

IN THE MATTER OF  
THE APPLICATION OF  
A BUDDY FOR LIFE, INC.  
c/o CRYSTAL LITTERAL

BEFORE THE CECIL COUNTY  
BOARD OF APPEALS  
CASE NO.: 3625

(Variance)

OPINION

Application of A Buddy for Life, Inc., c/o Crystal Litteral (hereinafter, “ABFL” or the “Applicant”) for a one hundred seventy (170) foot setback variance from the two hundred (200) foot setback required from a dog kennel to a residence on adjoining property, at real property located at 1750 Appleton Road, Elkton, Maryland 21921 (the “Property”), which is designated as Parcel 398 on Tax Map 14, Fourth Election District, Cecil County, Maryland. The Property is presently zoned Business General (“BG”), and is owned by Francis Jeffrey Asti (hereinafter, “Asti” or the “Owner”).

Under the provisions of Article XVII, Part I, Section 306, Paragraph 1, variances, as defined in Article II, may be granted by the Board of Appeals. Paragraph 2 of Section 306 requires the Board to examine all facts of the case and render a decision based upon the following criteria:

A. The variance request is based upon a situation where, because of special circumstances, a literal enforcement of the provisions of the Ordinance would deprive the applicant of a right commonly enjoyed by other parties in the same zone under the terms of this Ordinance.

B. Special conditions and circumstances exist that are peculiar to the land, buildings or structures involved, and that are not applicable to other lands, buildings, or

structures in the same zone, such conditions and circumstances not being the result of actions by the applicant.

C. The granting of the variance will not confer upon the applicant any special privileges that are denied by this Ordinance to other properties in the same zone.

D. The variance request does not arise from any condition to land or building use, either permitted or non-conforming, on any neighborhood property.

The Applicant appeared before the Board represented by Jennifer Callahan (hereinafter, "Callahan"). Callahan acknowledged that the Ordinance requires a 200-foot setback from residences, however, the Property was selected by the Applicant because (1) It fits the Applicant's needs; (2) The Owner and tenants on an adjacent parcel support the application; and, (3) It is difficult to find a building that is suitable for the services that the Applicant seeks to provide, e.g., animal control, including but not necessarily limited to, housing animals for owner reclamation and adoption pursuant to an animal control RFP issued by Cecil County Government in July, 2012. A letter to the Board submitted by the Applicant (dated October 2, 2012) acknowledges the potential for animal noise, and pledges that the Applicant "will make every effort to minimize this potential disturbance." The October 2<sup>nd</sup> letter further states that "[a]ll animals will be housed indoors with playtime and elimination [e.g., urination/defecation] outdoors either on leashes or within a fenced-in area for short periods during day time hours."

Callahan further testified that the structure that is proposed for use by the Applicant is heated, has air conditioning, and has an alarm. Callahan stated that stray and unwanted dogs and other animals will be kept on the Property for the mandatory

period set forth pursuant to Section 209 of the Ordinance (e.g., 8 days) and that, after expiration of the 8 day period, unclaimed animals would go up for adoption, during which time such animals may, or may not, be kept on site. Callahan testified that the Applicant does not euthanize animals, and maintains a strict “no kill” policy. Callahan further testified that animals carcasses will not be kept on the Property, and that there will be no crematory on the Property. Callahan represented that the business would operated 24-hours per day, 7-days per week, 365-days per year, that the building will be spot cleaned throughout the day, that the Applicant will not use the drain system on site for feces disposal, that feces deposited by animals outside will be picked up and placed in bags, and that the bags will be disposed of off-site.

Callahan further testified that the operation will have no more traffic than Milburn’s Orchard (which is located in proximity to the Property) during Milburn’s busy season, and that there will be no parking on Appleton Road associated with the proposed use. Callahan reiterated that there should be no environmental issues associated with the operation, as feces will be bagged and placed in a dumpster for disposal off site. Callahan stated that the Applicant seeks to offer fair, compassionate animal control services, that the Applicant will be a good steward, and a good neighbor.

