

**BOARD OF APPEALS**

**August 18, 2021**

**County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 6:00 p.m.**

**AGENDA**

**DOCKET NO. AP2021-021:** An appeal was made by Sandy Hook LLC for a special exception for short-term residential rental in exiting single family dwelling on property owned by the appellant and located at 19112 Sandyhook Road, Knoxville, Zoned Rural Village.-**GRANTED**

**DOCKET NO. AP2021-022:** An appeal was made by Kathy Pittman for a special exception to establish a dog breeding kennel in existing dwelling and a variance from the minimum 400 ft. setback to 200 ft. from the front yard, 100 ft. from the rear yard, 205 ft. from the left side yard, and 65 ft. from the right side yard on property owned by the appellant and located at 12019 Cove Road, Clear Spring, Zoned Environmental Conservation.-**GRANTED**

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Pursuant to the Maryland Open Meetings Law, notice is hereby given that the deliberations of the Board of Zoning Appeals are open to the public. Furthermore, the Board, at its discretion, may render a decision as to some or all of the cases at the hearing described above or at a subsequent hearing, the date and time of which will be announced prior to the conclusion of the public hearing. Individuals requiring special accommodations are requested to contact Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than August 9, 2021. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

The Board of Appeals reserves the right to vary the order in which the cases are called. Please take note of the Amended Rules of Procedure (Adopted July 5, 2006), Public Hearing, Section 4(d) which states:

Applicants shall have ten (10) minutes in which to present their request and may, upon request to and permission of the Board, receive an additional twenty (20) minutes for their presentation. Following the Applicant's case in chief, other individuals may receive three (3) minutes to testify, except in the circumstance where an individual is representing a group, in which case said individual shall be given eight (8) minutes to testify.

Those Applicants requesting the additional twenty (20) minutes shall have their case automatically moved to the end of the docket.

For extraordinary cause, the Board may extend any time period set forth herein, or otherwise modify or suspend these Rules, to uphold the spirit of the Ordinance and to do substantial justice.

Paul Fulk, Chairman  
Board of Zoning Appeals

**BEFORE THE BOARD OF APPEALS  
FOR WASHINGTON COUNTY, MARYLAND**

**SANDY HOOK LLC**

**APPELLANT**

**APPEAL No. AP2021-021**

**OPINION**

Sandy Hook LLC (hereinafter, "Appellant") requests a special exception to allow the establishment of a short-term residential rental at the subject property. The subject property, owned by Sandy Hook LLC, a Maryland limited liability company, is located at 19112 Sandyhook Road, Knoxville, Maryland, and is zoned Rural Village. The Board held a public hearing on the matter on August 18, 2021.

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, the "Ordinance") and upon proper notice to the parties and general public as required.

**FINDINGS OF FACT**

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. Appellant is the owner of the subject property located at 19112 Sandyhook Road, Knoxville, Maryland. The subject property is zoned Rural Village (RV).

2. The subject property is approximately 0.21 acres in area and is improved by a three-story residential dwelling.

3. Appellant has been operating the subject property as a short-term residential rental for the past four years, and desires to continue using it in the same manner. Appellant's application was submitted in response to the new amendment to the Ordinance for short-term residential rentals adopted on July 13, 2021.

4. A special exception is required to operate a short-term residential rental

in the RV zoning district (Ordinance §3.3(1)(B)).

5. Members of Appellant live in the subject property approximately one-half of the year, and Appellant rents out the dwelling to guests for 1-2 nights during the week and most weekends for the other half of the year. Appellant primarily rents to guests through short-term websites such as AirBnB® and VRBO®.

6. Appellant spends approximately 50 hours per week maintaining the subject property and preparing it for guest use.

7. Appellant carries extra liability insurance for short-term rental use, and has implemented strict rules for use of the subject property by guests.

8. Parking for guests is on a privacy-fenced macadam area next to the dwelling and provides space for three vehicles. Additional parking is available on a grassy strip along Sandyhook Road for another 1-2 vehicles. Neighbors on either side of the subject property are shielded from the parking by said fence and natural vegetation.

9. The subject property has lighting typical for a normal home (no flood lights).

10. Guests are required to keep the exterior grounds clear of trash and debris, are limited to a maximum of five vehicles, and are not permitted to have large gatherings or parties at the subject property..

11. Guests are rated by Appellant on several short-term rental websites, and this keeps renters in check, as other property owners can see how potential guests have behaved (or not), which provides an incentive for guests to follow the rules.

12. In four years of operation, Appellant has a nearly five-star rating and has received no complaints from neighbors or other area residents.

13. One neighbor testified in support of the application, noting that Appellant is a very good neighbor, and that the guests want to get their security deposit back, so the aforementioned rating system "keeps them in check". Four letters in support of the application were received. No one testified in opposition.

#### **RATIONALE**

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Ordinance. A special exception is defined as "a grant of a specific use



that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood" (Ordinance, Article 28A).

In the instant case, Michael Brown, member of Appellant, testified that Appellant has operated the subject property as a short-term residential rental at 19112 Sandyhook Road in Knoxville, Maryland. Upon learning of the new amendment to the Ordinance requiring a special exception for short-term residential rentals, Appellant made its application to continue operating in the same manner.

