

Tax Map/Block/Parcel
No. 61-15-36

Building Permit/Zoning
Certificate No. 93-2378

Case 3860

**OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND**

APPLICANTS: Paul DiNenna and Joyce DiNenna
2922 Old Liberty Road
New Windsor, Maryland 21776

ATTORNEY: David K. Bowersox, Esquire
Hoffman & Comfort
24 North Court Street
Westminster, Maryland 21157

REQUEST: To modify conditions imposed in Case 2997, approve a cattery and grooming area in an existing building, enlarge an existing business sign, affirm variances approved in Case 2997 and any new necessary variances; or alternatively, a conditional use for a kennel for more than ten dogs and a cattery and grooming area in existing buildings, a business sign, and variances as necessary

LOCATION: 2922 Old Liberty Road in Election District 9

BASES: Article 6, Sections 6.3(j) and 6.7; Article 15, Section 15.5.4; Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: August 25, 1993

On August 25, 1993, the Board of Zoning Appeals heard testimony and received evidence concerning the Application for Hearing for the purposes expressed above pertaining to operation of the kennel at 2922 Old Liberty Road.

In accordance with the provisions of Article 17, Sections 17.6.6 and 17.7 of the zoning ordinance, and the Board's longstanding policy of visiting sites prior to public hearings, the Board visited the site August 23, 1993. The purpose of the visit was for the Board to view the site and adjacent properties, and inspect the interior facilities of the kennel so that the Board would be reasonably familiar with the premises and adjacent properties, and assist in the Board's appraisal of testimony and evidence, either pro or con, presented during the public hearing.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the following findings of fact, applicable law and reasoning, the Board authorized modification of the conditions imposed in Case 2997 including enlargement of the business identification sign to sixteen square feet, and confirmed approval of the cattery and grooming area in an existing accessory building and variances authorized in Case 2997. The revised conditions are expressed below in the Board's conclusion

of this decision. As enlargement of the kennel facilities is not involved, authorization of additional variances was unnecessary. By modifying the conditions imposed in Case 2997, it was unnecessary to consider the alternative request for authorization of a new conditional use and attendant variances.

The pertinent findings determining the Board's decision include the following:

FINDINGS OF FACT

The Board's written decision dated November 7, 1988, in Case 2997, Applicants' Exhibit 1 in this case, authorized a conditional use for the establishment of a kennel for boarding dogs and providing related services and a variance reducing the minimum distance requirements pertaining thereto, subject to the following conditions:

1. Kennel facilities shall be restricted to not more than 55 adult dogs at one time.
2. The breeding program shall be restricted solely to German shepherds.
3. The number of boarding runs shall be restricted to not more than 35, with not more than 20 runs used in conjunction with the breeding program.
4. The authorization is based upon the Applicant's Exhibit 2, the surveyor's plat of the property; Applicant's Exhibit 3, the parking lot location; and, Applicant's Exhibit 4, the floor plan for the kennel, location of the security fence, and the landscape screening forming a vision barrier in front of the building.
5. One business identification sign not more than four square feet may be erected in conjunction with establishment of the kennel. The decision of whether or not to erect the sign shall be at the applicant's discretion.
6. As a temporary matter, the dogs presently located in, or adjacent to the large barn, shall be transferred to the proposed kennel building not later than December 31, 1988. If the renovation and conversion of the kennel building is not adequately completed to allow the dogs to be transferred there by December 31, 1988, Ms. Burdette [Mrs.

transfer, the work necessary to be completed to allow the transfer, the anticipated time table to complete the work, and the projected date of the transfer. Upon good cause shown, the zoning administrator may authorize a reasonable extension of time for the transfer of the dogs.

7. Following the transfer of the dogs to the proposed kennel building, the existing large barn shall not be used for boarding purposes in conjunction with the kennel.

Thereafter, the kennel was established and has been operated continuously since then.