In response to questions from the Board, Callahan further testified that:

- The Applicant does not know when the proposed operation will start; that the Applicant is presently waiting on the County to award the contract pursuant to the RFP;
- There is a second building located on the Property that the Applicant plans to use at a later date;
- Animal control services will be provided between the hours of 8:00 AM

and 5:00 PM, with animal rescue to remain open until 7:00 PM;

- No individual will reside on the Property; if there is an after-hours issue, an employee would respond. Callahan acknowledged that, because the Property will not be staffed after-hours, the Applicant would not necessarily know if there is an issue on site unless someone called and informed the Applicant of such an issue;

- The Applicant has capacity for 50 to 70 dogs, and 40 to 45 cats;

- The outside area will be fenced; although there is not a fence currently installed, the Applicant intends to install a 6-foot high “standard” wooden fence; and,

Finally, in rebuttal, Callahan was asked by the Board whether she wanted to testify directly to the three (3) elements set forth pursuant to Section 306 of the Ordinance; Callahan specifically declined to offer such testimony.

The Owner appeared and testified in favor of the application. In this respect, the Owner stated that his tenants on an adjacent parcel are in favor of the application, that he initially had concerns related to waste disposal, however, after discussion with the Applicant and the Health Department, he no longer has such concerns, particularly in so far as the septic system is pumped every five (5) years, and is currently well below the required percable rate. The Owner testified that the Property was formerly part of a larger parcel that was all commercial, that the former parcel was subdivided some years ago, and that the resulting subdivided parcels are now used by commercial as well as residential tenants. The Owner testified that neither the adjacent residential or commercial tenants have issue with the proposed operation; the Owner entered letters of support into the record.

A number of individuals testified in opposition to the application:

- Mike Nichols testified that the current zoning of the Property is unfair,

particularly having commercial use so close to residential housing. Mr. Nichols further testified that his residence is 210-feet from the second building on the Property (e.g., the building that the Applicant intends to use at a later date). Mr. Nichols testified that a trucking company and a lawn fertilizer company share the road to his home, as does an industrial park. Mr. Nichols testified that box trucks are already a hazard as he exits his driveway, and he expressed concern that adding the proposed use will increase existing traffic issues. Mr. Nichols further testified that he owns a parcel North of the Property, and that he already will be effectively precluded from building a residential dwelling on this parcel if the variance application is granted, because people are not interested in living so close to a commercial use such as that proposed here.

- Michael Halter, Esquire, attorney for the Cecil County Society for the Prevention of Cruelty to Animals (hereinafter, the “CCSPCA”) testified for the CCSPCA, and stated that the structure proposed for use on the Property is not beneficial or safe for animals. More specifically, Mr. Halter noted that there is no run or kennels in the facility, that it is impossible for the Applicant to keep feces out of the drain system, and that the Applicant does not have permits from the Maryland Department of the Environment or the Department of Agriculture to dispose of animal waste. Mr. Halter further testified that Callahan is not the Applicant’s President, and that the Board is therefore procedurally barred from considering the application.

- Ron Hartman testified that the Property is in close proximity (15-feet or less) to a stream, and that the proposed use requires 5-acres of land if animals are to be kept outside, however, the Property contains only 2.4-acres. Mr. Hartman also expressed concern related to noise and airborne disease associated with a kennel.

- Rupert Rossetti testified that he is concerned with nitrates from animal urine running into the stream, particularly in-so-far as the Property has a substantial amount of impervious surface cover, and lacks sufficient area for urine treatment.

- Todd Seymour testified that he owns three parcels North of the Property, that he is retired from 23-years of active military duty, and that he purchased his property to reside in a quiet area. Mr. Seymour expressed concern that he will be able to hear the dogs from his property, and that noise attributed to the proposed use will cause unrest for him and other individuals in the area.

- Jane Nonn testified that she built her home, which is located in the vicinity of the Property, using most of her savings; Ms. Nonn testified that she is single, and works in a local hospital emergency department. Ms. Nonn stated that she is a light sleeper, and will be able to hear the dogs. Ms. Nonn testified that she is concerned that the proposed use will disrupt her sleep and quiet enjoyment of her property, as well as devalue her property.

- Tanzy Hollaway Schuler testified that all adjacent property owners were not notified of the application; specifically, Ms. Schuler testified that she owns parcel 32, and was not notified of the application even though her parcel 32 is adjacent to the Property. Ms. Schuler testified that the building is not sound proof, and that the Property is too small, too close to a stream, and lacks the requisite acreage required for the proposed use.

- William Schuler testified that he owns 2 adopted dogs, that his residence is too close to the Property for the variance requested here, that the proposed area for the fenced run is too close to the stream, and that there was formerly a dog grooming business on the Property, from which he could smell urine with only 15 dogs on site

during the summer, and from which he could hear dog noise because the building is not soundproof. Mr. Schuler questioned whether the building is of sufficient size to house animals.

