

PASCO COUNTY, FLORIDA
INTEROFFICE MEMORANDUM

TO: Honorable Chairman and
Members of the Board of
County Commissioners

DATE: 4/2/09

FILE: PCA08-05

THRU: Bipin Parikh, P.E.
Assistant County Administrator
(Development Services)

SUBJECT: Appeal of Special Exception
No. 6817, Rae Anna Saks
BCC: 4/21/09, 1:30 p.m., NPR
(Cont. from 2/24/09)

FROM: Debra M. Zampetti
Zoning/Code Compliance
Administrator

REFERENCES: TAZ #58;
Comm. Dist. 4

It is recommended that the data herein presented be given formal consideration by the Board of County Commissioners (BCC).

DESCRIPTION AND CONDITIONS:

The applicant, Rae Anna Saks, is appealing the Planning Commission's decision of October 8, 2008, denying her request for a special exception (Petition No. 6817), for a kennel in an A-R Agricultural-Residential District.

The subject property is located at the southern end of Abaco Court, approximately 170 feet south of Albemarle Parkway (Parcel ID No. 16-26-16-052B-00000-2060), and contains .18 acre, m.o.l.

Surrounding Zoning Districts and Land Uses:

	<u>Zoning District</u>	<u>Types/Buffer Requirements</u>
North:	A-R Agricultural-Residential	Abaco Court
South:	A-R Agricultural-Residential	Single-Family Dwelling
East:	A-R Agricultural-Residential	Church
West:	A-R Agricultural-Residential; R-1MH Single-Family/Mobile Home	Single-Family Dwelling

FINDINGS OF FACT:

1. Presently, the subject site contains a single-family home and an existing kennel operation on a small lot of record. The applicant proposes to bring the property into conformance for a kennel for cats. The applicant has provided the following information:

"The subject property serves as a temporary animal sanctuary for cats that have been abandoned, abused, or neglected. An average of 70 cats are residents of the sanctuary; this number decreases as cats are adopted. The cats living in the sanctuary have access to the entire facility, which includes two bedrooms; a den; a living room; two bathrooms; a screened room, which has vinyl windows and a portable air conditioner; the kitchen, and an oversized screen garage, all of which are set up for the comfort of the cats. Approximately, four volunteers assist me in keeping the sanctuary clean and in working in the cats' socialization process. The cats are not allowed outside the sanctuary at any time."

2. Access to the property is from Abaco Court, a 24-foot wide, County-maintained road, which has 50 feet of right-of-way.

3. The subject property is located in Flood Zone "C," and development within this area is not subject to the requirements of the Land Development Code (LDC), Article 700, Flood Damage Prevention.
4. The surrounding area is characterized by residential development.
5. The subject area has been designated RES-6 (Residential - 6 du/ga) under the Comprehensive Plan.
6. On June 24, 2008, the applicant was issued a Pasco County Ordinance Violation Warning Notice for violation of the A-R Agricultural-Residential District Permitted Uses and failure to obtain a special exception for a kennel operation. A citation is pending the outcome of the appeal process.
7. According to the Growth Management Department, the subject proposed development and land use are exempt from the provisions of the Traffic Impact Study and Substandard Road Guidelines, Resolution No. 04-203, as it is under the threshold requirements.
8. Staff received five letters of no objection from property owners adjacent to the west, 50 feet east, and along Abaco Court; also, several letters of commendation from veterinarians and business partners.
9. The Animal Services Division provided guidelines for considering an acceptable population of cats in an indoor cattery/kennel facility. They recommended a maximum of 50 cats based on a formula of ten cats per room, excluding the bathrooms, kitchen, and master bedroom.
10. On October 8, 2008, staff's recommendation to the Planning Commission was for approval with conditions, which included limiting the kennel activities to a maximum of 50 cats.
11. At the hearing for the special exception on October 8, 2008, the Planning Commission heard the following testimony from residents in the area:
 - a. Robert Letsos:

"I'm a frequent, evening walker. As I walk in the evening, I pass by the residence in question. There has been a continual over-powering odor emanating from the property."
(Verbatim, Page 14.)
 - b. Ed Swedyk:

