also explained during cross-examination that a dog owner should take care of its animal's elimination needs before their visits. Sometimes animals are walked outside briefly and the yard would be cleaned every day, since this is her home. All sharps (needles) and medical animal waste are stored inside in separately marked containers and a private service picks it up. Deceased animals are not cremated or otherwise disposed of on-site.

12. During cross-examination by Loretta Gaffney, Dr. Bornemann testified that she had previously enlarged the septic system around 1997. She has requested copies of the appropriate permit information from county engineers.

13. Dr. Wendy Feaga testified to be a veterinarian with a small home practice on her property and that traditionally a veterinarian operated out of his or her home.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

A. Harmony with the General Plan. Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

- a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and
- b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

General Plan Policies. The Howard County General Plan designates the area in which the Property is located as a "Rural Conservation" land use. Animal hospital conditional uses are allowed only in the RR and RC (Rural Conservation) districts. They are presumptively compatible with this land use.

The Nature and Intensity of the Use. The proposed animal hospital will treat small animals in an approximately 700-foot section of the Petitioner's home, which is located on 2.037 acres and no addition is proposed. The practice will be limited to small animals. The Hearing Examiner concludes the low intensity use is a typical rural use that will provide an important service to rural Howard County.

The Size of the Site in Relation to the Use. The Petitioner proposes to use a 700-square foot area of her residence and a portion of the driveway for the animal hospital. The 2±-acre site will easily accommodate the use, which will be generally located in the central portion of the Property.

The Location of the Site With Respect to Streets Giving Access to the Site. The existing driveway off Triadelphia Road, a Minor Collector, will provide access for the relatively small numbers of patients. There are no traffic safety issues.

The Appropriateness of the Conditional Use in Combination with a Permitted Use on the Site. The animal hospital will be combined with the permitted residential use. The combination is appropriate.

B. Adverse Impacts. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

Inherent in the assessment of a proposed conditional use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed uses would have adverse effects in an RC district. The proper question is whether there are facts and circumstances showing the particular uses proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, and as conditioned, the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish the

proposed animal hospital will not have adverse effects on vicinal properties beyond those ordinarily associated with the use in the RR district.

a. Physical Conditions. The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The testimony and evidence indicate the proposed use will be conducted predominately indoors. Animal medical waste will be stored in the practice area in designated waste containers. Although there may be the occasional animal sound, the Petitioner will be soundproofing the practice area and only one patient will be seen at a time, which will reduce animal noise levels. No outdoor lighting is proposed. The Hearing Examiner concludes the impacts of noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will not be greater at the subject site than generally elsewhere in the RR or RC zone.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The Petitioner is proposing to use a 700-square foot section of her residence for the use. This section is well separated from surrounding properties. Additionally, the existing landscaping will screen the use from adjacent properties, with the exception of the residence across the street. However, the view will not change because no additions are proposed. The Hearing Examiner concludes the location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such, as conditioned, that the use will

not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The Technical Staff Report explains that Section 133.D of the Zoning Regulations does not establish parking requirements for the use. The Petitioner is proposing four parking spaces, next to the existing detached garage. These four spaces will provide adequate parking for clients and the one employee.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

There is no evidence that the long-existing access driveway does not provide safe access. I conclude the Petitioner has met its burden of demonstrating the existing ingress and egress drives comply with Section 131:B.2.d.

II. Specific Criteria for Animal Hospitals (Section 131.N.4)

A conditional use may be granted for an animal hospital in the RC or RR Districts, provided that:

- a. If outside pens or runs are included:**
- (1) They will be at least 200 feet from any lot line and screened from roads and residential properties; and**
 - (2) Their hours of operation will be established by the Hearing Authority.**

No outside pens are proposed. Section 131.N.4 does not apply.

b. Buildings where animals are kept or treated will be located or soundproofed so that noises are not detectible at the lot lines.

Dr. Bornemann testified that the animal hospital would be soundproofed. Additionally, the hospital use will be located more than 200 feet from the closest residence. The petition accords with Section 131.N.b.

c. Disposal of wastes will be such that odors or other emissions are not perceptible at lot lines.

Animal medical waste and sharps will be stored indoors in designated receptacles and removed by a private company, in accordance with Section 131.N.4.c.

ORDER

Based upon the foregoing, it is this 20th day of June 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

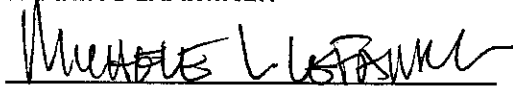
That the petition of Valerie W. Bornemann for an Animal Hospital in an RR-DEO (Rural Residential-Density Exchange Option) Zoning District, filed pursuant to Section 131.N.4 of the Zoning Regulations is **GRANTED**;

Provided, however, that:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the proposed animal hospital as described in the petition and as depicted for the "Veterinary Doctor's Office" submitted on March 8, 2011, and not to any other activities, uses, or structures on the Property.

2. The Petitioner shall replace the screening landscaping on the Property when necessary.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Date Mailed: 6/21/11

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.