Appellant provided testimony and photographic evidence of the subject property, and the Board made findings of fact regarding the same as set forth hereinabove. The Board also heard testimony from a neighbor in support of the application and read into evidence four letters from other neighbors who were also in support of the application. The Board then discussed and considered said testimony and evidence given in support of Appellants' contention that operation of the short-term residential rental on the subject property would not present adverse effects greater than other similar uses in the RV district.

The Board notes that Appellant appears to be operating the short-term residential rental and maintaining the subject property in proper fashion ("crossing all the 'Ts' and dotting all the 'Is'"). The Board also notes with favor Appellant's efforts to control the conduct of its guests and maintain a good relationship with its neighbors by minimizing any negative effects on surrounding properties, including living at the subject property for half of the year, not having signage on the property, limiting the amount of guest vehicles, no lighting beyond that of a normal residential dwelling, prohibiting guests from having large gatherings and parties, and an overall lack of increased noise, odors, or other sensory elements that might impact surrounding properties.

The Board finds that the current use at the subject property currently has no greater "adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Schultz v. Pritts*, 291 Md. 1, 15 (1981). For all these reasons, the Board concludes that this appeal meets the criteria for a special exception, secures public safety and welfare, otherwise conforms to and upholds the spirit of the Ordinance, and is compatible with the existing neighborhood.

Therefore, Appellants' request for a special exception to maintain and operate a short-term residential rental at the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the condition that operation of the short-term residential rental will be conducted in a manner consistent with the testimony and evidence presented herein and in compliance with all other applicable governmental requirements.

BOARD OF APPEALS

By: Paul Fulk, Chair

**Date Issued: September 17, 2021**

**Notice of Appeal Rights**

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, or bureau of the jurisdiction, may appeal the same to the Circuit Court for Washington County within thirty (30) days, in a manner set forth in Md. Code Ann., Land Use, § 4-401.



**BEFORE THE BOARD OF APPEALS  
FOR WASHINGTON COUNTY, MARYLAND**

**KATHY PITTMAN**

**APPELLANT**

**APPEAL No. AP2021-022**

**OPINION**

Kathy Pittman (hereinafter, "Appellants") requests a special exception to establish a dog breeding kennel business in an existing single-family dwelling, and variances from the minimum 400 foot setback requirements for all property lines to 200 feet for the front yard; to 100 feet for the rear yard; to 205 feet for the left side yard; and to 65 feet for the right side yard for the single-family dwelling, situated on the subject property. The subject property is located at 12019 Cove Road, Clear Spring, Maryland, and is zoned Environmental Conservation. The Board held a public hearing on the matter on August 18, 2021.

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, "Ordinance") and upon proper notice to the parties and general public as required.

**FINDINGS OF FACT**

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. Appellant is a co-owner (with her husband) of the subject property located at 12019 Cove Road, Clear Spring, Maryland. The subject property is zoned Environmental Conservation (EC).

2. The subject property contains approximately 3.069 acres, improved by a 1 1/2-story single-family dwelling of approximately 4,739 square feet of finished living space, of which Appellant plans to use approximately 1,352 square feet for her dog breeding kennel business, known as "Valness Yorkies" (hereinafter, the "Business").

3. A kennel<sup>1</sup> is a special exception use in the EC Zoning District (Ordinance, §3.3(1)(M)), and requires two times the distance requirement as set forth in Section 4.9 of the Ordinance (200 feet); thus, a required 400 foot minimum setback from all property lines.

4. Appellant has been breeding, training, grooming, and selling Yorkshire Terriers for seven years, the first four years in Frederick County, Maryland, and the past three years in Clear Spring, Maryland. Her dogs are registered with both the American Kennel Club® and America's Pet Registry, Incorporated®. She currently has 10 dogs (9 breeders, 1 retired; 2 males, 8 females), and all are kept up-to-date on vaccinations.

5. Appellant has an underground electric Invisible Fence® surrounding the dwelling and a significant part of the acreage around it, that will deter her dogs from roaming beyond the fence boundary (when used with the appropriate collar mechanism designed for the fence system). This allows the dogs to get needed exercise (under visual supervision via a Wi-Fi camera system) and to reduce barking due to stress that might result from being "cooped up all day." There are no "dog runs" on the subject property, and the dogs are individually crated when indoors.

6. Appellant composts the dog waste (about 365 lbs/year) with hay, shredded newspaper, and water in a separate area at least 100 feet away from the well for the subject property.

7. There is no additional lighting outside, as the dogs are not let outside at night. The only lighting at the subject property is that which is normal for a single-family dwelling.

8. Appellant does not groom dogs that are not her own and does not use "stud" dogs from other breeders; therefore, no "strange" dogs are on the subject property.

9. Dog buyers are not allowed to visit until the puppies are 6 weeks old.

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<sup>1</sup> The Ordinance defines "Kennel" as: "Any building or structure and/or land used, designed, or arranged for housing, boarding, breeding, or care of more than five (5) adult dogs, over the age of four (4) months, kept or bred for hunting, sale, exhibition, or training, for profit, but not including farm animals." Appellant's use of her single-family dwelling and a significant portion of the land surrounding it in the manner described in her application and through her testimony and evidence therefore satisfies this definition.