- Karen Spry testified that there are already traffic problems on Appleton Road, that there are so many businesses there that traffic is terrible, and makes it difficult for her to get out of her driveway, and hazardous for bikers to ride on Appleton Road. Ms. Spry expressed concern that the proposed use will make traffic worse, and devalue her home.

- Jay C. Emrey, Esquire testified for Mr. and Mrs. Schuler, and stated that he agrees with Mr. Halter. Mr. Emrey further stated that the Property is not appropriate for use as a kennel, that the Property is part of a small commercial pod located in a residential and agricultural area. Mr. Emrey testified that the kennel should be located in a secluded area without much traffic. Mr. Emrey also testified that if the Board were to grant the variance here, it would thereby confer privileges on the Applicant that are not available to others. Mr. Emrey noted that this is an application for a 170-foot variance, that the kennel should be located in a non-residential area, and that the kennel is not appropriate here. Additionally, Mr. Emrey testified that the Applicant has shown no hardship, that the Owner caused this situation to occur when he subdivided the property, and that to grant the variance would do a disservice to this residential neighborhood. Mr. Emrey stated that the neighborhood will be impacted with noise from the dogs; when one dog barks, they'll all bark. Mr. Emrey testified that the building is not soundproof, and that the Applicant will have to make substantial changes to the building in order for the structure to be suitable for use as a kennel. Finally, Mr. Emrey urged the Board to look

at the criteria set forth in Section 306 of the Ordinance, and noted that variances are hard to obtain.

Zoning Administrator Cliff Houston read a letter in opposition that had been submitted by Eileen Butler, in which Ms. Butler expressed concerns related to water quality, proximity of the proposed use to the stream, and noise.

From the evidence presented the Board is not satisfied that the criteria set forth in Section 306 has been met, and makes the following findings:

1. The Applicant has submitted no probative evidence or testimony demonstrating that the variance request is based upon a situation where, because of special circumstances, a literal enforcement of the provisions of the Ordinance would deprive the applicant of a right commonly enjoyed by other parties in the same zone under the terms of this Ordinance. The Applicant offered testimony and evidence through its agent Callahan, however, the testimony and evidence does not address this particular element of Section 306. When asked by the Board whether she would like to specifically address the requirements of Section 306, Callahan declined. Mr. Emrey, for example, offered testimony in opposition that disfavors the Applicant on this element. Based on the foregoing, the Board finds that the evidence and testimony weighs against the Applicant regarding this element and, as such, that the Applicant has failed to meet its burden in relation to this particular element of Section 306.

2. The Applicant has submitted no probative evidence or testimony demonstrating that special conditions and circumstances exist that are peculiar to the subject land, buildings or structures involved, and that are not applicable to other lands, buildings, or structures in the same zone. As set forth above, the Applicant offered testimony and evidence through its agent Callahan, however, the testimony and evidence



does not address this particular element of Section 306. When asked by the Board whether she would like to specifically address the requirements of Section 306, Callahan declined. As such, the Board finds that the Applicant failed to meet its burden in relation to this particular element of Section 306.

3. The Applicant has submitted no probative evidence or testimony demonstrating that the granting of the variance will not confer upon the applicant special privileges that are denied by this Ordinance to other properties in the same zone. The Applicant offered testimony and evidence through its agent Callahan, however, the testimony and evidence does not address this particular element of Section 306. When asked by the Board whether she would like to specifically address the requirements of Section 306, Callahan declined. As with the foregoing element, Mr. Emrey offered testimony in opposition that disfavors the Applicant on this element. Based on the foregoing, the Board finds that the evidence and testimony weighs against the Applicant regarding this element and, as such, that the Applicant has failed to meet its burden in relation to this particular element of Section 306.

4. The Applicant has submitted no probative evidence or testimony demonstrating that the variance request arises from any condition to land or building use, either permitted or non-conforming, on any neighborhood property. As set forth above, despite Board request, Callahan declined to offer testimony or evidence directly addressing this particular element of Section 306. As such, that the Applicant has failed to meet its burden in relation to this particular element of Section 306.

For the reasons stated, by unanimous vote, the Board finds that the criteria set forth in Section 306 has not been met, and the application for a one hundred seventy

(170) foot setback variance from the two hundred (200) foot setback required from a dog kennel to a residence on adjoining property is, therefore, DENIED.