"She's looking for sixty cats. The operation as you see it now, or as she is applying for it, was a disaster. She, the first thing she did was to close off her garage door, and install ken, cages for her cats in the garage. Then she decided that she couldn't get her contaminated kitty litter out without going through the side door and onto my property tearing out the front lawn, or a good portion of it. When I did, then in addition to that, during this period of time, she had six to eight cans, trash cans, fifty-five gallon jobs, or thirty whatever, every Wednesday and Friday, that's how many cats she had."
(Verbatim, Page 9.)
12. On October 8, 2008, the Planning Commission denied staff's recommendation of approval and denied the subject special exception based on Section 303.4(3)d, in that the requested special exception will result in substantially adverse economic, noise, glare, or odor effects on adjoining or surrounding properties.
13. The applicants filed a timely Notice of Appeal pursuant to the LDC, Section 317. A complete copy of the Notice of Appeal submitted by the applicants is attached hereto. It is the applicant's contention that the testimony and documentation received at the Planning Commission meeting did not provide substantial competent evidence to support a finding that the special exception would result in substantially adverse economic, noise, glare, or odor effects on adjoining or surrounding properties.

In considering appeals of special exceptions, the BCC shall be limited to the record of the Planning Commission's public hearing, as applicable, and shall not make new factual findings or accept new evidence. However, the BCC may adopt, modify, condition, or reverse the Planning Commission's legal conclusions and conditions including, but not limited to, 1) conclusions and conditions relating to consistency with the LDC, Comprehensive Plan, and County approvals and development orders (DO); 2) conclusions and conditions relating to the application of the LDC, Comprehensive Plan, and County approvals and DOs to the record evidence and facts; 3) reweighing the record evidence to evaluate

consistency with the LDC, Comprehensive Plan, and County approvals and DOs, and/or 4) interpretations of the LDC, Comprehensive Plan, or County Approvals and DOs.

This BCC must adhere to the following standards of review upon appeal of final orders granting or denying special exceptions:

1. No new testimony may be heard or presented.
2. Review is limited to the transcript and record from the Planning Commission.
3. The BCC may reweigh evidence previously presented to the Planning Commission and may modify, adopt, or reverse legal conclusions and conditions of the Planning Commission.

ALTERNATIVES AND ANALYSIS:

1. Grant the appeal and special exception based on the BCC's determination that the criteria in the LDC, Section 303.4, can be met with added conditions.
2. Uphold the decision of the Planning Commission to deny the request for a special exception pursuant to the LDC, Section 303.4(3)d.
3. Uphold the decision of the Planning Commission for different reasons as set forth in the LDC, Section 303.4.
4. Remand the matter to the Planning Commission for additional evidence.

RECOMMENDATION AND FUNDING:

The Zoning/Code Compliance Administrator recommends that the BCC grant the appeal and approve the special exception with the following conditions:

1. Kennel activities shall be limited to a maximum of 50 cats. The number of cats shall be reduced to 50 within six months of this action.
2. All kennel activities shall be conducted within the house and garage.
3. The owner/applicant must comply with Chapter 14 of the Pasco County Code of Ordinances and with Chapter 828.29, Florida Statutes, Dogs and Cats Transported or Offered for Sale, Health Requirements, Consumer Guarantee.
4. The owner/applicant shall obtain all required County and State permits, licenses, individual health certificates, and inspections.
5. This approval is subject to the provisions of the Pasco County LDC, Section 303.5, Review and Revocation of Special Exception Permits. In addition, staff may initiate a revocation for violations of the conditions of approval and/or upon a showing of the criteria outlined in Section 303.5.C.1, Review and Revocation of Special Exceptions and Conditional Use Permits.

There is no funding required for this action.

ATTACHMENTS:

1. Appeal Application
2. Verbatim of the October 8, 2008, Planning Commission Meeting with Exhibits
3. Special Exception Petition No. 6817
4. Copies of Visuals

DMZ/DH/ecm/bcc042109/pca0805

BOARD OF COUNTY COMMISSIONERS ACTION: