

08-1242-CD

R Stewart vs Zoning Bd of Sandy Twp.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,

Appellants,

vs.

ZONING HEARING BOARD OF SANDY
TOWNSHIP, CLEARFIELD COUNTY,
PENNSYLVANIA,

Appellee.

: NO. 08 - 1242 - C.D.

:
: Type of Pleading: NOTICE OF LAND
: USE APPEAL

:
: Filed on Behalf of: APPELLANTS,
: RICHARD AND KATHY STEWART

:
: Counsel of Record:
: BENJAMIN S. BLAKLEY, III
: Supreme Court No. 26331

:
: BLAKLEY & JONES
: 90 Beaver Drive, Box 6
: Du Bois, Pa 15801
: (814) 371-2730

Original
upstart

FILED
m/2:1387
JUL 07 2008
William A. Shaw
Prothonotary/Clerk of Courts
Att'y pd. \$95.00
3cc Att'y
Blakley

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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RICHARD and KATHY STEWART,

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ZONING HEARING BOARD OF SANDY
TOWNSHIP, CLEARFIELD COUNTY,
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: 90 Beaver Drive, Box 6
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FILED

7/2:13/07
JUL 07 2008

William A. Shaw
Prothonotary/Clerk of Courts

Atty pd.
\$95.00
3cc Atty
Blakley

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,

Appellants,

vs.

NO. 08 - 1242-CD


ZONING HEARING BOARD OF SANDY
TOWNSHIP, CLEARFIELD COUNTY,
PENNSYLVANIA,

Appellee.

SCHEDULING ORDER

AND NOW, this 11 day of July, 2008, upon consideration of the foregoing Notice of Land Use Appeal, it is the Order of this Court that hearing on said appeal is scheduled for the 8th day of August, 2008, at 10:15 o'clock A.m., in Courtroom No. 1, of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:



A handwritten signature in black ink, appearing to read 'William A. Shaw', is written over a horizontal line.

FILED 3cc
012:5564 Atty Blakley
JUL 10 2008
William A. Shaw
Prothonotary/Clerk of Courts

FILED

JUL 10 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/10/08

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,

Appellants,

vs.

NO. 08 - - C.D.

ZONING HEARING BOARD OF SANDY
TOWNSHIP, CLEARFIELD COUNTY,
PENNSYLVANIA,

Appellee.

NOTICE OF LAND USE APPEAL

RICHARD STEWART and KATHY STEWART, Appellants, appeals the decision of the Zoning Hearing Board of Sandy Township, Clearfield County, Pennsylvania, dated June 6, 2008, and in support thereof, states the following:

1. The Appellants, Richard Stewart and Kathy Stewart, are individuals and the owners of premises located at 15 Cardinal Drive, DuBois, Sandy Township, Clearfield County, Pennsylvania, and having an Assessment Map No. 128.0-003-000-00041.

2. The Appellee is the Zoning Hearing Board of Sandy Township, Clearfield County, Pennsylvania.

3. 15 Cardinal Drive is located in Sandy Township, Clearfield County, Pennsylvania, and is zoned as a part of R-U residential urban district under Part 3 of the Zoning Ordinance of Sandy Township, Clearfield County, Pennsylvania.

4. On May 3, 2008, Appellants filed with the Zoning Hearing Board of Sandy Township,

an application for a special exception of said Ordinance to operate a dog grooming home occupation business within the Appellants aforesaid residence. A copy of said application is attached hereto and marked as Exhibit "A".

5. A hearing was held before the Board on May 29, 2008. The Zoning Hearing Board rejected the Petitioner's application on June 6, 2008, a copy of the Board's Opinion is attached as Exhibit "B".

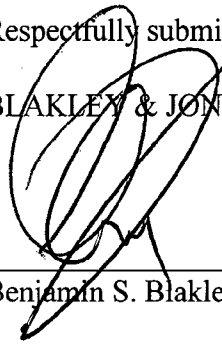
6. The actions of the Zoning Hearing Board of Sandy Township, Clearfield County, Pennsylvania, in denying the application was arbitrary, capricious and abusive discretion in contrary to law in that:

- a. The dog grooming home occupation business is the type of home occupation permitted by the special exception in a R-U residential urban district. The evidence established that the Petitioners are entitled to a special exception.
- b. The Board erred in concluding that the purposed dog grooming business was akin to a kennel and/or veterinary office, and that the use sought was not one permitted by special exception.
- c. Favorable action on Petitioners' application would not have an adverse effect on the health, safety, morales or general welfare of the community as defined by the Zoning Ordinance of Sandy Township.
- d. Similar home occupation businesses are operating in the general area of the Petitioner's residence and businesses of a significant size and employing many employees are located directly across from the Petitioner's residence.

WHEREFORE, Appellants request that the Court reverse the actions of the Zoning Board in Sandy Township, Clearfield County, Pennsylvania, and direct that the Appellants be granted a special exception as requested in their application.

Respectfully submitted,

BLAKLEY & JONES



Benjamin S. Blakley, III

VERIFICATION

We, **RICHARD STEWART and KATHY STEWART**, hereby state that we are the Appellants in this action and verify that the statements made in the foregoing Notice of Land Use Appeal are true and correct to the best of our knowledge, information, and belief. We understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 6/30/08



RICHARD STEWART

Dated: 6-30-08



KATHY STEWART

DATE OF HEARING 5/29/08 6:00pm

HEARING NO. _____

1 cc 1200-
5/27/08 JV

**SANDY TOWNSHIP
CLEARFIELD COUNTY
ZONING HEARING BOARD APPLICATION**

NAME OF APPLICANT: Kathy Stewart
ADDRESS: 15 Cardinal Drive DUBOIS, PA
PHONE: 814-371-2414 APPLICATION IS MADE THIS: _____ DAY OF _____
YEAR 2008.

NAME OF LANDOWNER: Richard and Kathy Stewart
(If landowner is not applicant, authorization to act on landowner's behalf must be presented with the application.)
ADDRESS: 15 CARDINAL DRIVE, DUBOIS, PA
PHONE: 814 371-2414

TYPE OF APPLICATION: (Check one)

☒ USE BY SPECIAL EXCEPTION

☐ ZONING APPEAL

☐ APPEAL FROM MUNICIPAL ACTION

☐ SIGN APPEAL

☐ ZONING VARIANCE

☐ VALIDITY CHALLENGE

☐ SIGN VARIANCE

☐ OTHER

CITE ALL APPLICABLE SECTIONS OF ZONING / SIGN ORDINANCE: CHAPTER 27, ZONING
PART 3, SECTION 27-306, SPECIAL EXCEPTIONS, S, HOME OCCUPATION

DESCRIBE PROPERTY FOR WHICH APPLICATION IS BEING FILED:

LOCATION: 15 CARDINAL DRIVE, DUBOIS, SANDY TWP

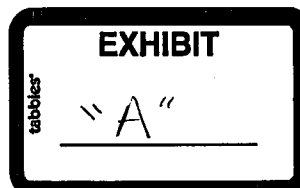
ZONING CLASSIFICATION: R-U LOT SIZE: _____

PRESENT USE: Residence

PROPOSED USE: RESIDENCE & HOME OCCUPATION

EXISTING AND PURPOSED IMPROVEMENTS ON THE PROPERTY: N/A

JUSTIFICATION FOR REQUEST: (Please include grounds for appeal, and if physical hardship is claimed as basis for variance, state specific hardship.) ALLOWED BY CODE OF THE
TOWNSHIP OF SANDY CHAPTER 27, PART 3,
SECTION 27-306 SPECIAL EXCEPTIONS, S, HOME
OCCUPATIONS



HAS A PREVIOUS APPLICATION BEEN FILED WITH THE BOARD FOR THE PROPERTY? NO

PLEASE PROVIDE THE CURRENT NAMES AND ADDRESSES OF OWNERS OF PROPERTY WITHIN 200 FEET FROM THE EXTERIOR LIMITS OF THE PROPERTY FOR WHICH THIS APPLICATION IS FILED AS SHOWN ON THE LATEST ASSESSMENT ROLLS OF CLEARFIELD COUNTY:

NAME	ADDRESS
DEE ERICKSON	10 Cardinal Drive, DuBois
JEWELL	20 Cardinal Drive, DuBois
TONEY	25 Cardinal Drive, DuBois

(Attach a separate sheet if additional space is needed)

THIS APPLICATION MUST BE ACCOMPANIED BY THE REQUIRED FEE AND THREE (3) COPIES OF A PLOT PLAN FOR THE PROPERTY AND ANY DESIGN DRAWINGS. THE APPLICATION MUST BE SIGNED AND NOTARIZED.

Commonwealth of Pennsylvania

County of Clearfield

I, Kathy Stewart, hereby depose and say that all of the above statements and statements contained in the papers submitted herewith are true to the best of my knowledge and belief.

Signature: Kathy L. Stewart Date: 5-7-08

Address: 15 Cardinal Dr. DuBois Pa

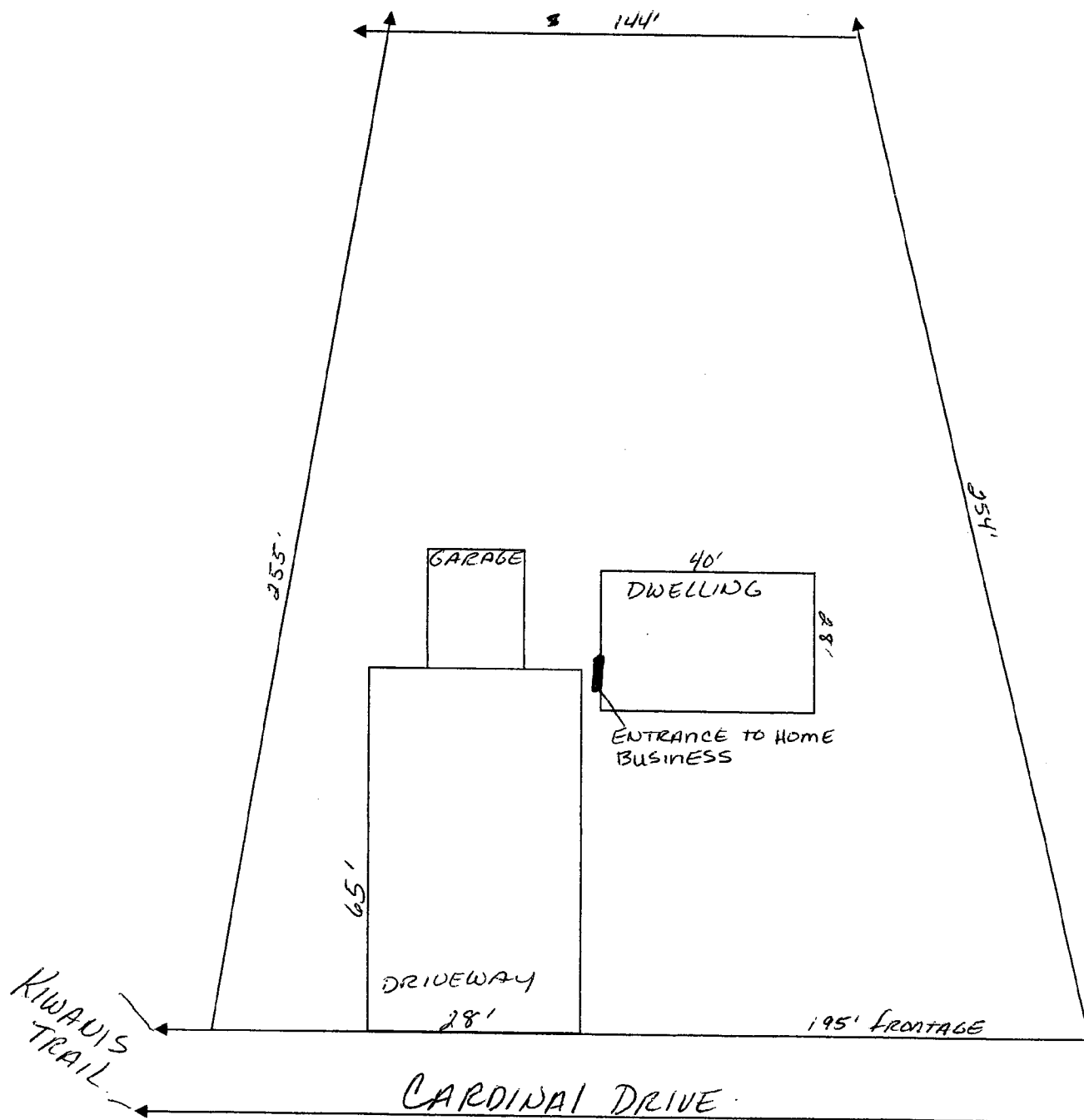
Subscribed and sworn to before me this 7 day of May, year 2008.

