

IN THE MATTER OF	*	BEFORE THE CECIL COUNTY
THE APPLICATION OF	*	BOARD OF APPEALS
CHESAPEAKE FELINE	*	CASE NO.: 3729
ASSOCIATION, INC.	*	
	*	
(Special Exception – RR)	*	

* * * * *

OPINION

The Cecil County Board of Zoning Appeals (the “Board”) is now asked to consider the application of Chesapeake Feline Association, Inc. (CFA) (the “Applicant”). Applicant seeks a special exception to operate a cat rescue facility as an in-home occupation on property owned by 88 Spring Hill, LLC, located at 88 Spring Hill Lane, North East, Maryland 21901, designated as Parcel 428, Lot 8, on Tax Map 37, in the Fifth Election District of Cecil County (the “Property”), in an area zoned Rural Residential (“RR”) in accordance with Article V, Part V, Section 79 of the Cecil County Zoning Ordinance (the “Ordinance”).

Section 79 of the Ordinance provides:

Home occupations may be permitted in the RMU zone and permitted as a Special Exception in the NAR, SAR, RR, LDR, ST, VR, UR, MH, RM, and MEA zones provided that:

1. Home occupations are on the same property as the residence, and do not change the residential character and appearance of the dwelling.
2. No type of advertisement for the home occupations shall be carried out on the property, except one (1) unlighted sign identifying the home occupation, limited to three (3) square feet in size.
3. No goods for sale or rent shall be stored on the property in a manner as to be seen from off the premises.

4. Parking is provided in accordance with Article XIV.
5. No equipment or process shall be used which creates noise, vibration, glare, fumes, odors, or electrical interference detectable from adjoining properties.

In determining whether to grant an application for a Special Exception the Board must consider Section 311 of the Ordinance, which states:

No special exception shall be approved by the Board of Appeals after considering all facts in the case unless such Board shall find:

1. Such use or any operations thereto will not be detrimental to or endanger the public health, safety, or general welfare.
2. The use will not be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor substantially diminish or impair property values in the neighborhood.
3. The establishment of the use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zone.
4. The use will not, with respect to existing development in the area and development permitted under existing zoning, overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements.
5. The use shall not adversely affect critical natural areas or areas of ecological importance.
6. The use shall, in all other respects, conform to the applicable regulations of the zone in which it is located.
7. That the particular use proposed at the particular location proposed, would not have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. *Schultz v. Pritts*, 291 Md.1 (1981).
8. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
9. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the County.

Article XVII, Part II, Section 311, Cecil County Zoning Ordinance.

Applicant's Managing Member, Mary Fabulic, testified that CFA is requesting a Special Exception to operate a cat rescue facility out of the property. The business will be operated out of the pre-existing residence and the 18' x 30' outbuilding CFA had constructed on the property. There will be no significant change in traffic to or from the Property. No signage will be used.

Ms. Fabulic testified that 88 Spring Hill, LLC is a 501(c)(3) and is staffed by all volunteers and she described the property and its location. The property was purchased for CFA by a benefactor. She indicated that their Facilities Manager lives on the property, and that one person comes in to assist her. The facility receives calls from people requesting their help and they respond to the call. The rescued cats, ranging up to eighty (80), are confined to the structures on the property and are not permitted to run free. The only "outside" area for the cats is a fully enclosed patio off the back of the house. CFA has installed three (3) cameras at the property in an effort to prevent people from dropping cats off there. CFA partners with PETCO in order to find homes for the rescued cats. CFA also transports their rescued cats to Vermont, Connecticut, and Maine, where these State's spay and neuter programs are so successful that they have a shortage of adoptable cats. CFA uses litter boxes filled with pine nuggets, which are cleaned daily and the waste is removed by Cecil Trash Co. They only euthanize for health reasons via cremation at their veterinarian's office; not on site.