12/07/2012  
Date

David Willis, Jr.  
David Willis, Chairperson

**BOARD OF APPEALS APPLICATION**  
**CECIL COUNTY, MARYLAND**

MEET. MONTH: Nov. 2012  
FILE NO. 3625

**Received**

**THIS REQUEST IS FOR:**

- SPECIAL EXCEPTION RENEWAL ( )
- SPECIAL EXCEPTION ( )
- VARIANCE (X)
- APPEAL ( )

OCT 02 2012

DATE FILED: 10/2/12  
AMOUNT PD: \$200.00  
ACCEPTED BY: CFH Jd OK# 322

Cecil County Office  
of Planning & Zoning

**A. APPLICANT INFORMATION**

*mail to* → A Buddy For Life, Inc c/o Crystal Litteral  
 APPLICANT NAME (PLEASE PRINT CLEARLY)  
1750 Appleton Rd Elkton MD 21921  
 ADDRESS CITY STATE ZIP CODE  
Crystal Litteral 302-345-3295  
 APPLICANT SIGNATURE PHONE NUMBER

(mailing address: A Buddy For Life, Inc 1148 Pulaski Highway Suite 309 Bear, DE 19701)

**B. PROPERTY OWNER INFORMATION**

*mail to* → FRANLIS JEFFREY ASTI  
 PROPERTY OWNER NAME - PLEASE PRINT CLEARLY  
409 LITTLE EGYPT Rd ELKTON MD 21921  
 ADDRESS CITY STATE ZIP CODE  
[Signature] 443-309-0483  
 PROPERTY OWNER SIGNATURE PHONE NUMBER

**C. PROPERTY INFORMATION**

1750 Appleton Rd Elkton MD 21921 4-011465  
 PROPERTY ADDRESS ELECTION DIST. ACCT. NUMBER  

<u>14</u>	<u>22</u>	<u>398</u>	<u>-</u>	<u>2.4</u>	<u>BG</u>
TAX MAP #	BLOCK	PARCEL	LOT #	#ACRES	ZONE

**D. PURPOSE OF APPLICATION** - Indicate reasons why this application should be granted. (attach separate sheet if necessary)

170' setback variance from the 200' setback required from a dog kennel to a residence on adjoining property. see attached

**E. On an attached sheet, PLEASE submit a sketch of the property indicating the proposed project. Show distances from the front, side and rear property lines and the dimensions of the project.**

**F. LAND USE DESIGNATION**

Is property in the Critical Area? \_\_\_\_\_ YES \_\_\_\_\_  NO  
 If yes, Pertinent provision of the Chesapeake Bay Critical Area Program: \_\_\_\_\_  
 Is property in the 100 year Floodplain? \_\_\_\_\_ YES \_\_\_\_\_  NO  
 Is property an Agricultural Preservation District? \_\_\_\_\_ YES \_\_\_\_\_  NO

If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, Part I, II & III of the Zoning Ordinance.

**G. PROVISION OF ZONING ORDINANCE:** Section 306

**H. SPECIAL EXCEPTION RENEWAL** - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: N/A

**I. SPECIAL EXCEPTION FOR A MANUFACTURED HOME** - Please fill out the following information:

Will unit be visible from the road? N/A If yes, distance: \_\_\_\_\_  
 Will unit be visible from adjoining properties? \_\_\_\_\_ If yes, distance: \_\_\_\_\_  
 Distance to nearest manufactured home: \_\_\_\_\_ Size/Model/Year of Unit: \_\_\_\_\_  
 Number of units on property at present time: \_\_\_\_\_

October 2, 2012



**Board of Appeals**

**Purpose of Application**

A Buddy For Life, Inc is a non-profit animal rescue who is currently bidding for the Animal Care and Control Contract in Cecil County. We are requesting a variance on the property we intend to rent at 1750 Appleton Rd Elkton MD 21921. If awarded this variance, it will allow us to utilize this commercial property that is centrally located and publically convenient for housing animals for owner reclamation and adoption pursuant to the animal control RFP that was issued by the Cecil County government.

Although this commercial property is appropriately zoned for our intended use, the proximity to a residentially zoned property has necessitated this request for a variance. We ask that the Board recognize that the owner of the residential property is the same as the adjoining commercial property we intend to rent.