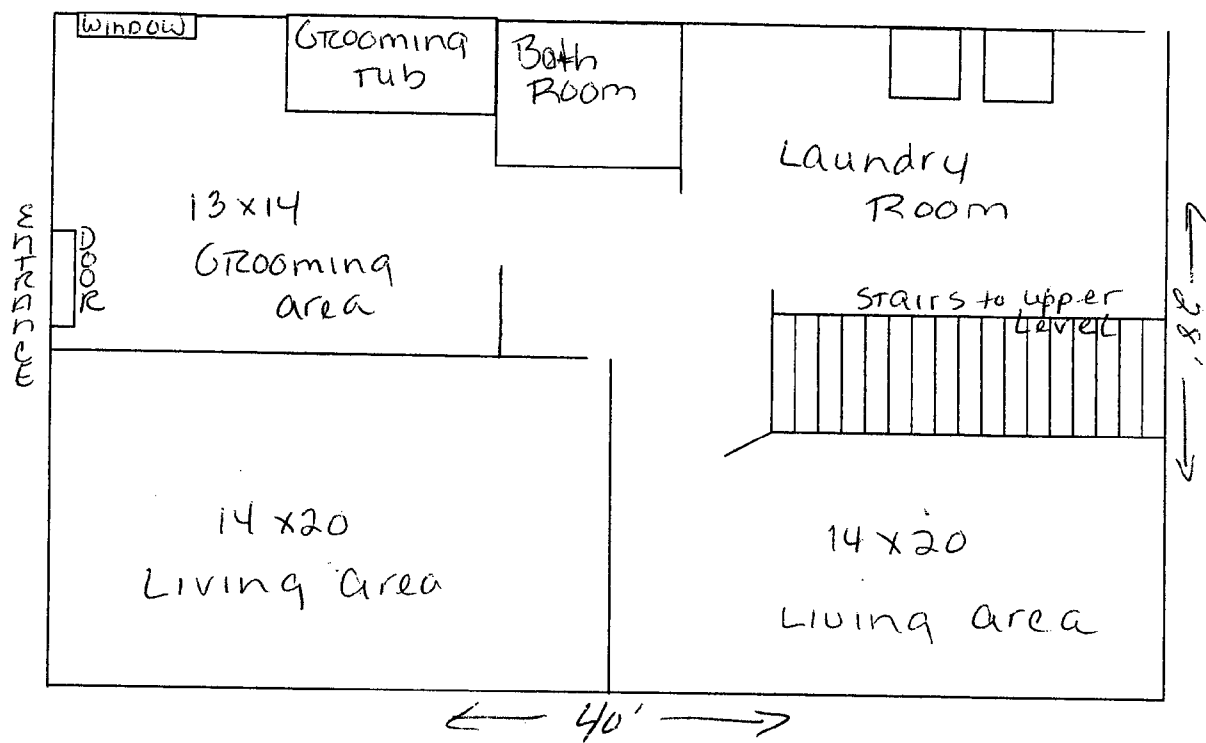
My Commission Expires: _____

Melissa A. McDonald
Notary Public

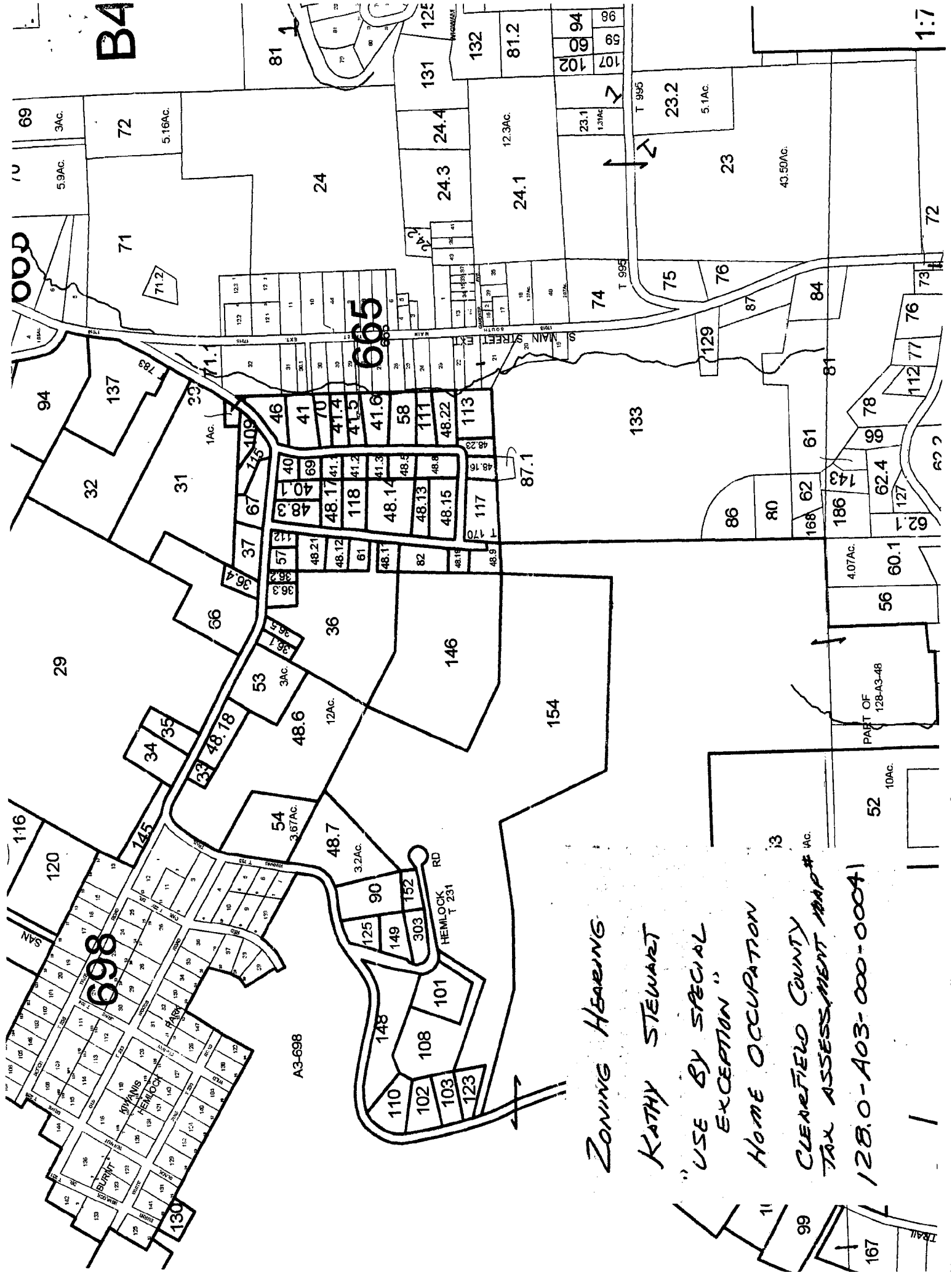
COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Melissa A. McDonald, Notary Public
Sandy Twp., Clearfield County
My Commission Expires June 2, 2011
Member, Pennsylvania Association of Notaries

1. There is a 65 foot by 28 foot driveway into my property located on Cardinal Drive in Sandy Township. There is adequate space in the driveway for parking and turning.
2. There will be one employee, Kathy Stewart, owner and operator.
3. All work will be done inside the dwelling. Customers will be able to walk their dogs in a permitted area to allow them bathroom privileges. Dogs will enter the grooming shop area and will be crated until I am ready to start the grooming. All dogs will be leashed to and from the customer's vehicle and never be left outside unattended. There will be no animals tied outside.
4. I am seeking a special exception for my business that will be located at 15 Cardinal Drive, DuBois, Pa. in the Township of Sandy. My home occupation is dog grooming. I went to the Pennsylvania Academy of Dog Grooming, Indiana, Pa. I have 300 hours of professional training in dog grooming and bathing. There are no state inspections or credentials required for this business. All work will be done inside my home. Customers will drop off their pet and nearing the end of the grooming I will call the customer to come and pick up their dog. I work on a one to one basis with my customers, so when one customer drops off the other should be picking up. I plan on grooming between five and eight dogs daily, Monday through Friday. I will not be grooming on the weekends or holidays.
5. There will be no outward changes to the residence. All customers will enter and leave in the lower level of the dwelling.
6. An area with the dimensions of 13 feet by 14 feet will be allocated for the work area inside the dwelling. The dwelling is 28 feet by 40 feet with the approximate living area on the first floor to be 1120 feet. The same is true for the lower level where the business will be located with a private entrance.
7. Signs will be per the Sandy Township Sign Ordinance.
8. The hours for the business will begin at 10 a.m. and cease by 7 p.m.
9. There will not be more than 25% of on premise sales. Sales will consist of Frontline Flea and Tick medicine.
10. This will be the only business at this dwelling.

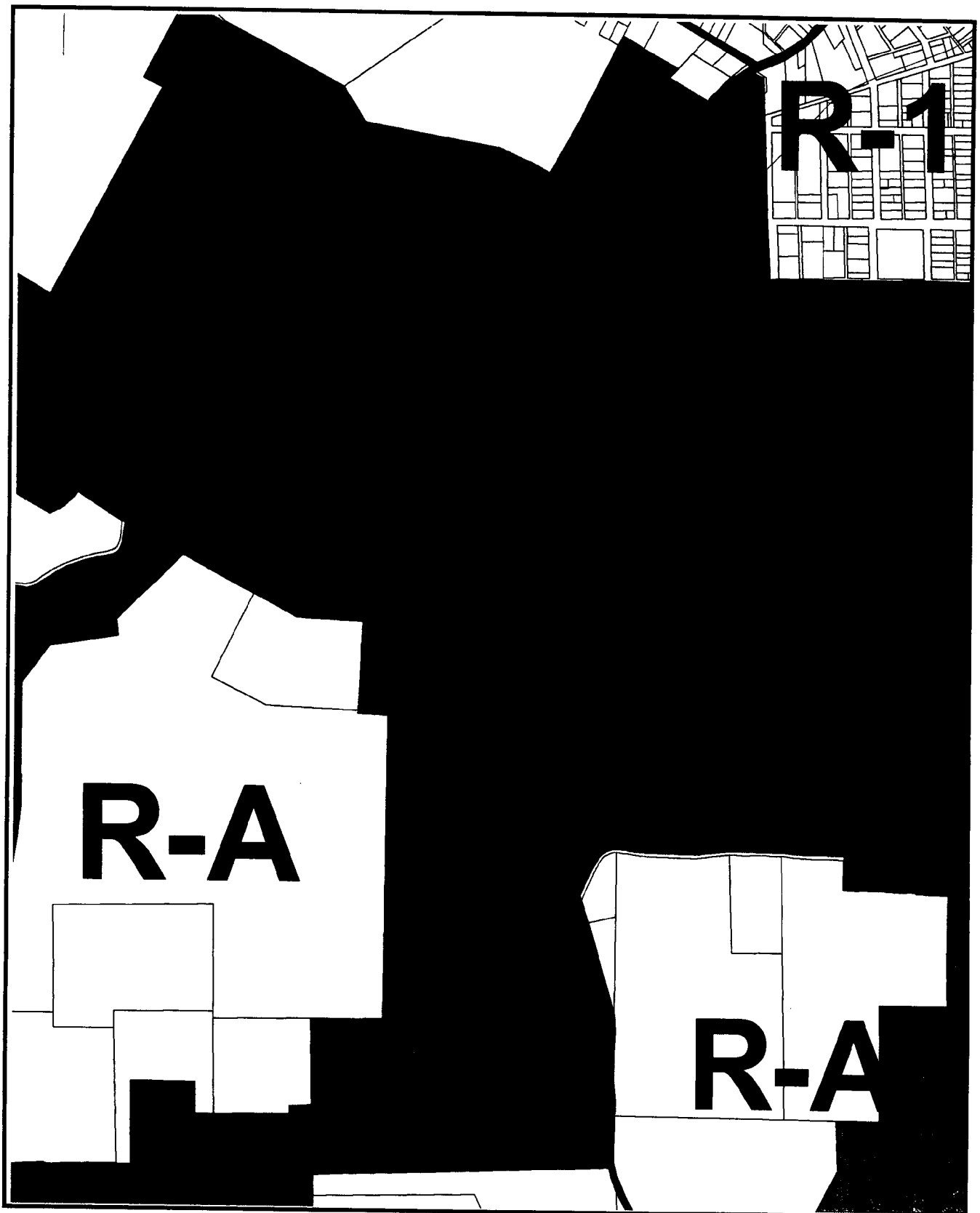




Proposed Grooming Shop.



Kathy Stewart Zoning Hearing



6

BEFORE THE SANDY TOWNSHIP ZONING HEARING BOARD

In RE: Application by Kathy & Richard Stewart,
Regarding real property carrying Clearfield
County Assessment Map No. 128.0-A03-000-00041

**WRITTEN FINDINGS AND DECISION OF
THE SANDY TOWNSHIP ZONING HEARING BOARD**

I. Procedural History

1. On May 7, 2008, Kathy & Richard Stewart, husband and wife (both hereinafter referred to as "Applicant") filed an Application requesting a special exception under Section 308(2)(S) of the Sandy Township Zoning Ordinance ("Zoning Ordinance").

2. Applicant seeks the special exception in order to perform dog grooming services at Applicant's residence.

3. After due and proper public notice, the Board conducted hearings on the Application on May 29, 2008.

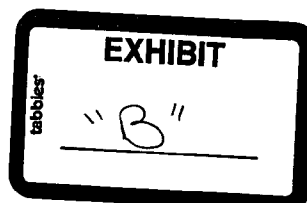
II. Jurisdiction

1. The Board has jurisdiction over the Application under Section 10909.1(a)(6) of the Pennsylvania Municipalities Planning Code, ("MPC"), 53 P.S. §10909.1(a)(6) and Section 608(6) of the Zoning Ordinance.

III. Findings of Fact

1. The Applicant's residence is located at 15 Cardinal Drive, DuBois, Sandy Township, Pennsylvania 15801 ("Premises").

2. The Premises lie in the R-U Residential Urban District under Part 3 of the Zoning Ordinance.



3. Home occupations as defined under Section 202 and regulated by Section 308(2)(S) of the Zoning Ordinance are a special exception in the R-U District.

4. The Premises are presently developed with Applicant's residence.

5. The Application for Special Exception sets forth the following as the specifics of the proposed use should the special exception be granted:

I am seeking a special exception for my business that will be located at 15 Cardinal Drive, DuBois, Pa. in the Township of Sandy. My home occupation is dog grooming. I went to the Pennsylvania Academy of Dog Grooming, Indiana, Pa. I have 300 hours of professional training in dog grooming and bathing. There are no state inspections or credentials required for this business. All work will be done inside my home. Customers will drop off their pet and nearing the end of the grooming I will call the customer to come and pick up their dog. I work on a one to one basis with my customers, so when one customer drops off the other should be picking up. I plan on grooming between five and eight dogs daily, Monday through Friday. I will not be grooming on the weekends or holidays.

6. The Application states that dogs would defecate and urinate in an area outside the dwelling.

IV. Conclusions of Law

1. The proposed use is not one customarily carried on within a Residential District.
2. The proposed use is similar to activities expressly excluded by Section 308(2)(S).
3. The natural and predictable effects of the proposed use with regard to potential noise, traffic congestion, pedestrian traffic, or other intrusion upon the neighborhood are greater than permitted for home occupations under the Zoning Ordinance.

V. Discussion

Where Sandy Township in its Zoning Ordinance has authorized special exceptions to be granted or denied under express standards and criteria, the Zoning Hearing Board is to hear

and decide such requests in accordance with those standards and criteria. Section 912.1 of the Pennsylvania Municipality Planning Code, 53 P.S. §10912.1. The Zoning Ordinance provides:

Special exceptions are to be allowed or denied by the Zoning Hearing Board. Procedures for both shall follow those specified in this Ordinance and the Planning Code. The purpose of the conditional use and special exception categories is to provide flexibility within specified zoning districts. However, it is not the intent of this Zoning Ordinance to allow such uses automatically. The chief criteria or standard that any conditional use or special exception must meet is the effect such a use would have on its immediate surroundings. If such an effect is adverse due to potential noise, traffic congestion, pedestrian traffic, hours of operation, safety or general environment degradation then, regardless of the fact that such a proposed use may meet other criterias listed in this Ordinance, it shall be denied.

Section 308.

The Applicant has requested a special exception contending that the proposed use qualifies as a home occupation. Home occupation is defined by Section 202 as follows:

Home Occupation - Any business use customarily carried on entirely within a dwelling by the occupants thereof, which use is clearly incidental and subordinate to the use of the dwelling for dwelling purposes and does not change the residential character thereof. Home Occupations are divided into two categories: No-impact home-based business must conform to the requirements listed in §27-416. No-impact home-based business shall be a Permitted Use in all zoning areas. Other Home Occupations must conform to the requirements listed in §27-308(2)(S).

Applicant proposes to provide dog grooming services from Applicant's residence. The first relevant consideration is whether such a business is "customary" in a residential area. In Allegheny West Civic Council, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 552 Pa. 541 (1998), the Pennsylvania Supreme Court reviewed the standards for determining whether a proposed home occupation is "customary". In Allegheny West, the Applicant there sought a special exception to conduct an engineering business on the first floor of a one-family dwelling as a home occupation. In construing the City of Pittsburgh's Zoning Ordinance, the

Supreme Court found that the proposed engineering business is not a use customarily carried on in a dwelling unit. In reaching this decision, the Supreme Court ruled that zoning hearing boards and courts can take notice of what business occupations are customarily conducted in residential buildings based on general experience and understanding.

Here as in Allegheny West, the definition of home occupation under the Zoning Ordinance requires a finding that the proposed business use be one that is "customarily carried on entirely within a dwelling by the occupants thereof, which use is clearly incidental and subordinate to the use of the dwelling for dwelling purposes and does not change the residential character thereof." Section 202.

This Board finds that dog grooming is not a "business use customarily carried on entirely within a dwelling by the occupants thereon." To the contrary, it is a business activity customarily carried on in commercial zones.

Moreover here, the Zoning Ordinance contains specific examples of what businesses are to be considered acceptable home occupations and which are not. Under Section 308(2)(S)(3) unacceptable home occupations are "kennels, veterinary offices...and similar undertakings."

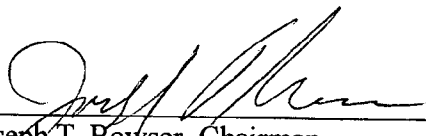
As noted, the Zoning Ordinance specifically excludes activities "similar" to kennels and veterinary offices. This Board finds that kennels and veterinary offices have common attributes. They are significant business enterprises of a non-residential character which are not customarily found in residential areas. Also, in providing services to animals, they create the potential for undue noise, traffic and other intrusions into the neighborhood. While distinctions can be made, this Board cannot conclude that dog grooming would be a materially dissimilar activity from those specifically excluded by the Zoning Ordinance. In this specific case, applicant testified that five (5) to eight (8) dogs would be groomed per day.

This Board finds that granting the Application could foreseeably create a greater intrusion upon the residential area beyond what is specifically authorized by the Zoning Ordinance for a home occupation.

VI. Decision

1. Applicant's Application for Use by Special Exception is denied.

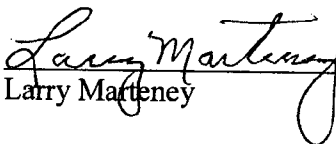
We, the following members of the Sandy Township Zoning Hearing Board declare this to be our decision this 6TH day of June, 2008.



Joseph T. Bowser, Chairman



Walter Kosiba



Larry Marteney

UA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,

Appellants,

vs.

ZONING HEARING BOARD OF SANDY
TOWNSHIP, CLEARFIELD COUNTY,
PENNSYLVANIA,

Appellee.

: NO. 08 - 1242 - C.D.
:
: Type of Pleading:
: MOTION FOR CONTINUANCE
:
: Filed on Behalf of: APPELLANTS,
: RICHARD AND KATHY STEWART
:
: Counsel of Record:
: BENJAMIN S. BLAKLEY, III
: Supreme Court No. 26331
:
: BLAKLEY & JONES
: 90 Beaver Drive, Box 6
: DuBois Pa 15801
: (814) 371-2730

FILED

m 10:33a.m. GK

JUL 17 2008

3cc Atty

(GK)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,

Appellants,

vs.

NO. 08 - 1242 - C.D.

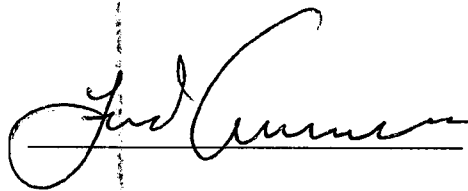
ZONING HEARING BOARD OF SANDY
TOWNSHIP, CLEARFIELD COUNTY,
PENNSYLVANIA,

Appellee.

ORDER

AND NOW, this 18 day of July, 2008, upon consideration of the Motion for Continuance filed by the Petitioner, it is the Order of this Court that the hearing on the Plaintiffs' appeal from the decision of the Zoning Hearing Board of Sandy Township, Clearfield County, Pennsylvania, dated June 6, 2008, upon which a hearing has been scheduled for August 8, 2008 at 10:15 a.m., is hereby continued until September 26, 2008, at 9:00 a.m. in Courtroom 1 of the Clearfield County Courthouse.

BY THE COURT



FILED

014:00301
JUL 18 2008

William A. Shaw
Prothonotary/Clerk of Courts

3CC
Atty Blakley
@

FILED

JUL 18 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/18/08

X You are responsible for serving all appropriate parties.

___ The Prothonotary's office has provided service to the following parties:

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,

Appellants,

vs.

NO. 08 - 1242 - C.D.

ZONING HEARING BOARD OF SANDY
TOWNSHIP, CLEARFIELD COUNTY,
PENNSYLVANIA,

Appellee.

