

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPELLANTS: Carl S. Carlson and Betty L. Carlson
939 Hoods Mill Road
Woodbine, Maryland 21797

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APPELLEES: Donald Farb and Charlotte B. Katz
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APPEAL: Appeal from the Zoning Administrator's determination that the property of Appellees is being used in compliance with the application for a conditional use and the conditions imposed in Case No. 1231

LOCATION: 1001 Hoods Mill Road
Woodbine, Maryland 21797
Fourteenth (14th) Election District
of Carroll County, Maryland

BASES: Article 17, Section 17.4; Zoning Ordinance 1E

HEARINGS HELD: April 18, 1988; May 3, 1988; June 6, 1988

In Case No. 1231, dated February 21, 1978, the Carroll County Board of Zoning Appeals ("the Board") authorized Appellees' predecessor in interest to add a new kennel building to her existing commercial kennel. The Board classified the addition as a structural alteration of a nonconforming use. Four conditions were imposed:

"1. In conjunction with the establishment of the new kennel building, and in order to provide both an effective sight barrier and security fence, either a solid wooden plank board or stockade type fence, at least six feet in height, shall be constructed in the location of the security fence as indicated on the Foundation and Floor plan, or Applicant's Exhibit No. 1.

2. Similar sight barriers and security fences, not less than six feet in height, shall be erected so as to enclose all exterior runs of kennel buildings 1, 2, and 3 as shown on Appellant's Exhibit No. 1, Case No. 1230.

3. All such sight barriers and security fences shall be maintained as long as the buildings are used as kennels.

4. Establishment of the kennel shall be subject to the requirements of the Carroll County Health Department."

One underlying purpose of the conditions was to protect adjacent residents from excessive noise. The Appellants in this case, Carl S. Carlson and Betty L. Carlson, attended the hearing of Case No. 1231 and received a copy of the Decision. They did not appeal that decision.

On February 23, 1987, the Zoning Administrator notified Appellees that the kennel failed to comply with the first three conditions, in that the required fencing was incomplete. Appellees proceeded to complete the necessary fencing, and as of September 22, 1987, the Zoning Administrator determined that the kennel was in compliance with the conditions.

The Carlsons appealed the Zoning Administrator's determination to the Board of Zoning Appeals. Specifically, they challenged "the determination that the property is being used in compliance with the application for a conditional use, and the

conditions imposed by the Board of Zoning Appeals in Case No. 1231."¹

The Board heard the appeal, Case No. 2889, on April 18, 1988, and May 3, 1988. During the latter half of the May hearing, Appellants completed their case and Appellees commenced but did not complete theirs. Throughout the proceedings, Appellees repeatedly moved for dismissal of the appeal.

On June 6, 1988, counsel for each side presented oral argument concerning the motion to dismiss.

Appellees argue for dismissal on two grounds:

1. The Zoning Ordinance does not authorize adjacent property owners to appeal a determination by the Zoning Administrator that conditions previously imposed by the Board have been met; and
2. Appellants have failed to prove that Appellees are not in compliance with the conditions imposed in Case No. 1231.

The Board disagrees with the first argument. Section 17.2(a) of the Zoning Ordinance does not distinguish between positive and negative determinations by the Zoning Administrator, and does not in any way restrict the right of appeal to the holder of the property in question.

¹ The Appellants have not pursued their assertion regarding the application.

However, the Board agrees with the second argument. The only evidence pertaining to the alleged noncompliance with the conditions had to do with the construction of the "solid wooden plank board or stockade type fence" required by Condition No. 1. There was evidence that the wooden planks are set at vertical angles to one another and have approximately one-inch gaps between them, although the gaps are visible only from the side of the fence. No breaks between the planks appear when the fence is viewed from the front. Appellants did not establish that this design violates the first condition. Moreover, Mr. Carlson himself testified that as far as he was concerned, no change in the construction of the fence could aid in reducing the noise from the kennel.

Accordingly, the Appellees' motion to dismiss is hereby granted. In the alternative, the Board finds that the Zoning Administrator correctly determined that Appellees are in compliance with the conditions imposed in Case No. 1231.

June 20, 1988
Date:

John Totura
John Totura, Chairman