Phillip Giesing, a realtor and former planner, testified that the work CFA has done to clean up the property has improved the property and that what CFA has done has not changed the character of the neighborhood. Numerous other witnesses testified in favor of the application citing the improvements CFA has made and the good work CFA does in rescuing cats in the county, in particular in North East Town Park and at Perry Point where CFA rescued feral cats.

Numerous witnesses testified in opposition to the application stating that the area is zoned residential and used for residential purposes, not business purposes, and that the cat rescue is a business use. Those in opposition testified that people are dropping off stray cats and that there are many stray cats in their neighborhood when there were not before CFA moved into their residential neighborhood, and they are concerned about the health problems these cats bring to their neighborhood. Dennis Clower, Esquire, retained by Mr. and Ms. Krasman, et al, stated that the Applicant is trying to come in the back door by requesting a Special Exception, which is defined by the Zoning Ordinance as a business operated by a resident that does not change the character of the property itself, not the character of the neighborhood, as the witnesses have testified to. In-home occupations are uses in keeping with the residential use, such as a physician's office or a hair salon. The occupational use is secondary to the residential use. Even if someone resides at CFA's property, the residential use is secondary. The closest use in the Zoning Ordinance to CFA's use is a kennel which cannot be in an RR zone even with a Special Exception. A commercial kennel is only permitted in the SAR zone and only permitted in the NAR zone if a Special Exception is granted. Even if the Board grants the Special Exception, the property is deed restricted for residential use only. Even the loan CFA has to purchase the property is a Deed of Trust, a commercial loan, and he cited Board of Appeals Opinion in Case #3721.

Dennis Clower, Esquire, addressed the *Schultz v. Pritz* standard by stating that a Home Occupation is not a use; it's a status. By its application for a Home Occupation, CFA is attempting to use the Home Occupation Special Exception as a back door method of getting in a use that is not permitted otherwise in the RR zone.

Clifford Houston of the Cecil County Department of Planning and Zoning testified that Department and the Planning Commission recommended approval of the special exception for a

period of five years.

Pursuant to Section 311 of the Ordinance, the Board finds as follows:

1. The special exception is not detrimental or an endangerment to the public health, safety, or general welfare. The proposed use would consist of the operation of a cat rescue facility. The Board finds nothing in this proposed use that would constitute a danger to the public health, safety, or general welfare.

2. The use will not be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, or substantially diminish or impair property values in the neighborhood. The business use does not create pollution in the form of noise, light, or particulate matter. There is nothing in the nature of the proposed home occupation that would diminish or impair property values in the neighborhood.

3. The use will not impede the normal and orderly development and improvement of the surrounding properties for uses permitted in the zone. The Board does not find that the operation of the proposed use is an impediment to the preservation of the character of the area or to the reasonable and orderly residential development permissible within the zone. The proposed use will not change the residential character of the Property or contribute to an increase in traffic that would alter the character of the neighborhood.

4. The proposed use will not overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements. No evidence was presented indicating that the proposed use would contribute to an increased burden upon public facilities or municipal services.

5. The continued use will not adversely affect critical natural areas or areas of ecological importance. The Property is not located in a Critical Area District.

6. The proposed use will, in all other respects, conform to the applicable regulations of the zone in which it is located. Based upon the evidence presented, the Board finds that the cat rescue operation as contemplated by Applicant is not inconsistent with these neighboring uses.

7. The particular use proposed at the particular location proposed will not have any adverse effects above those inherently associated with such special exception use irrespective of its location in the zone. *Schultz v. Pritz*, 291 Md. 1 (1981). The Board finds that, because of the residential density of the zone and the nature of the activities undertaken in the area, the impact of Applicant's proposed use in this particular area of the RR zone is no different than the impact of the operation of a home occupation in other areas of the RR zone.

8. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion on the public streets. No evidence was presented evincing issues related to traffic and parking.

9. The use is not contrary to the objectives of the Comprehensive Plan for the County. The special exception is presumptively valid and the Board finds nothing in the record to indicate that the proposed use is contrary to the objectives of the Comprehensive Plan.