MOTION FOR CONTINUANCE

AND NOW comes Movant, **BENJAMIN S. BLAKLEY, III**, attorney for
Plaintiffs, **RICHARD and KATHY STEWART**, and moves this Honorable Court for a
continuance of the hearing scheduled for August 8, 2008, at 10:15 a.m. in the above captioned
matter. In support thereof the following is averred:

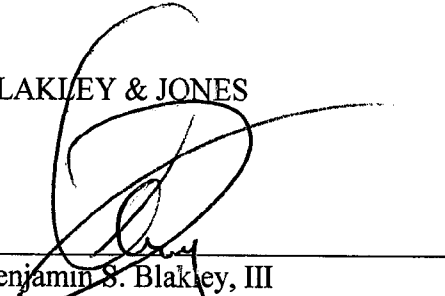
1. The Plaintiffs, **RICHARD and KATHY STEWART**, has filed an appeal
from the decision of the Zoning Hearing Board of Sandy Township, Clearfield County,
Pennsylvania, dated June 6, 2008 , upon which a hearing has been scheduled for August 8, 2008
at 10:15 a.m.

2. Plaintiffs have employed Benjamin S. Blakley, III, Esquire, of DuBois,
Pennsylvania to represent him in the above matter.

3. Plaintiff's Attorney has scheduled a vacation commencing July 14, 2008, and will not return from vacation until July 30, 2008, and therefore, will have insufficient time to prepare for said hearing.

WHEREFORE, Petitioner respectfully requests this Honorable Court grant his Motion and continue the Hearing on the Petitioner's appeal presently scheduled for August 8, 2008 at 10:15 a.m.

BLAKLEY & JONES

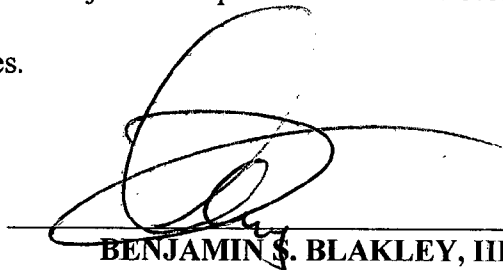


Benjamin S. Blakley, III
Attorney for Plaintiffs

VERIFICATION

I, **BENJAMIN S. BLAKLEY, III**, hereby state that I am counsel for the Plaintiffs in this action and verify that the statements made in the foregoing Motion for Continuance are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 7/15/08



BENJAMIN S. BLAKLEY, III

CERTIFICATE OF SERVICE

This will certify that the undersigned served a copy of the foregoing Motion for Continuance in the above-captioned matter on the following parties at the addresses shown below by first-class U.S. Mail on the 16th day of July, 2008:

Sandy Township Zoning Hearing Board
1094 Chestnut Avenue
P O Box 267
DuBois PA 15801

A handwritten signature in black ink, appearing to read 'Benjamin S. Blakley, III', written over a horizontal line.

Benjamin S. Blakley, III

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,
Appellants

Vs.

ZONING HEARING BOARD OF SANDY
TOWNSHIP, CLEARFIELD COUNTY
PENNSYLVANIA,
Appellee

No. 08-1242-CD

Type of Pleading:

MOTION FOR CONTINUANCE

Filed on Behalf of:

APPELLEE

Counsel of Record for This Party:

Kim C. Kesner, Esquire
Supreme Court No. 28307
212 South Second Street
Clearfield, PA 16830
(814) 765-1706

FILED

011:21/301
JUL 31 2008

3cc
Amy Kesner

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART, : No. 08-1242-CD
Appellants :
Vs. :
ZONING HEARING BOARD OF SANDY :
TOWNSHIP, CLEARFIELD COUNTY :
PENNSYLVANIA, :
Appellee :

ORDER

AND NOW, this 4th day of August, 2008, in consideration
of Appellee's Motion for Continuance,

IT IS HEREBY ORDERED AND DECREED the Appeal Hearing scheduled for
September 26, 2008, has been rescheduled for the 6th day of October,
2008, at 9:00 o'clock A.M. in Courtroom No. 1, Clearfield County Courthouse,
Clearfield, Pennsylvania.

BY THE COURT:

Justin J. Gorman
Judge

FILED ⁶¹²
014:00 ³⁰⁰
AUG 04 2008

Any Kesner

William A. Shaw
Prothonotary/Clerk of Courts

FILED

AUG 04 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/4/08

☒ You are responsible for serving all appropriate parties.
____ The Prothonotary's office has provided service to the following parties:
____ Plaintiff(s) _____ Plaintiff(s) Attorney _____ Other
____ Defendant(s) _____ Defendant(s) Attorney
____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,	:	No. 08-1242-CD
Appellants	:	
	:	
Vs.	:	
	:	
ZONING HEARING BOARD OF SANDY	:	
TOWNSHIP, CLEARFIELD COUNTY	:	
PENNSYLVANIA,	:	
Appellee	:	

MOTION FOR CONTINUANCE


AND NOW, comes the Appellee, SANDY TOWNSHIP ZONING HEARING BOARD OF, by and through its attorney, Kim C. Kesner, Esquire, who files this Motion for Continuance and in support thereof avers the following:

1. This is a Land Use Appeal challenging a decision of the Sandy Township Zoning Hearing Board.
2. The undersigned at all times relevant to this proceeding has served as solicitor of the Sandy Township Zoning Hearing Board.
3. This Appeal was filed on July 7, 2008. By Order dated July 18, 2008, this matter was scheduled for Hearing on August 8, 2008. However, Appellant's counsel, Benjamin S. Blakley, III, Esquire, filed a Motion for Continuance on July 17, 2008, which resulted in the matter being rescheduled to September 26, 2008.
4. Attorney Blakley secured the continuance without contacting the undersigned for concurrence, and apparently did not notify the Court Administrator of the undersigned's representation of Appellee.

5. The Court Administrator was given notice in early 2008 that the undersigned was scheduled to be out of the country from September 19th through September 29th. However, as Appellant's counsel did not notify the Court Administrator of the undersigned's representation of Appellee, the matter was rescheduled despite counsel's unavailability.

WHEREFORE, the undersigned, on behalf of Appellee respectfully requests this Honorable Court to reschedule the Hearing to another date and time.

Respectfully submitted,



Kim C. Kesner, Esquire
Attorney for Appellee

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,	:	No. 08-1242-CD
Appellants	:	
	:	
Vs.	:	
	:	
ZONING HEARING BOARD OF SANDY	:	
TOWNSHIP, CLEARFIELD COUNTY	:	
PENNSYLVANIA,	:	
Appellee	:	

CERTIFICATE OF SERVICE

I do hereby certify that on the ____ day of July, 2008, I served a true and correct copy of the within Motion for Continuance by first class mail, postage prepaid, on the following:

Benjamin S. Blakley, III, Esquire
90 Beaver Drive, Box 6
DuBois, PA 15801

Date

Kim C. Kesner

CA
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013:523N
OCT 08 2008
William A. Shaw
Prothonotary/Clerk of Courts
Blakley
Kesner

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD and KATHY STEWART :
VS. : NO. 08-1242-CD
ZONING HEARING BOARD OF SANDY :
TOWNSHIP, CLEARFIELD COUNTY, PA :

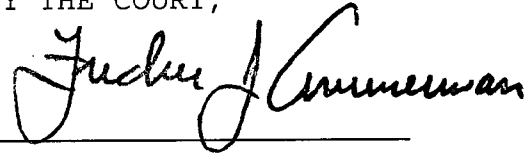
O R D E R

AND NOW, this 6th day of October, 2008, this being the date set for hearing relative the Petitioner's Land Use Appeal; the Court noting that the transcript of the proceedings before the Sandy Township Zoning Hearing Board has not been completed and the record has not been filed with the Prothonotary, it is the ORDER of this Court that counsel for the parties ensure that appropriate steps are taken by the Prothonotary and the Sandy Township Zoning Hearing Board to cause a transcript to be completed and the record filed with the Court of Common Pleas. The Court Administrator shall reschedule the matter for argument approximately forty-five (45) days from this date, with the estimated time of the same being one (1) hour.

Counsel for both parties shall supply the Court with

appropriate brief on the issues by no later than the date of oral argument.

BY THE COURT,

A handwritten signature in cursive script, appearing to read "Justice J. Newman", is written over a horizontal line.

President Judge

FILED

OCT 08 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/8/08

____ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ☒ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ☒ Defendant(s) Attorney

____ Special Instructions:

UA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

RICHARD and KATHY STEWART:
LEONARD IDDINGS, her husband :

vs.

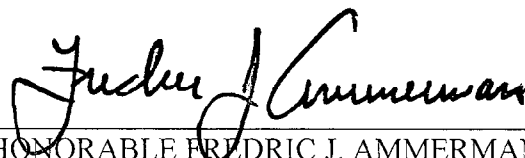
No. 08-1242-CD

ZONING HEARING BOARD OF
SANDY TOWNSHIP,
Clearfield County, PA

O R D E R

NOW, this 10th day of October, 2008, it is the ORDER of this Court
that hearing relative Petitioner's Land Use Appeal shall be and is hereby scheduled for
Wednesday, November 26, 2008 at 1:30 P.M., in Courtroom No. 1 of the Clearfield
County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:


HONORABLE FREDRIC J. AMMERMAN
President Judge

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013:03601 Atty's:
OCT 13 2008 Bakley
Kosner
William A. Shaw
Prothonotary/Clerk of Courts
(60)

FILED

OCT 13 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/13/08

 You are responsible for serving all appropriate parties.

 X The Prothonotary's office has provided service to the following parties:

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,
Appellants

Vs.

ZONING HEARING BOARD OF SANDY :
TOWNSHIP, CLEARFIELD COUNTY :
PENNSYLVANIA, :
Appellee :

No. 08-1242-CD

Type of Pleading:

CERTIFICATION OF RECORD

Filed on Behalf of:
APPELLEE

Counsel of Record for This Party:

Kim C. Kesner, Esquire
Supreme Court No. 28307
212 South Second Street
Clearfield, PA 16830
(814) 765-1706

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0/11:35cm Kesner
OCT 27 2008

5 William A. Shaw
Prothonotary/Clerk of Courts

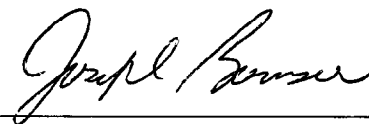
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,	:	No. 08-1242-CD
Appellants	:	
	:	
Vs.	:	
	:	
ZONING HEARING BOARD OF SANDY	:	
TOWNSHIP, CLEARFIELD COUNTY	:	
PENNSYLVANIA,	:	
Appellee	:	

CERTIFICATION OF RECORD

I, Joseph Bowser hereby certify that I am the Chairman of the Sandy Township Zoning Hearing Board and as such, I do hereby certify in accordance with Section 1003-A of the Municipalities Planning Code, 53 P.S. Section 11003-A that the entire record of the Sandy Township Zoning Hearing Board in the matter concerning which the land use appeal has been taken is annexed hereto in the forms of:

1. Original transcript of Hearing dated Thursday, May 29, 2008, with exhibits;
and
2. Written findings and decision of Sandy Township Zoning Hearing Board dated June 6, 2008.



Joseph Bowser, Chairman
Sandy Township Zoning Hearing Board

BEFORE THE SANDY TOWNSHIP ZONING HEARING BOARD

In RE: Application by Kathy & Richard Stewart,
Regarding real property carrying Clearfield
County Assessment Map No. 128.0-A03-000-00041

**WRITTEN FINDINGS AND DECISION OF
THE SANDY TOWNSHIP ZONING HEARING BOARD**

I. Procedural History

1. On May 7, 2008, Kathy & Richard Stewart, husband and wife (both hereinafter referred to as "Applicant") filed an Application requesting a special exception under Section 308(2)(S) of the Sandy Township Zoning Ordinance ("Zoning Ordinance").