Visits are by appointment only on weekends during daylight hours.

10. Appellant uses very detailed protocols for all aspects of her Business, including breeding, puppy socialization, neurological stimulation, health testing, flea and tick treatment of the dogs and the yard (with EPA-approved pesticides), regular and thorough cleaning of sleeping and other areas of the dwelling to prevent illness or parasites.

11. Appellant purchased the property in 2018 in its current configuration, and the size of the lot and the location of the dwelling do not allow for compliance with the 400 foot setbacks from any of the property lines. Appellant is seeking the variances for these reasons.

12. No complaints have been registered to the County regarding noise or odors from due to the Business.

13. No persons testified in support of or in opposition to the application.

14. A letter was received (and read into the record) from the Washington County Division of Plan Review and Permitting which indicated that there were no issues regarding the Cove Road where the subject property is located, nor were there any issues with the maintenance of the subject property entrance or the adequacy of sight distances therefrom.

15. A septic review printout was received from the Washington County Health Department indicating that composted dog waste from Appellant's dog must be kept and spread no closer than 100 feet from the well for the subject property.

#### **RATIONALE**

##### **Part I - Special Exception**

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Ordinance. A special exception is defined as "a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood" (Ordinance, Article 28A).

In the instant case, Appellant testified regarding the operation of her Business, her experience in breeding and caring for her dogs, and the steps she has taken to minimize any negative impacts from the Business upon the neighboring properties.



Appellant presented certificates demonstrating the education and training she has received for this type of work, and also provided a great deal of information about the protocols, rules, and systems in place at her home and property for safe, clean, and secure treatment of her dogs.

The Board notes its appreciation that Appellant applied on her own for the special exception, and not due to any complaints or violation. Further, the Board is impressed with the great lengths Appellant has taken to care for her dogs and to protect the interests of her neighbors by maintaining a minimal-impact operation. In addition, the Board is pleased with the obvious professionalism and industry knowledge Appellant demonstrates.

The Board finds that the current use at the subject property currently has no greater "adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Schultz v. Pritts*, 291 Md. 1, 15 (1981). For all these reasons, the Board concludes that this appeal meets the criteria for a special exception, secures public safety and welfare, otherwise conforms to and upholds the spirit of the Ordinance, and is compatible with the existing neighborhood. Appellant's request for a special exception to establish and operate a dog breeding kennel business at the subject property is GRANTED, by a vote of 5-0. Said special exception is granted upon the conditions that operation of the dog breeding kennel business will continue to be consistent with the testimony and evidence presented herein.

## **Part II - Variances**

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship (Ordinance §§25.2(c) and 25.56).<sup>2</sup> "Practical difficulty" may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variances would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and 3) granting the variance would observe the spirit of the Ordinance and secure

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<sup>2</sup> "When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive ("or"), Maryland court generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements." *Belvoir Farms Homeowners Ass'n, Inc. v. North*, 355 Md. 259, 276 n.10 (1999)(citations omitted).

public safety and welfare (Ordinance §25.56(A)).

“Undue hardship” may be found when: (1) strict compliance with the Ordinance would prevent the applicant from securing a reasonable return from or to make reasonable use of the property; and (2) the difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and (3) the hardship is not the result of the applicant’s own actions (Ordinance §25.56(B)).

Practical difficulty and undue hardship are the result of a property being unique. “‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.” *North v. St. Mary’s Cnty.*, 99 Md. App. 502, 514 (1994).

In this case, Appellant testified that due to the configuration of the lot and placement of the single-family dwelling on the subject property, which existed at the time Appellant acquired same, the circumstances present a practical difficulty, since the lot is not adequately sized to comply with the 400 foot setback requirements of the Ordinance.

Appellant testified that they have gone to great lengths to operate the Business in a professional and low-impact manner, and have numerous practices, systems, and protocols in place to continue to do so.

The Board finds that for the variances requested in this case, the size limitations of the subject property, the impracticality of moving the dwelling, combine to result in a practical difficulty on Appellant if the Ordinance were strictly enforced. The Board also finds that Appellant’s has taken appropriate actions to minimize and/or eliminate negative impacts upon neighboring properties. For these reasons and the findings of fact set forth hereinabove, the Board finds that strict compliance would prevent Appellant from using the subject property for a permitted purpose or render conformance unnecessarily burdensome (if not impossible), a lesser relaxation that that applied for would not give substantial relief, and granting the variances will observe the spirit of the



Ordinance and secure public safety and welfare.

Therefore, Appellant's request for a variance from the minimum 400 foot setback to all property lines to 200 feet for the front yard; to 100 feet for the rear yard; to 205 feet for the left side yard; and to 65 feet for the right side yard for the single-family dwelling, situated on the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the conditions that: (1) the composted dog waste from the must be kept and spread no closer than 100 feet from the well on the subject property; and (2) that operation of the dog breeding kennel business will continue to be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

**Date Issued: September 17, 2021**

Notice of Appeal Rights

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