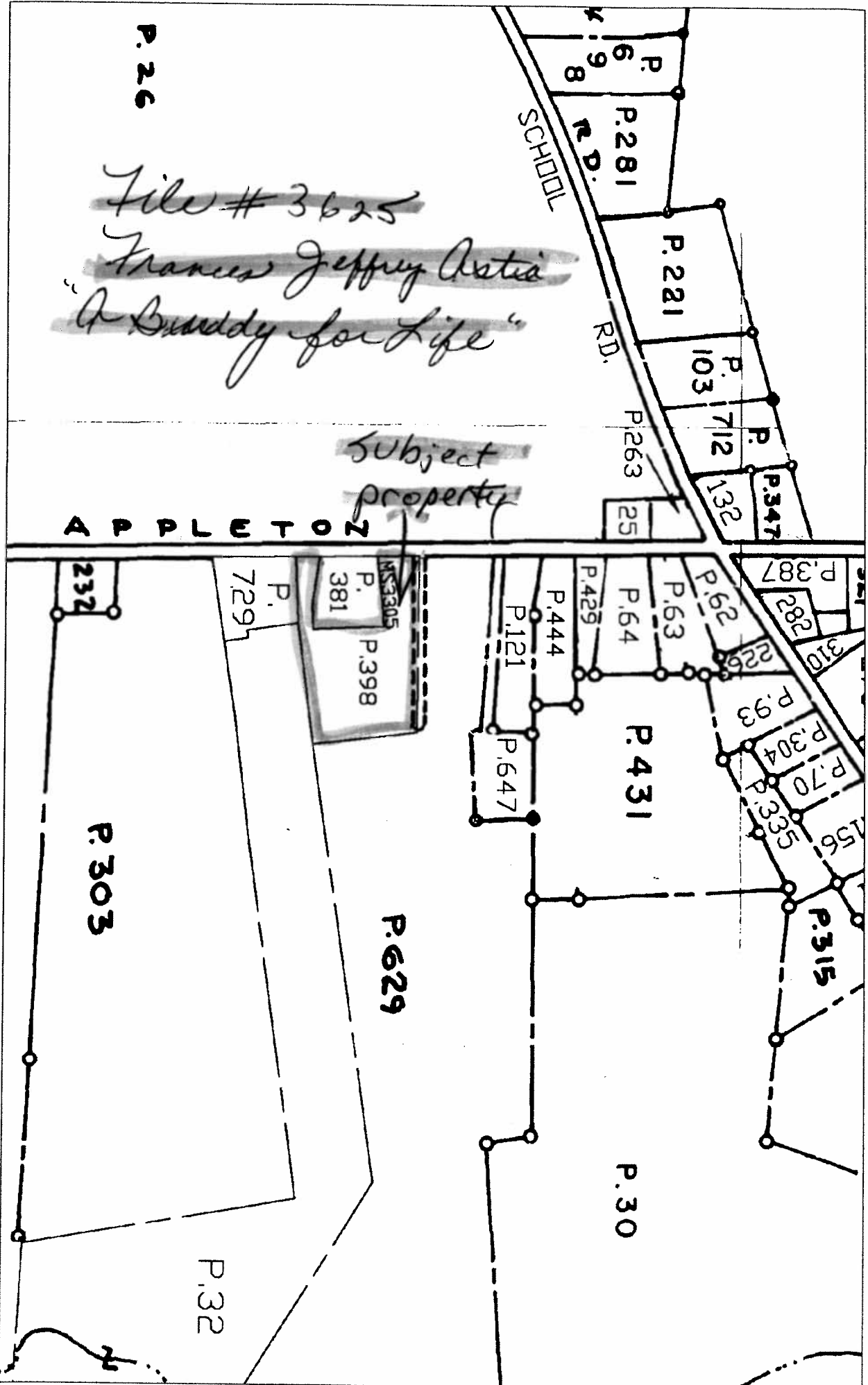
A Buddy For Life, Inc recognizes the potential for animal noise and will make every effort to minimize this potential disturbance. All animals will be housed indoors with playtime and elimination outdoors either on leashes or within a fenced in area for short periods during day time hours.

Respectfully submitted,

**X** *Crystal Literal*

Crystal Literal

President A Buddy For Life, Inc



*File # 3625*  
*Francis Jeffrey Astia*  
*"A Buddy for Life"*

*Subject property*

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