

Tax Map/Block/Parcel
No. 26/25/121

Building Permit/Zoning
Certificate No. 94-4080

Case 3991

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Elizabeth B. Ferro
8212 Sixes Bridge Road
Detour, Maryland 21725

ATTORNEY: M. L. Smith, Esquire
12317 Tilbury Lane
Bowie, Maryland 20715

REQUEST: Amend the conditional use authorized in Case 3340 for a kennel limited to not more than ten dogs to a kennel for more than ten dogs

LOCATION: 8212 Sixes Bridge Road in Election District 10

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

HEARING HELD: March 31, 1995

On March 31, 1995, the Board of Zoning Appeals heard testimony and received evidence concerning the request to amend the conditional use authorized in Case 3340 for a kennel limited to not more than ten dogs to a kennel for more than ten dogs at 8212 Sixes Bridge Road in Election District 10.

Articles and Sections cited below are of Ordinance 1E.

This case was originally scheduled for public hearing January 25, 1995, but was postponed and re-advertised for public hearing February 24, 1995. Due to the inability to applicant's attorney to appear at that time, the public hearing was again postponed and re-advertised for public hearing March 31, 1995.

In accordance with the provisions of Sections 17.6.6 and 17.7 and the Board's long standing policy of visiting sites prior public hearing, the Board visited the site, viewing it from Sixes Bridge Road only, January 17, and February 1, 1995. The purpose of the visits were for the Board to view the site and adjacent properties so that the Board would be reasonably familiar with the properties to 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 incorporated by reference in this decision. Based on the record and in accordance with the state Open Meetings

Act, the Board denied the request to amend conditional use conditionally authorized in Case 3340. The pertinent findings determining the Board's decision include the following facts:

FINDINGS OF FACT

On May 4, 1990, the Board of Zoning Appeals authorized a conditional use for a kennel for not more than ten dogs following a public hearing April 25, 1990. Conditions of authorization imposed by the Board included:

1. In accordance with the applicant's testimony, the exercise area shall be completely fenced. The fencing shall be adequate to prevent any dog from escaping the exercise area.

The Board also directed Ms. Ferro's attention to Carroll County Ordinance 26, which is also known as The Animal Control Law.

The Board's decision in Case 3340 notes that at that time Ms. Ferro had seven dogs that were kept as pets within her home; that she was present when the dogs were allowed outside of the dwelling twice a day; and, that an exercise area would be completely fenced to prevent dogs from straying from the property.

Although the request was opposed, the substance of the opposition involved matters other than the zoning ordinance and land use. From the record of that case, the Board found that operation of the kennel, as then proposed, would have no unusual or particular effects upon residents of adjacent properties or the value of their properties.

Ms. Ferro filed the Application for Hearing for this case December 16, 1994. Evidently, Ms. Ferro only filed the application after a complaint was filed with Zoning Enforcement that as of October 14, 1994, Ms. Ferro had at least fifteen dogs and over one hundred cats on the premises.

An inspector with Zoning Enforcement advised Ms. Ferro in a December 6, 1994, letter that Ms. Ferro had not responded to an application forwarded to her October 18, 1994, for her to submit to the Board of Zoning Appeals to request enlargement of the kennel. The letter warned Ms. Ferro that unless the completed application was received within ten days of the date of the letter, a formal Notice of Violation would be issued.

Ms. Ferro's sister has been staying in Ms. Ferro's home since July 1992, and Ferro's mother, who is aging, arrived unexpectedly to stay indefinitely in September 1994. Ms. Ferro's sister brought five dogs with her, and her mother brought four dogs with her. Thus, Ms. Ferro has been in violation of the Board's authorization

Case 3991 Decision
Page 3 of 5 Pages

in Case 3340 since July 1992.

Ms. Ferro's mother's health is questionable and she experiences lapses of memory.

Presently there are seventeen dogs and forty-eight cats on the premises. Although Ms. Ferro did not specifically establish where the dogs were kept in the home, some may be kept separately from others. The cats are kept in a separate building.