For the reasons stated above, by unanimous vote, the Board is satisfied that the requirements of Article XVII, Part II, Section 311, of the Ordinance have been met and the application the special exception under Section 79 is therefore **APPROVED** for a period of one (1) year. [All applicants are hereby notified that they are required to obtain any and all necessary licenses and permits required for the use described herein.]

9/29/15
Date


Mark Saunders, Acting Chairperson

BOARD OF APPEALS APPLICATION
Cecil County, Maryland

MEET. MONTH August 2015
FILE NO. 3724

Received

- THIS REQUEST IS FOR:
- SPECIAL EXCEPTIONS RENEWAL ()
 - SPECIAL EXCEPTION (x)
 - VARIANCE ()
 - APPEAL ()

JUL 15 2015

DATE FILED: 7/15/15
 AMOUNT PD: 1150.00
 ACCEPTED BY: [Signature] CR# 110

Cecil County Office
of Planning & Zoning

A. APPLICANT INFORMATION

Chesapeake Feline Association, Inc.
 APPLICANT NAME - PLEASE PRINT CLEARLY

88 Spring Hill Lane, PO Box 743 North East Maryland 21901
 ADDRESS CITY STATE ZIP CODE

[Signature] 302-438-3090
 APPLICANT SIGNATURE PHONE NUMBER

B. PROPERTY OWNER INFORMATION

88 Spring Hill, LLC
 PROPERTY OWNER NAME - PLEASE PRINT CLEARLY

PO Box 77 North East Maryland 21901
 ADDRESS CITY STATE ZIP CODE

[Signature] 302-528-3642
 PROPERTY OWNER SIGNATURE PHONE NUMBER

C. PROPERTY INFORMATION

88 Spring Hill Lane, North East, Maryland 5th 05-042992
 PROPERTY ADDRESS ELECTION DISTRICT ACCT. NUMBER

37 7 428 8 2.88 ± RR
 TAX MAP # BLOCK PARCEL LOT# #ACRES ZONE

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

The applicant operates a "cat rescue" as a non-profit corporation on the property. Requesting special exception for "in home occupation" as proposed use does not change the residential character of the property nor does it have any effect on the neighborhood.

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 the property in the Critical Area? _____ YES X NO

If yes, Pertinent provision of the Chesapeake Bay Critical Area Program: _____

Is property in the 100 year floodplain _____ YES X NO

Is property an Agricultural Preservation District? _____ YES X 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. PROVISIONS OF ZONING ORDINANCE: Section 79

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

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

Will unit be visible from the road? _____ 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: _____

Baker, Thomey and Emrey, P.A.

Attorneys at Law

DWIGHT E. THOMEY
JAY C. EMREY, III
RICHARD J. POLANSKY
ROBERT E. SURMACZ

WALTER M. BAKER
1927-2012

153 East Main Street, Elkton, MD 21921
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Fax: (410) 392-9035

E-mail: btepa@comcast.net

July 14, 2015

Cecil County Board of Appeals
200 Chesapeake Blvd.
Elkton, Maryland 21921

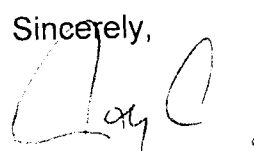
RE: New Special Exception Application

Gentlemen:

I am enclosing an application for Special Exception and check for the filing fee. Please inform me as to the date for the Planning Commission and Board of Appeals hearings.

Thank you for your assistance.

Sincerely,


Jay C. Emrey, III

Received
Cecil County Office
& Zoning

JCE/dmh
5-2015-164
Enclosure

Received
Cecil County
of Planning & Zoning

File 3729

Chesapeake Feline
Association, Inc.

M 37 P428 L048

P. 185

subject
property

PC 973:490

A's WAS 1/76 2/16

P. 428

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FOREST

P. 301

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A35

P. 20

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16

P. 294

WAYSIDE DR

SHAMROCK LN

IRISHTOWN RD

SPRINGHILL LN

HILL

LA.

EVERGREEN LN