Mrs. DiNenna, in testifying on behalf of this request, noted that when she appeared before the Board in Case 2997 that although she was an experienced kennel operator and trainer, she was unaware of the Board's policies of imposing conditions in authorizing kennels as conditional uses. Consequently, critical misconceptions occurred leading to the Board imposing conditions that are inappropriate, unjustified and unduly restrict operation of the kennel. The Board agrees.

The practice of allocating one run for a single dog is inconsistent with the standard practices of operating kennels and providing services to owners of more than one dog. The error of equating one run to one dog was compounded by also applying the standard to the breeding program. Another error involved not acknowledging the routine practice of using manufactured cages, known as wall units, to confine pets.

Grooming services and operation of the cattery, within the smaller block building located adjacent to and in front of the kennel, are incidental to the operation of the kennel and do not require separate authorization by this Board. However to remove any doubt, the Board would authorize these uses if required in administration of the zoning ordinance.

In accordance with Mr. and Mrs. Burdette's testimony, and the Board's inspection of the premises prior to the public hearing, the kennel is constructed to minimize any adverse affects to adjacent properties including the sound of dogs barking. From the record of this case, including the Board's inspection of the premises, it is evident that the kennel building does not readily transmit sound of dogs barking within the building, and that services including training of dogs are conducted so as to minimize any adverse affects of the operation upon the owners and residents of the dwelling located to the northeast of the kennel. The remaining properties adjoining Mr. and Mrs. DiNennas' 37 acre farm are sufficiently separated by distance, topography, and woods so as to be unaffected by operation of the kennel.

As depicted by the photograph of a portion of the premises, Applicant's

by operation of the kennel.

As depicted by the photograph of a portion of the premises, Applicant's Exhibit 7, the business identification sign which is set back significantly from Old Liberty Road is too small to reasonably identify the business. The proposed sign, 4 feet by 4 feet will provide sufficient sign area to satisfactorily identify the kennel without unduly affecting the adjacent residents.

APPLICABLE LAW

Article 17, Board of Appeals; Section 17.2, General Powers, reads in relevant part:

The Board shall have the following powers:

- (b) To hear and decide conditional uses to the ordinance upon which such Board is required to pass.

In exercising the above-mentioned powers, the Board may, in conformity with the provisions of law and this ordinance and amendments thereto, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made. (Emphasis added.)

In the case of Von Lusch v. Board of County Commissioners of Queen Anne's County, 268 Md. 445, 455 (1973) the decision reads in relevant part:

The Board of Appeals is given the power to hear and decide conditional uses (or special exceptions) as authorized by Section 4.07 of Article 66B (formerly Section 22) [Annotated Code of Maryland] and the Board of Appeals may impose conditions or exceptions with respect to location, construction, maintenance and operation in addition to those expressly stipulated in the ordinance as the Board of Appeals may deem necessary for protections of adjacent properties and public interest.

REASONING

In reconsidering the Board's decision in Case 2997 in light of the record of this case, it is evident that the Board erred in imposing the conditions of authorization. As brought to the Board's attention, the Board has authorized similar boarding kennels without imposing conditions of authorization that impair operation of the kennel. Since establishment of the kennel, Mr. and Mrs. DiNenna have complied with the conditions of authorization even though the conditions have severely interfered with serving customers and operating the kennel.

It is now evident that the kennel facilities and programs are exceptionally well managed and operated, and do not unduly affect the residents or businesses of adjacent properties, the values of those properties, or the public interests.

CONCLUSION

Based on the findings of fact, applicable law and reasoning, the Board hereby modifies the conditions of authorization imposed in Case 2997 as follows:

1. Conditions 1, 2 and 3 are rescinded.
2. Condition 4 is amended to read: The authorization is based on the annotated house location survey plat identified as Applicants' Exhibit 5 in Case 3860.
3. Condition 5 is amended to read: One business identification sign of not more than 16 square feet is authorized as requested and in conjunction with operation of the kennel.
4. Condition 6 expired after issuance of the Board's decision in Case 2997 and is void.
5. Condition 7 is amended to read: The existing large barn located to the northwest of the kennel building shall not be used for boarding purposes in conjunction with operation of the kennel.

9/20/93
Date


William Law, Chairman