2. Applicant seeks the special exception in order to perform dog grooming services at Applicant's residence.

3. After due and proper public notice, the Board conducted hearings on the Application on May 29, 2008.

II. Jurisdiction

1. The Board has jurisdiction over the Application under Section 10909.1(a)(6) of the Pennsylvania Municipalities Planning Code, ("MPC"), 53 P.S. §10909.1(a)(6) and Section 608(6) of the Zoning Ordinance.

III. Findings of Fact

1. The Applicant's residence is located at 15 Cardinal Drive, DuBois, Sandy Township, Pennsylvania 15801 ("Premises").

2. The Premises lie in the R-U Residential Urban District under Part 3 of the Zoning Ordinance.

3. Home occupations as defined under Section 202 and regulated by Section 308(2)(S) of the Zoning Ordinance are a special exception in the R-U District.

4. The Premises are presently developed with Applicant's residence.

5. The Application for Special Exception sets forth the following as the specifics of the proposed use should the special exception be granted:

I am seeking a special exception for my business that will be located at 15 Cardinal Drive, DuBois, Pa. in the Township of Sandy. My home occupation is dog grooming. I went to the Pennsylvania Academy of Dog Grooming, Indiana, Pa. I have 300 hours of professional training in dog grooming and bathing. There are no state inspections or credentials required for this business. All work will be done inside my home. Customers will drop off their pet and nearing the end of the grooming I will call the customer to come and pick up their dog. I work on a one to one basis with my customers, so when one customer drops off the other should be picking up. I plan on grooming between five and eight dogs daily, Monday through Friday. I will not be grooming on the weekends or holidays.

6. The Application states that dogs would defecate and urinate in an area outside the dwelling.

IV. Conclusions of Law

1. The proposed use is not one customarily carried on within a Residential District.
2. The proposed use is similar to activities expressly excluded by Section 308(2)(S).
3. The natural and predictable effects of the proposed use with regard to potential noise, traffic congestion, pedestrian traffic, or other intrusion upon the neighborhood are greater than permitted for home occupations under the Zoning Ordinance.

V. Discussion

Where Sandy Township in its Zoning Ordinance has authorized special exceptions to be granted or denied under express standards and criteria, the Zoning Hearing Board is to hear

and decide such requests in accordance with those standards and criteria. Section 912.1 of the Pennsylvania Municipality Planning Code, 53 P.S. §10912.1. The Zoning Ordinance provides:

Special exceptions are to be allowed or denied by the Zoning Hearing Board. Procedures for both shall follow those specified in this Ordinance and the Planning Code. The purpose of the conditional use and special exception categories is to provide flexibility within specified zoning districts. However, it is not the intent of this Zoning Ordinance to allow such uses automatically. The chief criteria or standard that any conditional use or special exception must meet is the effect such a use would have on its immediate surroundings. If such an effect is adverse due to potential noise, traffic congestion, pedestrian traffic, hours of operation, safety or general environment degradation then, regardless of the fact that such a proposed use may meet other criterias listed in this Ordinance, it shall be denied.

Section 308.

The Applicant has requested a special exception contending that the proposed use qualifies as a home occupation. Home occupation is defined by Section 202 as follows:

Home Occupation - Any business use customarily carried on entirely within a dwelling by the occupants thereof, which use is clearly incidental and subordinate to the use of the dwelling for dwelling purposes and does not change the residential character thereof. Home Occupations are divided into two categories: No-impact home-based business must conform to the requirements listed in §27-416. No-impact home-based business shall be a Permitted Use in all zoning areas. Other Home Occupations must conform to the requirements listed in §27-308(2)(S).

Applicant proposes to provide dog grooming services from Applicant's residence. The first relevant consideration is whether such a business is "customary" in a residential area. In Allegheny West Civic Council, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 552 Pa. 541 (1998), the Pennsylvania Supreme Court reviewed the standards for determining whether a proposed home occupation is "customary". In Allegheny West, the Applicant there sought a special exception to conduct an engineering business on the first floor of a one-family dwelling as a home occupation. In construing the City of Pittsburgh's Zoning Ordinance, the

Supreme Court found that the proposed engineering business is not a use customarily carried on in a dwelling unit. In reaching this decision, the Supreme Court ruled that zoning hearing boards and courts can take notice of what business occupations are customarily conducted in residential buildings based on general experience and understanding.

Here as in Allegheny West, the definition of home occupation under the Zoning Ordinance requires a finding that the proposed business use be one that is "customarily carried on entirely within a dwelling by the occupants thereof, which use is clearly incidental and subordinate to the use of the dwelling for dwelling purposes and does not change the residential character thereof." Section 202.

This Board finds that dog grooming is not a "business use customarily carried on entirely within a dwelling by the occupants thereon." To the contrary, it is a business activity customarily carried on in commercial zones.

Moreover here, the Zoning Ordinance contains specific examples of what businesses are to be considered acceptable home occupations and which are not. Under Section 308(2)(S)(3) unacceptable home occupations are "kennels, veterinary offices...and similar undertakings."

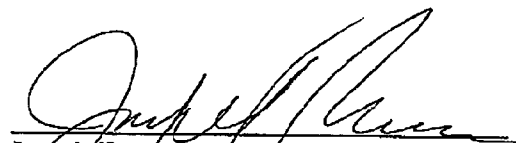
As noted, the Zoning Ordinance specifically excludes activities "similar" to kennels and veterinary offices. This Board finds that kennels and veterinary offices have common attributes. They are significant business enterprises of a non-residential character which are not customarily found in residential areas. Also, in providing services to animals, they create the potential for undue noise, traffic and other intrusions into the neighborhood. While distinctions can be made, this Board cannot conclude that dog grooming would be a materially dissimilar activity from those specifically excluded by the Zoning Ordinance. In this specific case, applicant testified that five (5) to eight (8) dogs would be groomed per day.

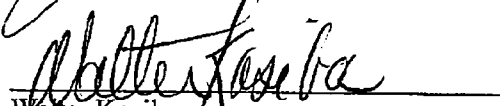
This Board finds that granting the Application could foreseeably create a greater intrusion upon the residential area beyond what is specifically authorized by the Zoning Ordinance for a home occupation.

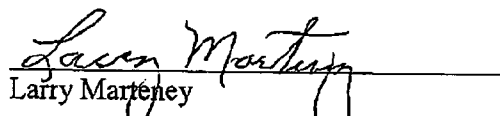
VI. Decision

1. Applicant's Application for Use by Special Exception is denied.

We, the following members of the Sandy Township Zoning Hearing Board declare this to be our decision this 6th day of June, 2008.


Joseph T. Bowser, Chairman


Walter Kosiba


Larry Marteney

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

FILED ^{FW}

OCT 31 2008
11:50 AM

William A. Shaw
Prothonotary/Clerk of Courts

I went to ATT

RICHARD and KATHY STEWART,
Appellants

No. 08-1242-CD

Vs.

Type of Pleading:

CERTIFICATE OF SERVICE

ZONING HEARING BOARD OF SANDY
TOWNSHIP, CLEARFIELD COUNTY
PENNSYLVANIA,

Filed on Behalf of:

APPELLEE

Appellee

Counsel of Record for This Party:

Kim C. Kesner, Esquire
Supreme Court No. 28307
212 South Second Street
Clearfield, PA 16830
(814) 765-1706

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

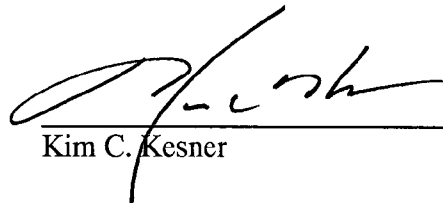
RICHARD and KATHY STEWART,	:	No. 08-1242-CD
Appellants	:	
	:	
Vs.	:	
	:	
ZONING HEARING BOARD OF SANDY	:	
TOWNSHIP, CLEARFIELD COUNTY	:	
PENNSYLVANIA,	:	
Appellee	:	

CERTIFICATE OF SERVICE

I do hereby certify that on the 28th day of October, 2008, I served a true and correct copy of the within Certification of Record by first class mail, postage prepaid, on the following:

Benjamin S. Blakley, III, Esquire
90 Beaver Drive, Box 6
DuBois, PA 15801

October 28, 2008
Date



Kim C. Kesner

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,

Appellants,

vs.

ZONING HEARING BOARD OF SANDY
TOWNSHIP, CLEARFIELD COUNTY,
PENNSYLVANIA,

Appellee.

: NO. 08 - 1242 - C.D.
:
: Type of Pleading: MOTION FOR
: PRESENTATION OF ADDITIONAL
: EVIDENCE
:
: Filed on Behalf of: APPELLANTS,
: RICHARD AND KATHY STEWART
:
: Counsel of Record:
: BENJAMIN S. BLAKLEY, III
: Supreme Court No. 26331
:
: BLAKLEY & JONES
: 90 Beaver Drive, Box 6
: DuBois Pa 15801
: (814) 371-2730

FILED^{2cc}
013:513d Amy Blakley
NOV 07 2008

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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,

Appellants,

vs.

NO. 08 - 1242 - C.D.

ZONING HEARING BOARD OF SANDY
TOWNSHIP, CLEARFIELD COUNTY,
PENNSYLVANIA,

Appellee.

MOTION FOR PRESENTATION OF ADDITIONAL EVIDENCE

AND NOW comes Movants, **RICHARD and KATHY STEWART**, by and through their attorneys, **BENJAMIN S. BLAKLEY, III**, and moves this Honorable Court for permission to present additional evidence in the above-captioned land use appeal. In support thereof the following is averred:

1. The Movants, Richard Stewart and Kathy Stewart, are individuals and the owners of premises located at 15 Cardinal Drive, DuBois, Sandy Township, Clearfield County, Pennsylvania, and having an Assessment Map No. 128.0-003-000-00041.
2. The Respondent is the Zoning Hearing Board of Sandy Township, Clearfield County, Pennsylvania.
3. Movants filed a Notice of Land Use Appeal on July 7, 2008, with hearing being held on October 6, 2008.

4. At that hearing, this Honorable Court ordered that a transcript of the land use hearing held before Respondent's on Thursday, May 29, 2008, be prepared and presented to the Court and the Movants.

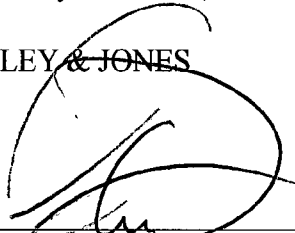
5. Upon review of the transcript, counsel for the Movants has determined that additional evidence will be needed in order to allow the Court to have a complete realization of the area in question surrounding the Movants' residence for which they seek a special exception from the zoning ordinances of Sandy Township, Clearfield County, Pennsylvania, in order to conduct a pet grooming business within their residence.

6. Movants would intend to offer additional evidence showing other businesses in close proximity to Movants' residence. 53 P.S. § 11005-A provides that if proper consideration of a land use appeal requires presentation of evidence at Court, upon motion, my hold a hearing to receive such additional evidence.

WHEREFORE, Movants respectfully requests this Honorable Court grant their Motion and permit the presentation of additional evidence at the reconvened hearing in the above matter scheduled for November 26, 2008.