Eight of the dogs and eight of the cats are Ms. Ferro's. Five of the dogs and forty of the cats are her sister's. Ms. Ferro's mother has four dogs. All of the dogs are over one year of age, and include a variety of species. Larger dogs include two German shepherds and two Doberman pinschers owned by her mother, a German shorthaired pointer, a husky and a chow chow. Since July 1992 at least several dogs fights have occurred, and one cat has been killed by a terrier.

Ms. Ferro is employed full-time and commutes approximately forty miles one-way from her home to Woodlawn, Monday through Friday. Consequently, she is not home from about 8:00 a.m. until after 8:00 p.m. days that she works.

Ms. Ferro's sister is also employed elsewhere from 3:00 p.m. until after 11:00 p.m.

When neither Ms. Ferro nor her sister are present, Ms. Ferro's mother is alone with the dogs. Apparently this is from about 3:00 p.m. until after 8:00 p.m. when Ms. Ferro returns home.

Although Ms. Ferro testified that the dogs were always supervised when they were out of the dwelling, her testimony was contradicted by adjoining property owners, Mr. and Mrs. Crotts, who oppose Ms. Ferro's request.

Evidently, Ms. Ferro's mother allows the front door to remain open, or allows the dogs kept in that part of the home to go out and come in freely. Credible testimony was presented that when Ms. Ferro's mother walks to the mail box, which is located outside of the front fence, she leaves the gate open and dogs often run outside of the fenced area.

In addition, the dogs are not kept in a completely fenced area and have routinely strayed from the premises. In a nighttime incident approximately two and a half years ago, one of the dogs strayed onto the adjoining horse farm of Mr. and Mrs. Crotts and confronted Mr. Crotts in, or near, the barn, which is located perhaps 400 feet from Sixes Bridge Road. Because of its threatening behavior, Mr. Crotts shot, and apparently wounded, the dog.

Mr. Crotts also testified that within the last two weeks, one of Ms. Ferro's dogs and one of her sister's dogs have strayed from the premises.

APPLICABLE LAW

A kennel is defined in Article 20 as:

Property which is used or designed for the keeping, boarding, breeding, training or sale of more than three (3) dogs or other canines that are more than one year old.

Section 17.7, Limitations, Guides and Standards governs the Board in considering conditional use requests. The provision reads in relevant part:

Where in these regulations certain powers are conferred upon the Board or the approval of the Board is required before a conditional use may be issued, the Board shall study the specific property involved, as well as the neighborhood, and consider all testimony and data submitted. The application for a conditional use shall not be approved where the Board finds the proposed use would adversely affect the public health, safety, security, morals or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood.

REASONING

The circumstances involved in Ms. Ferro keeping ten or less dogs within her home changed drastically with the arrival of her sister and her mother.

After her sister became a resident, if not before, Ms. Ferro has demonstrated little regard for her neighbors, her responsibilities in complying with the Board's decision in Case 3340 authorizing a kennel for not more than ten dogs, and for complying with the Carroll County Animal Control Ordinance by not preventing dogs kept in her home from leaving the premises while not under her control or the control of a responsible person.

Control of the dogs is, at best haphazard, and one serious incident has already occurred when a dog strayed from the premises and was shot because of its actions.

There is no evidence to substantiate that Ms. Ferro's mother can control the dogs, and in the event that she would need emergency assistance because of fire or illness, the dogs could at least delay the response of emergency personnel. In fact, due to Ms. Ferro's mother's aging and memory lapses, it is at least questionable, if not dangerous, for her mother to be left alone with the dogs. Thus, the Board is convinced that the existing situation is dangerous for both the neighbors and Ms. Ferro's mother.

The provisions of Section 17.7 direct the Board not to approve a conditional use "...where the Board finds the proposed use would adversely affect the public health, safety, security,...or general welfare, or would...jeopardize the lives or property of people in the neighborhood."

With these facts now before the Board, Ms. Ferro's request must be denied.

CONCLUSION

In accordance with the Board's findings of fact, the applicable law, and the Board's reasoning, the requested amendment of the conditional use authorized in Case 3340 is hereby denied.

4-25-95
Date

Claude R. Rash
Claude R. Rash, Chairman