

BEFORE THE TALBOT COUNTY BOARD OF APPEALS

IN THE MATTER OF	*	CASE NO. SPEX-22-5	*
	*		*
TOP OF THE BAY	*	SPECIAL EXCEPTION AND VARIANCE	*
PET LODGE	*	REQUEST APPLICATION	*
	*		*
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The Board of Appeals (the “Board”) held a hearing on January 23, 2023 in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of Top of the Bay Pet Lodge, Inc., c/o Gregory Strong (the “Applicant”). The Applicant requested modification to Special Exception to allow the addition of an outdoor kennel pavilion with attached breezeway. The Applicant also seeks a variance from the 200’ setback requirement established by § 190.29.2 because the new pavilion will be a distance of 51.7’ from the western property line. The property is located at 6026 Ocean Gateway, Trappe, MD (“Property”). Chairman Frank Cavanaugh, Board Members Paul Shortall, Patrick Forrest, Jeff Adelman, Zakary Krebeck, and Board Attorney Lance M. Young were present. Brennan Tarleton, Planning and Zoning Director and Board Secretary Christine Corkel appeared on behalf of the County.

STATEMENT OF THE CASE

This Board previously granted a special exception for the Property, as described more fully herein below. The current Application is for a modification to construct an outdoor pavilion with attached breezeway. The kennel pavilion is 2,970 square feet in area. It will be constructed as an open sided pole building structure with sound attenuation panels to damper the sound of dogs barking in the pavilion. The pavilion will be attached to the main existing kennel. The Applicant also proposes a stockade fence adjacent to the pavilion on the west side. The construction will require a setback variance.

SPECIAL EXCEPTION BACKGROUND

The current application seeks to modify the special exception(s) previously granted for the Property. The zoning and special exception status for the Property has evolved over the years.

A special exception was initially approved for a kennel operation in May 1961 (Appeal #37) (hereinafter “the Special Exception”) with limiting conditions. The conditions included: 1) the type of dog allowed for boarding and training is limited to retrievers used for the hunting of wild waterfowl and that at no time will there be more than 10 such dogs except to raise puppies until they reach the age of 3 months, and 2) at no time will the dogs and puppies be permitted to run at-large.

A modification to the Special Exception was approved in September 1962 (Appeal #49) to allow 10 additional dogs for the kennel operation to include enclosed runs, to board any type of dog and to keep the owner’s own puppies on the premises for as long as they desire, regardless of age,

with conditions including: 1) at no time will the dogs and puppies be allowed to run at large, 2) no more than 20 dogs at any one time, not counting the puppies shall be allowed for boarding and training, and 3) improvements associated with the Special Exception request be completed within two years from the date of the approval.

A modification to the Special Exception (Appeal #67) was approved in April 1962 to allow up to 40 dogs associated with the operation kennels and enclosed runs with a condition that at no time will the dogs and puppies be allowed to run at-large.

Applicant purchased the property in April, 1984, and has continuously operated a kennel on the Property from that time. Before that time, and until February 10, 2018, the special exception grant was based on continuing nonconforming use. In 2018, the County Council amended the zoning for the property from VC to AC, which permits kennels as a special exception use.

On September 5, 2018, the Planning Commission reviewed the Special Exception modification (#18-1682) when Applicant sought to relocate and expand the existing commercial kennel and increase the number of dogs. On September 24, 2018, this Board granted a modification to the Special Exception with conditions that included, but were not limited to: a) increasing the kennel capacity up to 100 dogs, b) determination by Talbot County Environmental Health for wastewater design flow, c) containment of dogs within a fenced area at all times, d) screening and fencing required by the site plan shall be implemented before the occupancy or use of the new building, and e) incorporation and compliance with a sound abatement plan comprising of measures of sound attenuation that will comply with the Talbot County Noise Ordinance. Additionally, the Board of Appeals granted a variance of the 200-foot side yard setback for the proposed improvements.

On March 6, 2019, the Planning Commission approved the Major Site Plan (SP607) with conditions that included, but were not limited to: a) approval by the Board of Appeals of modifications to their approved side setback variances, a variance to the rear setback, and a modification to their Special Exception, b) obtaining a certificate of nonconformity or an “after-the-fact” variance for the “storage & training building” to operate within the side yard setback as part of the kennel use, and c) screening and/or fencing, as well as noise attenuation measures required by the site plan, to be implemented before the occupancy or use of the new building.

In April 2019, the applicant appeared before this Board because the setbacks granted by (#18-1682) had substantively changed. The BOA granted the revised setback variance. According to Applicant, the COVID pandemic created a downturn in the kennel’s business and, therefore, Applicant no longer sought final site plan approval of the major site plan (SP 607) for the proposed construction of the new facility.

Applicant now seeks to scale back its anticipated addition with the proposed outdoor pavilion and attached breezeway. Applicant participated in a pre-application meeting on March 16, 2022. A major site plan was submitted and reviewed by the Technical Advisory Committee meeting on August 10, 2022. The Major Site Plan and the Recommendation to the Board Appeals for the Amendment to the Special Exception were reviewed by the Planning Commission on January 4, 2023. The Major Site Plan was approved by the Planning Commission and the Commission made a favorable recommendation to this Board for the Modification to the Special Exception.

The Planning Commission received one letter regarding the concern of the noise for barking dogs and suggested that the new pavilion should meet the 200-foot setback for commercial kennels. The Planning Commission, at their January 4, 2023 meeting, approved the location of the proposed pavilion with the reduced setback.