Respectfully submitted,

BLAKLEY & JONES



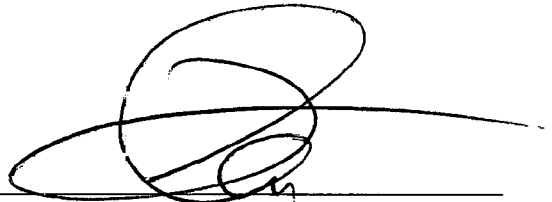
Benjamin S. Blakley, III
Attorney for Movants

VERIFICATION

I, **BENJAMIN S. BLAKLEY, III**, hereby state that I am counsel for the Movants in this action and verify that the statements made in the foregoing Motion for Presentation of Additional Evidence are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: _____

11/07/08

A handwritten signature in black ink, consisting of a large, stylized 'B' followed by 'S. Blakley, III'.

BENJAMIN S. BLAKLEY, III

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,

Appellants,

vs.

NO. 08 - 1242 - C.D.

ZONING HEARING BOARD OF SANDY
TOWNSHIP, CLEARFIELD COUNTY,
PENNSYLVANIA,

Appellee.

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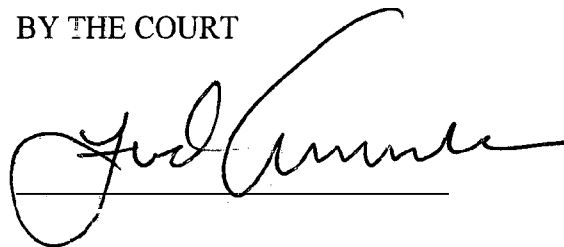
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William A. Shaw
Prothonotary/Clerk of Courts

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(60)

ORDER

AND NOW, this 10th day of November, 2008, upon consideration of the foregoing Motion,
it is the Order of this Court that Richard Stewart and Kathy Stewart are hereby granted permission
to present additional evidence concerning other businesses in the area of their residence at the
hearing being held November 26, 2008.

BY THE COURT



FILED

NOV 10 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11-16-08

☒ You are responsible for serving all appropriate parties.

☐ Plaintiff(s) _____

☐ Defendant(s) _____

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) _____

☐ Defendant(s) _____

☐ Other _____

☐ For serving all appropriate parties:

☐ Plaintiff(s) _____

☐ Defendant(s) _____

☐ Other _____

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) _____

☐ Defendant(s) _____

☐ Other _____

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,

Appellants,

vs.

ZONING HEARING BOARD OF SANDY
TOWNSHIP, CLEARFIELD COUNTY,
PENNSYLVANIA,

Appellee.

: NO. 08 - 1242 - C.D.
:
: Type of Pleading:
: CERTIFICATE OF SERVICE
:
: Filed on Behalf of: APPELLANTS,
: RICHARD AND KATHY STEWART
:
: Counsel of Record:
: BENJAMIN S. BLAKLEY, III
: Supreme Court No. 26331
:
: BLAKLEY & JONES
: 90 Beaver Drive, Box 6
: DuBois Pa 15801
: (814) 371-2730

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NOV 17 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD and KATHY STEWART,

Appellants,

vs.

NO. 08 - 1242 - C.D.

ZONING HEARING BOARD OF SANDY
TOWNSHIP, CLEARFIELD COUNTY,
PENNSYLVANIA,

Appellee.

CERTIFICATE OF SERVICE

This will certify that the undersigned served a copy of the Appellants' Motion for Presentation of Additional Evidence in the above-captioned matter on the following parties at the addresses shown below by first-class U.S. Mail on the 13th day of November, 2008:

Kim Kesner, Esquire
212 South Second Street
Clearfield PA 16830



Benjamin S. Blakley, III


LA

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)
)

NO. 08-1242-CD

BY THE COURT

BY THE COURT



President Judge

ICC Attys:
Blakely
Kessner

5

FILED

DEC 01 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/1/08

 You are responsible for serving all appropriate parties.

 X The Prothonotary's office has provided service to the following parties:

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD and KATHY STEWART

*

NO. 08-1242-CD

VS.

*

ZONING HEARING BOARD OF SANDY
TOWNSHIP, CLEARFIELD COUNTY,
PENNSYLVANIA

*

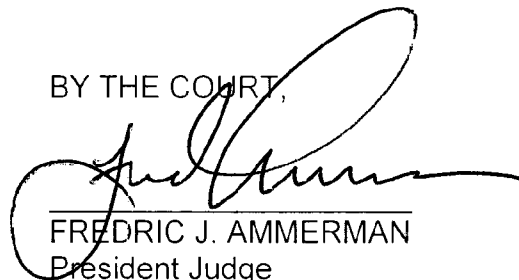
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ORDER

AND NOW, this 12th day of January, 2009, in consideration of the Land Use Appeal requesting a special exception; it is the ORDER of this Court that the said Land Use Appeal be and is hereby DISMISSED. The Court hereby adopts the factual findings of Sandy Township Zoning Hearing Board (ZHB) and finds that the said factual findings were supported by substantial testimony. The Court further finds that the ZHB did not abuse its discretion in denying the request for a special exception.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
JAN 12 2009

2cc Attys:
Blakley
Kesner
William A. Shaw
Prothonotary/Clerk of Courts
(61)

FILED

JAN 12 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/12/09

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

SANDY TOWNSHIP

Vs.

RICHARD and KATHY STEWART

ZONING HEARING

Pages 1 through 22

Sandy Township Municipal Building
1094 Chesnut Avenue
DuBois, Pennsylvania 15801

THURSDAY, MAY 29th, 2008

APPEARANCES:

For the Township:

KIM KESNER, ESQ
Solicitor
23 North 2nd Street
Clearfield, Pennsylvania 16830

For the Applicant:

KATHY STEWART
15 Cardinal Drive
DuBois, Pennsylvania 15821

REPORTER:

SARANNE VARISCHETTI
Certified Shorthand Reporter

ORIGINAL

I N D E X

	Direct	Cross	Redirect	Recross
Mr. Keck				
By Mr. Kesner	4	--	--	--

CERTIFICATE OF REPORTER.22

E X H I B I T S

	Marked for Identification	Admitted Into Evidence
Board's		
1- Application For Relief	06	--
2- News Paper Advertisement	07	--

P R O C E E D I N G S

6:00 P.M.

MR. BOWSER: I would like call to order the Sandy Township Zoning Board Hearing of May 29th, 2008 to order. Present are, board members, Larry Marteney, Walter Kasiba, and Joe Bowser. The purpose of this meeting is to hear a special exception for a home occupation. At this time, I would like to ask Mr. Kesner for the preliminary items, if you would.

MR. KESNER: Thank you Mr. Chairman. The board has before it an application for relief, filed by Kathy Stewart as the applicant. Is the applicant present?

MRS. STEWART: Yes.

MR. KESNER: Okay. Mrs. Stewart you are here appearing for the landowner, which is indicated to be yourself and Richard. Is Richard your husband?

MRS. STEWART: Yes.

MR. KESNER: Has he consented to you appearing solely for both landowners today?

MRS. STEWART: Yes.

MR. KESNER: Will you be represented tonight by counsel?

MRS. STEWART: By counsel, no.

MR. KESNER: So will you be representing

1 yourself?

2 MRS. STEWART: Yes.

3 MR. KESNER: I note Mr. Chairman, that there
4 is no one else present therefore no one else apparently
5 will be participating as a party of interest. Could the
6 Court Reporter please swear in Mr. Keck?

7 JAMES H. KECK,

8
9 Called as a witness, having first been duly sworn,
10 testified as follows:

11

12 BY MR. KESNER:

13 Q. Would you please state for the record, your full
14 name?

15 A. James Howard Keck.

16 Q. Are you presently engaged as the Zoning Officer
17 for Sandy Township?

18 A. Yes, I am.

19 Q. Did you serve in that capacity on or before
20 May 7th, of 2008?

21 A. Yes.

22 Q. Prior to May 7th, of 2008, were you approached by
23 Kathy Stewart with a proposed use for her residence at
24 12, strike that, 15 Cardinal Road, DuBois, Sandy
25 Township, Pennsylvania?

1 A. Yes, I was.

2 Q. Did she describe the proposed use to you?

3 A. Yes, she did.

4 Q. What was her description of that proposed use?

5 A. She would like to perform dog grooming services
6 in her home.

7 Q. Did you make a decision that that would be a
8 nonconforming use in the district in which her residence
9 is located?

10 A. Yes, that is correct.

11 Q. Did you consider, whether or not, that the use
12 would be a nonimpact?

13 A. We did look at that. Kathy and I looked at that
14 together on the Township Code.

15 Q. Did you make a decision as Zoning Officer that
16 that would not apply?

17 A. Yes.

18 Q. After making that decision, did you receive an
19 application for relief from Mrs. Stewart?

20 A. Yes, I did.

21 Q. Do you have that original application?

22 A. Yes, I do.

23 Q. Pass that down to the Court Reporter and ask her
24 to mark that as Board's Exhibit One. Could you please
25 pass that back to me?

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1 Q. In response to the posting, and in response to
2 the published notice in the newspaper, have you received
3 any indication that anyone would appear at this hearing
4 today, other than Mrs. Stewart?

5 A. No, I have not.

6 Q. I would have nothing further for the Zoning
7 Ordinance. To establish that this hearing has been
8 lawfully convened, the burden is on you, Mrs. Stewart,
9 to demonstrate entitlement to relief. You can do that
10 by the presentation of testimony and evidence. This is
11 a hearing. The burden is on you to present to the
12 board. The board has no investigative power, nor does
13 it have any ability to assist you in meeting your
14 burden. Their function is to hear the testimony and
15 evidence that you present and then make a determination
16 on whether what you have presented meets the
17 requirements of the law. So you can proceed.

18 MRS. STEWART: Okay. This is for my home
19 occupation. Number one, is to deal with parking. There
20 is a, 65X28 foot driveway into my property located on
21 Cardinal Drive in Sandy Township. There is adequate
22 space in the driveway for parking and turning. Number
23 two, concerns employees. There will be one employee,
24 Kathy Stewart, myself. I am the owner and operator
25 Number three, restrictions. All work will be done

1 inside my dwelling. Customers will be able to walk
2 their dog in a permitted area to allow them bathroom
3 privileges. Dogs will enter the shop area and be crated
4 until I am ready to begin grooming. All dogs will be
5 leashed to and from the customers vehicles, and never
6 left outside unattended. There will be no animals tied
7 outside. Number four, I am seeking special exception
8 for my business that will be located at 15 Cardinal
9 Drive in DuBois, Pennsylvania, in the Township of Sandy.
10 My home occupation is dog grooming. I went to the
11 Pennsylvania Academy of Dog Grooming in Indiana. I have
12 300 hours of professional training in dog grooming and
13 bathing. There are no state inspection or credentials
14 required for this business. All work will be done
15 inside my home. Customers will drop off their pet, and
16 nearing the end of grooming, I will call the customer to
17 come and pick up their dog. I work on a one to one
18 basis with my customers. So when one customer drops
19 off, the other one would be picking up. I plan on
20 grooming five to eight dogs daily, Monday through
21 Friday. I should not be grooming on weekends or
22 holidays. Number five, there will be no outward changes
23 to my residence. All customers will enter and leave in
24 the lower level of the dwelling. Number six, an area
25 with the dimensions of 13 feet by 14 feet will be

1 allocated for my work area inside the dwelling. The
2 dwelling is 28 by 40 feet with an approximate living
3 area on the first floor to be 1,120 feet. The same is
4 true for the lower level where the business will be
5 located with a private entrance. Number seven, signs
6 will be per the Sandy Township ordinance. Number eight,
7 the hours of the business will begin at 10:00 a.m. and
8 cease by 7:00 p.m. Number nine, it will not be more
9 than 25% premise sales. Sales will consist of Front
10 Line Flea and Tick Medication. Number ten, this will be
11 the only business at this dwelling.

12 MR. KASIBA: Mr. Chairman, I have a question
13 if permitted. In item three, you went down your litany
14 of parking and employees. Item three on page 2736, can
15 you explain to me, and it is the restriction page. It
16 is saying Mondays activities excluded shall be kennels,
17 veterinary offices, restaurants, small -- and similar
18 undertakings. In my mind, I'm thinking this business is
19 similar to a veterinary office that is restricted. Can
20 you help me understand what the difference would be?

21 MRS. STEWART: Between a veterinary office
22 and my grooming business, is that grooming is the only
23 thing that will be done there. In veterinary offices
24 they are giving medications, and they have medications,
25 and they sale dog food, and many kinds of other flea

1 medications. I don't think it even compares to a
2 veterinary office.

3 MR. KASIBA: I guess where I am having a
4 problem is the impact over the houses in the
5 neighborhood. I am just trying to understand the
6 difference. If I am going to a vet, I am taking my dog,
7 I take it in the office he gives the dog a shot or he
8 grooms, some of them groom, I take my dog and I go home.

9 MRS. STEWART: Well, if the grooming is
10 done, I know in a veterinary office, they have to be put
11 under, they use anesthetic for their dogs to put them
12 under. This is more of a service. This is more of a
13 personal service for the customer more so than a
14 veterinary office. It kind of does. You are clipping
15 the hair, and nails, and getting in between the toes.
16 And all that kind of stuff.

17 A. Right. It is just like when you go to the barber
18 or hair salon and you get your hair done and you go
19 home.

20 MR. KASIBA: Okay.

21 MR. BOWSER: I have a similar concern with
22 regard to that. I think what goes on inside the
23 building is most likely less of an impact on the
24 neighborhood than what goes on outside of the building.
25 That is the impact on the neighborhood. There is the

1 traffic and the coming and going of animals which I
2 think is almost identical to a veterinarian clinic. I
3 think this board should be more concerned with the
4 outside impact than internal differences. I think there
5 are very significant similarities outside.

6 MR. KASIBA: Even you mentioned, I'm sorry
7 Joe, that in your presentation that there is going to be
8 a designated area for dogs to do their business.

9 A. Right.

10 Q. If I go to dog kennels and veterinary hospitals,
11 now assuming this would be considered similar, animal
12 runs can't be any closer than 100 feet from a
13 neighboring residential use and in no event closer than
14 75 feet, and if I look at your plot plan that kind of
15 restriction doesn't allow you to do that.

16 MRS. STEWART: I don't have any runs. It
17 would be brought in on a leash. If I were to let the
18 dog out to go to the bathroom, I would leash my dog and
19 she goes out and does what she has to do and she comes
20 back into the house. When they would walk their dog
21 from the car to the door which is only a few feet and I
22 have a little area right out behind my house, where they
23 could go to the bathroom and then come back right into
24 the house. It wouldn't be in the front of the house.
25 There shouldn't be any dogs that would be seen or heard

1 by the neighbors at all. I run a business now on
2 Shaffer Road. The business next to me was a uniform
3 shop which had customers coming and going and I never
4 once had a complaint of noise. We were in the same
5 building. She occupied three spaces of the building and
6 I occupied the fourth. We never had any noise
7 complaints from Patty and Greg Donahue. I was there
8 almost three years. Two and a half years I have been
9 there. That was on 5051 Shaffer Road which is right in
10 the corner of Maple Avenue and Shaffer Road.

11 MR. KASIBA: Okay.

12 MR. BOWSER: I guess the additional comment
13 on that would be, I don't comprehend how the applicant
14 can control what visitors are doing with their animals.
15 I don't know how she can say or know if every animal
16 will be on a leash. She doesn't have any control of
17 that. I am not in favor of this. I think it is very
18 much like the activity of a veterinary clinic where
19 animals are being brought. Even the nicest animal, and
20 I am a dog lover, but people may not respect that other
21 children, other people, are not comfortable around
22 animals, and I don't think that this board can be
23 assured that they are going to be controlled all the
24 time. I think it is a significant impact on the
25 neighborhood.

1 MR. KESNER: If I may, we have not had a
2 request for special exception for home occupation since
3 2003, and we had the case of Joseph and Margrett
4 Finkster at that time, and at that time we learned that
5 under the general law, which is reflected in the
6 definition of home occupation in this ordinance. In
7 order to be acceptable the use has to be a home
8 occupation, and in order to be a home occupation, it has
9 to be customary to a residential area. There is no
10 specific standard for that, the Supreme Court in
11 Allegheny West Civic Counsel vs the Zoning Board of
12 Adjustment of the City of Pittsburgh said that the
13 Zoning Hearing Boards are to use there own experience as
14 to what is customary. So first and foremost, in order
15 to be acceptable it has to be a home occupation. Which
16 means, in the general scheme of things, it has to be
17 something that has to be normal, usual, and customary in
18 a residential area. Then this ordinance says that home
19 occupations of any type, are an intrusion. That is
20 stated in subsection S. There are potential intrusions,
21 and the supervisors in acting the zoning ordinance
22 indicated specifically what home occupations are
23 acceptable and what are not acceptable. So aside from
24 whether or not it is customary, the board has looked at
25 the ordinance and what the supervisors have indicated,

1 and you were right on that from the beginning. But the
2 Township has indicated that kennels, veterinary offices,
3 and similar undertakings are presumed to create undue
4 noise, traffic, or other intrusion. That is
5 distinguished from dress makers, beauty shops, and
6 professional services. Our 2003 case, the board found
7 was physical therapy, and was a professional service
8 which was specifically endured by the ordinance. Like
9 it or not, the ordinance does express a preference for
10 human grooming and a judgement against animal
11 activities. So I think it comes down to whether the
12 board turns to say that dog grooming is customary in a
13 residential area and/or is substantial similar to a
14 kennel or veterinary office. You were already thinking
15 in those terms, and the correct analysis under the
16 ordinance supports that. The ultimate decision is
17 whether or not you feel this use, under the
18 circumstances, falls within those restrictions.

19 MRS. STEWART: In the three years that I
20 have been over on Shaffer Road, I have never had a
21 instance where a dog has not been restrained or gotten
22 out or ran on the road or any of that. That is a very
23 busy highway, a very very busy highway. I take extra
24 special precaution to do that. So I can protect them.
25 The people love their animals and I have to protect

1 them. It will be three years this October, and I have
2 not had an animal that has not been, that I have failed
3 to restrain on the way into the shop or on the way out
4 of the shop. I am very proud of that. Very, very proud
5 of that.

6 MR. BOWSER: Larry, do you have any
7 thoughts?

8 MR. MARTENEY: I'm sorry?

9 MR. BOWSER: Do you have any thoughts or
10 comments?

11 MR. MARTENEY: I'm torn. I can understand
12 what you are saying about the veterinary office,
13 certainly. I guess the one thing is, that she is
14 dealing with a one on one situation vs having several
15 animals coming into a veterinary office at one time.
16 Usually veterinary offices keep animals overnight, and
17 they are noisy as the devil sometimes, and there is no
18 question about that. That would certainly be an
19 intrusion. I think looking at the strict interpretation
20 of the law, the law as it is written, I think this does
21 more clearly fall under the business that would be
22 associated with that of a veterinary office than it does
23 a beauty shop. It would be a stretch.

24 MR. BOWSER: So you think it would be a
25 similar use?

1 MR. MARTENEY: No. It would be a stretch to
2 keep it excluded. I think it is closer to a veterinary
3 hospital than it is a beauty shop.

4 MRS. STEWART: May I say something? This
5 is, tax wise, this is considered not to be a taxable
6 business. It is considered to be a service. I'm not, I
7 do have to charge tax on the product that I sale, the
8 Frontline, but I don't have to charge tax because it is
9 a service that I am offering. A veterinary office, they
10 are under a different -- with the tax laws. So like a
11 beauty shop I don't have to charge tax because it is a
12 service to the customer. I do work on a one to one
13 basis, and my average is five or six dogs a day and over
14 a course of eight or ten hours a day. That doesn't have
15 a whole lot of impact on the traffic in the area. They
16 won't be left overnight, and I won't have any runs or
17 kennels outside. The dogs won't be left to bark. I
18 have an air conditioner in my window, even if they did
19 bark inside, you wouldn't hear them.

20 MR. KESNER: Generally the decisions are not
21 personal. They don't have to do with you, or your
22 potential to run a good dog grooming business. They
23 have to do with allowing the use, because if the use is
24 permitted, and you sold your house then anyone else
25 would be able to utilize that same thing, and they could

1 utilize the other end of the spectrum. It is the
2 potential for the use. The board has to decide whether
3 or not it would cause undue noise, traffic, or other
4 intrusions potentially because of the nature of the use,
5 not because of the character of the person.

6 MRS. STEWART: I have another question.
7 There is a lady now, that does it as a hobby. Is that
8 considered -- she does dog grooming has a hobby, is that
9 considered to be legal to do?

10 MR. KESNER: That is something you will have
11 to discuss with the Zoning Officer. The board can only
12 decide the application for relief they have in front of
13 them.

14 MRS. STEWART: Because we do have another
15 groomer on the street, or on the block I guess. Please
16 look really close.

17 MR. KASIBA: Boy, as much as I would like to
18 agree, as Kim has said the home occupancy is more geared
19 towards personal as opposed to animals. The fact that
20 the code specifically identifies the veterinary clinic,
21 or veterinary offices, I don't know how at least from my
22 mind we can approve this. With this new code, we are
23 charged with intent and similar use. In my mind, I
24 think that is a similar use unfortunately.

25 MR. BOWSER: I agree. I can't think of

1 anything different than a similar use. I can't get
2 beyond that. In this case the ordinance, I think, is
3 provided as pretty reasonable, pretty clear guidance for
4 this particular case.

5 MR. KASIBA: I guess that is where I am
6 Mr. Chair. I just can't get beyond that. Should that
7 decision go in that direction, what would be the
8 recourse of the applicant? I guess, Kim, and I'll ask
9 you, we are going to come up with intent and similarity.
10 Can the supervisors overturn us?

11 MR. KESNER: They can always, and if I can
12 find it real quick in the Allegheny West Civic Counsel
13 case -- I can't find it very quickly. In that decision,
14 The Court made clear that the municipality can determine
15 what home occupations are permissible and what are not,
16 and to determine the definition of that. So certainly
17 they can refine those definitions if they wish. We are
18 charged with making a hard decision under the direction
19 they have provided us. You have to decide whether or
20 not that terminology; kennels, veterinary clinics, and
21 or similar under takings applies. Certainly, if the
22 supervisors disagree they can redo that section and
23 indicate what animal endeavors would be acceptable.
24 That provision is relatively simple. I think it is a
25 close question, and I think an argument can be made both

1 ways under the limited use that she is talking about.
2 It is one of those hard decisions where you just have to
3 decide. The supervisors can only overrule you, in the
4 sense that they change the definition of home
5 occupation.

6 MR. KASIBA: Or what they want to permit.

7 MR. KESNER: Uh-huh. Obviously the Township
8 has made a threshold decision that this is not a
9 permitted use, and therefore would have to be allowed,
10 if at all, as a special exception.

11 MR. BOWSER: Is there any more discussion?
12 Is this a motion?

13 MR. KASIBA: Mr. Chairman, I make a motion
14 that we deny the request for special exception for dog
15 grooming for the home occupancy.

16 MR. BOWSER: Is there a second?

17 MR. MARTENEY: I second.

18 MR. BOWSER: It has been moved and seconded.
19 All those in favor signify by saying I.

20 MR. MARTENEY: I.

21 MR. KASIBA: I.

22 MR. BOWSER: I. So it is the unanimous
23 decision of the board to deny the request. If there is
24 no more business for a hearing, then we need a motion to
25 adjourn.