SUMMARY OF TESTIMONY

Elizabeth Fink, a Land Planner at Fink, Whitten & Associates, appeared on behalf of the Applicant. The existing proposal is a scaled back proposal from a previously approved plan to expand the facility. The current proposal is more modest than what was previously approved by this Board.

A privacy fence already exists around the facility. New fencing is proposed on the west side of the facility for the purpose of additionally deflecting noise that occurs at dog kennels. The new kennel and attached breezeway are designed for the purpose of reducing noise of the dogs who will utilize the pavilion for exercise and play.

A variance is required from the 200' setback requirement. The Applicant would not be able to add the improvements on any side of the property without a variance. One neighbor has complained of noise from the facility and these improvements hope to reduce noise that comes from the Property. The Property owner, Greg Strong, testified that the design is borrowed from a facility he visited in another State and uses technology specifically for reducing the noise coming from the dogs in the kennel. In other words, the addition will improve the facility, not expand it.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Special Exception

The Board finds by a preponderance of the evidence that the Application should be approved to modify the Special Exception for the Property to allow the construction of an outdoor pavilion with attached breezeway. The standards for granting a special exception are met:

1. The use will be consistent with the purposes and intent of the Talbot County Comprehensive Plan. The Comprehensive Plan supports reinvestment and redevelopment of existing businesses. The ability to improve operational efficiencies and quality are important for retention of the County's existing businesses and the improvements sustain their contributions to the local economy. The kennel is also representative of the service sector, which is the largest business sector in Talbot county.
2. The use will comply with the standards of the zoning district in which it is located, except as those standards are modified by the granting of a variance with this decision. The kennel use is permitted in the AC zoning district by special exception. The use requires a 200 foot setback from property lines, which is the purpose of the variance that is granted by this decision.

3. The scale, bulk and general appearance of the use will be such that the use will be compatible with adjacent land uses, with existing and potential uses in its general area, and will not be detrimental to the economic value of the neighboring property. The proposed addition will be located behind the existing kennel building. It is being constructed with technology to reduce noise from barking dogs for the benefit of the Property neighbors. The perimeter fence that will be constructed will additionally benefit neighbors.

4. The use will not constitute a nuisance to other properties and will not have significant, adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental disturbances. The proposed addition includes noise attenuating panels for greater noise protection than what currently exists on the Property. The kennel does not anticipate additional customers than it currently supports.

5. The use will not have a significant adverse impact on public facilities or services, including roads, schools, water and sewer facilities, police and fire protection or other public facilities or services. The Property utilizes onsite septic and well.

6. The use will not have a significant adverse effect upon marine, pedestrian or vehicular traffic. The Applicant is not proposing changes to the ingress and egress points for operation. The purpose of the proposed addition is to increase efficiency and noise pollution on the property, not to expand services.

7. The use will not produce traffic volumes, which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications established in Chapter 134, the Talbot County Roads and Bridges Ordinance, and other applicable standards for road capacity. The Property has direct vehicular access from Maryland Route 50 and will not affect county or private roads. The State Highway Administration has not provided any comment on the proposal.

8. Any vehicle access to proposed off-street parking areas and drive-in facilities will be designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on adjacent properties and on public or private roads. The project will be required to provide all parking on-site and will not impact neighboring properties.

9. The use will not significantly adversely affect wildlife with respect to the site's vegetation, water resources, or its resources for supplying food, water, cover, habitat, nesting areas, or other needs of wildlife. A forest conservation plan and wetland pond buffering will be addressed through site plan review.

Variance

The Board finds that the Applicant has satisfied the standards for granting a variance.

A. Unique physical characteristics exist such that literal enforcement of the height requirements would result in practical difficulty or unreasonable hardship in enabling the Applicant to develop the property. The property has existed as a commercial kennel since prior to the existing zoning regulations, including the requirement of a 200' supplemental setback. The addition could not be constructed on any side of the kennel without the grant of a variance.

B. The need for a variance is not based upon circumstances which are self-created or self-imposed. The existing kennel has been existence since the 1960s prior to the zoning regulations.

C. The variance is not requested for greater profitability or lack of knowledge of the restrictions. The variance is being requested to improve the functionality of the kennel operations and customer service and to reduce sound for the benefit of neighbors.

D. The variance is not contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The proposed addition will provide better noise attenuation for the benefit of the public.

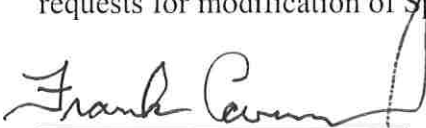
E. The variance will not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. The proposed addition is connected to the existing facility. The Board finds that it will be situated in the best location for the property.

Mr. Krebeck made a motion to approve the request for a modification to Special Exception subject to staff conditions. Mr. Shortall seconded the motion, and it was unanimously approved. Mr. Shortall made a motion to approve the request for a variance subject to staff conditions. Mr. Adelman seconded the motion, and it was unanimously approved.

Conditions

1. The Applicant shall take all of the required steps and acquire all necessary approvals, including any additional waivers necessary, required for a Site Plan and Landscaping Plan as spelled out in the Talbot County Code.
2. The Applicant shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction.


IT IS THEREFORE, this 14th day of February, 2023, **ORDERED** that the Applicant's requests for modification of Special Exception and for a variance is GRANTED.


Frank Cavanaugh, Chairman


Paul Shortall


Patrick Forrest


Zakary A. Krebeck


Jeff Adelman