1 MR. KASIBA: So move.

2 MR. MARTENEY: Okay.

3 MR. BOWSER: Okay. This hearing is
4 adjourned.

5 (Whereupon, the Court proceedings concluded at
6 6:31 P.M.)

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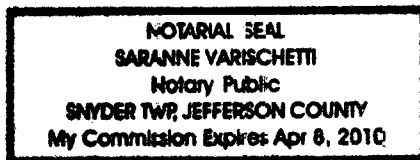
CERTIFICATION OF COURT REPORTER

I, Saranne Varischetti, a Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Pennsylvania, do hereby certify that the foregoing transcript of the testimony of James H. Keck having been duly sworn, on May 29th, 2008, is a true and accurate transcript of my stenographic notes to the best of my knowledge, skill, and ability.

I further certify he came before me the witness herein; namely, James H. Keck who was by me duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matters in the case.

I further certify that I am neither attorney or counsel for, not related to or employed by the parties hereto, or financially interested in the outcome thereof.

IN WITNESS WHEREOF, I have thereunto set my hand and affixed my seal of office this 10th day of June, 2008.



A handwritten signature in cursive script that reads "Saranne Varischetti".

Saranne Varischetti, C.S.R.

Certified Shorthand Reporter

r as may be approved by either the zoning hearing board or the following: the date of such approval in accordance with the provisions of the zoning ordinance or plans as they stood at the time the application was made; or the date of the zoning hearing board or governing body, as the case may be, for a land development or subdivision plan is so filed within said plan. The provisions of section 508(1) through (4) shall be subject to the provisions of section 508(4) through (6) to the time limitations of section 508(4) which shall commence as such land development or subdivision plan.

1 Applicability Provisions.—A municipal zoning ordinance enacted on or after August 21, 2000, shall not be invalidated, superseded or amended by any subsequent ordinance, resolution or order of the governing body of the municipality, whether enacted before or after the date of the ordinance, resolution or order, which purports to amend, repeal or modify the ordinance, resolution or order, except as provided in this section. The provisions of the ordinance, resolution or order shall be subject to the provisions of section 508(1) through (6) to the time limitations of section 508(4) which shall commence as such land development or subdivision plan.

1 Applicability Provisions.—A municipal zoning ordinance enacted on or after August 21, 2000, shall not be invalidated, superseded or amended by any subsequent ordinance, resolution or order of the governing body of the municipality, whether enacted before or after the date of the ordinance, resolution or order, which purports to amend, repeal or modify the ordinance, resolution or order, except as provided in this section. The provisions of the ordinance, resolution or order shall be subject to the provisions of section 508(1) through (6) to the time limitations of section 508(4) which shall commence as such land development or subdivision plan.

Appeals

53 P.S. § 11001-11011

(Art. repealed Dec. 21, 1988, P.L. 1329, No. 170)

- § 1001. Zoning Appeals.**—(1001 repealed Dec. 21, 1988, P.L. 1329, No. 170)
- § 1002. Venue.**—(1002 repealed Dec. 21, 1988, P.L. 1329, No. 170)
- § 1003. Validity of Ordinance; Procedural Questions.**—(1003 repealed Dec. 21, 1988, P.L. 1329, No. 170)
- § 1004. Validity of Ordinance; Substantive Questions; Landowner Appeals.**—(1004 repealed Dec. 21, 1988, P.L. 1329, No. 170)
- § 1005. Validity of Ordinance; Substantive Questions; Appeals by Persons Aggrieved.**—(1005 repealed Dec. 21, 1988, P.L. 1329, No. 170)
- § 1006. Applications, Decisions and Orders Not Involving the Validity of an Ordinance; Landowner Appeals.**—(1006 repealed Dec. 21, 1988, P.L. 1329, No. 170)
- § 1007. Decisions and Orders Not Involving the Validity of an Ordinance; Appeals by Persons Aggrieved.**—(1007 repealed Dec. 21, 1988, P.L. 1329, No. 170)
- § 1008. Appeals to Court; Commencement; Stay of Proceedings.**—(1008 repealed Dec. 21, 1988, P.L. 1329, No. 170)
- § 1009. Intervention.**—(1009 repealed Dec. 21, 1988, P.L. 1329, No. 170)
- § 1010. Hearing and Argument of Zoning Appeal.**—(1010 repealed Dec. 21, 1988, P.L. 1329, No. 170)
- § 1011. Judicial Relief.**—(1011 repealed Dec. 21, 1988, P.L. 1329, No. 170)

ARTICLE X-A

Appeals to Court

53 P.S. § 11001-A-11006-A

§ 1001-A. Land Use Appeals.—The procedures set forth in this article shall constitute the exclusive mode for securing review of any decision rendered pursuant to Article IX or deemed to have been made under this act.

§ 1002-A. Jurisdiction and Venue on Appeal; Time for Appeal.—All appeals from all land use decisions rendered pursuant to Article IX shall be taken to the court of common pleas of the judicial district wherein the land is located and shall be filed within 30 days after entry of the decision as provided in 42 Pa.C.S. § 5572 (relating to time of entry of order) or, in the case of a deemed decision, within 30 days after the date upon which notice of said deemed decision is given as set forth in section 908(9) of this act.

§ 1003-A. Appeals to Court; Commencement; Stay of Proceedings.—(a) Land use appeals shall be entered as of course by the prothonotary or clerk upon the filing of a land use appeal notice which concisely sets forth the grounds upon which the appellant relies. The appeal notice need not be verified. The land use appeal notice shall be accompanied by a true copy thereof.

(b) Upon filing of a land use appeal, the prothonotary or clerk shall forthwith, as of course, send to the governing body, board or agency whose decision or action has been appealed, by registered or certified mail, the copy of the land use appeal notice, together with a writ of certiorari commanding said governing body, board or agency, within 20 days after receipt thereof, to certify to the court its

Part I Ch. 1-3 Ethics, Records, Open Meetings
Part II Ch. 4-10 Taxation
Part III Ch. 11-18 Torts, Contracts & Civil Rules
Part IV Ch. 19-24 Zoning & Planning
Part V Ch. 25-30 Construction and Emergency Codes
Part VI Ch. 31-36 Municipal Codes
Index

valuable to the governing body, board or agency at the time it received certification.

3. appellant is a person other than the landowner of the land directly the decision or action appealed from, the appellant, within seven days and use appeal is filed, shall serve a true copy of the land use appeal ailing said notice to the landowner or his attorney at his last known r identification of such landowner, the appellant may rely upon the e municipality and, in the event of good faith mistakes as to such y make such service nunc pro tunc by leave of court.

filing of an appeal in court under this section shall not stay the ac- ad from, but the appellants may petition the court having jurisdiction appeals for a stay. If the appellants are persons who are seeking to se or development of the land of another, whether or not a stay is tem, the landowner whose use or development is in question may pe- art to order the appellants to post bond as a condition to proceeding eal. After the petition for posting a bond is presented, the court shall ing to determine if the filing of the appeal is frivolous. At the hear- e may be presented on the merits of the case. It shall be the burden wners to prove the appeal is frivolous. After consideration of all ev- acted, if the court determines that the appeal is frivolous, it shall ction for posting a bond. The right to petition the court to order the o post bond may be waived by the appellee, but such waiver may be um if an appeal is taken from a final decision of the court. The ques- amount of the bond shall be within the sound discretion of the court. nying a petition for bond shall be interlocutory. An order directing ent to the petition for posting a bond to post a bond shall be inter- in appeal is taken by a respondent to the petition for posting a bond r of the court dismissing a land use appeal for refusal to post a bond, ding party, upon motion of petitioner and, after hearing in the court, diction of land use appeals, shall be liable for all reasonable costs, d attorney fees incurred by petitioner.

Intervention.—Within the 30 days first following the filing of a land if the appeal is from a board or agency of a municipality, the munic- any owner or tenant of property directly involved in the action ap- may intervene as of course by filing a notice of intervention, l by proof of service of the same, upon each appellant or each ap- sel of record. All other intervention shall be governed by the Penn- es of Civil Procedure.

Hearing and Argument of Land Use Appeal.—If, upon motion, it t proper consideration of the land use appeal requires the presenta- onal evidence, a judge of the court may hold a hearing to receive ad- ance, may remand the case to the body, agency or officer whose decision been brought up for review, or may refer the case to a referee to re- al evidence, provided that appeals brought before the court pursuant 3.1 shall not be remanded for further hearings before any body, agency the municipality. If the record below includes findings of fact made ing body, board or agency whose decision or action is brought up for he court does not take additional evidence or appoint a referee to al evidence, the findings of the governing body, board or agency shall bed by the court if supported by substantial evidence. If the record ude findings of fact or if additional evidence is taken by the court or the court shall make its own findings of fact based on the record be- mented by the additional evidence, if any.

power to declare any ordinance or map invalid and set aside or modify any ac- tion, decision or order of the governing body, agency or officer of the municipal- ity brought up on appeal.

(b) Where municipalities have adopted a joint municipal comprehensive plan and enacted a zoning ordinance or ordinances consistent with the joint munici- pal comprehensive plan within a region pursuant to Articles VIII-A and XI, the court, when determining the validity of a challenge to such a municipality's zon- ing ordinance, shall consider the zoning ordinance or ordinances as they apply to the entire region and shall not limit its consideration to the application of the zoning ordinance within the boundaries of the respective municipalities.

(b)(1) Notwithstanding any provision of this section to the contrary, each mu- nicipality shall provide for reasonable coal mining activities in its zoning ordi- nance. [Ed. note: Acts 67 & 68 of 2000 both added (b)(1). The section above appears misplaced.]

(b)(1) Where municipalities have adopted a multimunicipal comprehensive plan pursuant to Article XI but have not adopted a joint municipal ordinance pursuant to Article VIII-A and all municipalities participating in the multimunicipal comprehensive plan have adopted and are administering zoning ordi- nances generally consistent with the provisions of the multimunicipal comprehensive plan, and a challenge is brought to the validity of a zoning ordi- nance of a participating municipality involving a proposed use, then the court shall consider the availability of uses under zoning ordinances within the mu- nicipalities participating in the multimunicipal comprehensive plan within a rea- sonable geographic area and shall not limit its consideration to the application of the zoning ordinance on the municipality whose zoning ordinance is being chal- lenged.

(c) If the court finds that an ordinance or map, or a decision or order there- under, which has been brought up for review unlawfully prevents or restricts a development or use which has been described by the landowner through plans and other materials submitted to the governing body, agency or officer of the mu- nicipality whose action or failure to act is in question on the appeal, it may or- der the described development or use approved as to all elements or it may order it approved as to some elements and refer other elements to the governing body, agency or officer having jurisdiction thereof for further proceedings, including the adoption of alternative restrictions, in accordance with the court's opinion and order.

(d) Upon motion by any of the parties or upon motion by the court, the judge of the court may hold a hearing or hearings to receive additional evidence or em- ploy experts to aid the court to frame an appropriate order. If the court employs an expert, the report or evidence of such expert shall be available to any party and he shall be subject to examination or cross-examination by any party. He shall be paid reasonable compensation for his services which may be assessed against any or all of the parties as determined by the court. The court shall re- tain jurisdiction of the appeal during the pendency of any such further proceed- ings and may, upon motion of the landowner, issue such supplementary orders as it deems necessary to protect the rights of the landowner as declared in its opinion and order.

(e) The fact that the plans and other materials are not in a form or are not accompanied by other submissions which are required for final approval of the development or use in question or for the issuance of permits shall not prevent the court from granting the definitive relief authorized. The court may act upon preliminary or sketch plans by framing its decree to take into account the need for further submissions before final approval is granted.

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