

Case 2997

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Joyce L. Burdette
2922 Old Liberty Road
New Windsor, Maryland 21776

ATTORNEY: Thomas F. Stansfield, Esq.
One Court Place
Westminster, Maryland 21157

REQUESTS: A kennel for boarding of dogs and providing related services; and,
a variance reducing the minimum distance requirements pertaining
thereto.

LOCATION: 2922 Old Liberty Road in Election District 9.

BASES: Article 6, Section 6.3(j) and 6.7; Article 4, Section 4.12; Article
15, Section 15.5; Ordinance 1E.

HEARING HELD: September 27, 1988

FINDINGS AND CONCLUSION

On September 27, 1988 the Board of Zoning Appeals heard testimony and received evidence concerning the Application for Hearing requesting a conditional use for the establishment of a kennel for boarding of dogs and providing related services; and, a variance reducing a minimum distance requirements pertaining thereto on property at 2922 Old Liberty Road West. Based on the record of this case, the Board approves of the conditional use and variance, subject to the conditions noted below.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. The pertinent findings are as follows:

FINDINGS OF FACTS

The 37 acre property is located on the south side of Old Liberty Road West beginning a short distance west of Franklinville Road intersection, shown by the site location map, with frontage extending slightly more than 900 feet west along Old Liberty Road. The property is improved with a dwelling, a large barn, several smaller accessory buildings, and the proposed kennel building as shown on the survey plat of the property identified as Applicant's Exhibit 2. Apparently all of the buildings were constructed prior to the adoption of Ordinance 1E in 1965. The proposed kennel building was

constructed in 1952 for use as a poultry house. However, the use ceased sometime in the 1950's. As shown on the survey plat, the building is located in excess of one hundred fifty feet from Old Liberty Road and three hundred fifty feet from the westerly side property line.

The applicant, Ms. Burdette proposes conversion of the building, including substantial improvements, to establish the kennel facility. Services will include boarding and grooming of dogs and cats. Ms. Burdette, who has extensive experience in operating a kennel, plans to continue raising and training German shepherds for showing and sale. As shown on the floor plan for the facility, Applicant's Exhibit 4, the kennel will include an office, a room for grooming, a kitchen, a catery and nursery. Both indoor and outdoor runs will be provided, and all runs will be covered for security purposes. In addition, a security fence will be erected and landscape screening to establish a vision barrier will be planted. As the dogs will normally be kept inside the building, Ms. Burdette plans to insulate the building in order to minimize transference of sound. Ordinarily the dogs will be allowed in the outside runs two to three times a day. Ms. Burdette requests authorization for fifty-five adult dogs. A parking area for customers will be provided on the premises, as shown on Applicant's Exhibit 3. No business identification sign is presently proposed.

The site and surrounding properties are zoned "A" Agricultural District as shown on Zoning Map 61A. Although the adjoining property to the west is a large junk yard specializing in vehicle dismanteling and recycling of parts, classified as a nonconforming use, agriculture appears to be the major use of land in the area. Only one home is located adjacent to the site and within the minimum distance requirements of four hundred feet governing the location of the proposed kennel. That home is located on the property identified as P218 on the site location map of the area. While the home is not shown on any of the exhibits, Mrs. White, a new owner of the home, appeared before the Board in opposition to the request and established its location as opposite the large barn. This places Mr. and Mrs. White's home, which is approximately two-hundred years old, about two hundred fifty to three hundred feet from the proposed kennel building. The second home is located to the east on property identified as P38 on the site location map. This home appears to be in excess of four hundred feet from the proposed kennel building. Ms. Burdette indicated that before buying the property

she had contacted the county by telephone regarding use of the property for the proposed kennel. She was advised that it should not be a problem because of the amount of acreage, the agricultural zoning, the junk yard adjoining the property to the west, and a small trucking business located about one thousand feet to the east.

Acting on the information she had received, Ms. Burdette purchased the property. Subsequently, she moved 18 German shepherds there, keeping them in, or adjacent to, the large barn. In the intervening time, work has progressed on cleaning and renovating the proposed kennel building. Ms. Burdette plans to move the dogs into the kennel building upon its completion, and use the large barn as a stable for two riding horses. From Ms. Burdett's reference letters, identified as Applicant's Exhibit 1 (collective) it is evident that her previous kennel was located on less than an acre of land in a residential neighborhood, and that it was operated without complaint from neighbors and without adversely affecting adjacent residential property values.

Both Ms. Burdette, and Mr. and Mrs. White purchased their properties from the same previous owner. Mrs. White testified that Mr. White and she did not become aware of the proposed kennel until after settlement and occupancy of their home, evidently on September 23, 1988, when they observed the hearing notice sign posted in front of Ms. Burdette's home. Mrs. White testified that they had been advised that the proposed use of Ms. Burdette's property was to be a horse ranch, and that they would not have purchased the property if they had known about the proposed kennel. Mrs. White's objection is to the noise created by barking dogs.

APPLICABLE LAW

The land use provisions for the "A" Agricultural District are specified in Article 6 of Ordinance 1E. Section 6.3, Conditional uses (requiring Board authorization), paragraph (j) reads:

"Kennels, or animal hospitals with runways; provided such use shall be subject to the distance requirements specified in Section 4.12, except that where the kennel involves more than 10 dogs, the distance requirement shall be two (2) times the requirements specified in Section 4.12."

The site and proposed kennel building comply with the minimum lot area, lot width and yard requirements specified in Section 6.7 for conditional uses.

Article 20, Section 20.24 defines kennel (Amended 2-15-68) as:

"Any building or structure and/or land used, designed, or arranged for housing, boarding, breeding or care of more than three adult dogs kept or bred for hunting, sale, exhibition or domestic use or other domestic animals for profit, but not including those animals raised for agricultural purposes."

Article 4, General provisions; Section 4.12, Distance requirements (Amended 7-5-77) states:

"Any uses or buildings subject to compliance with this section shall be located at least 200 feet from:

- (a) any lot in an "R: District; or,
- (b) any lot of less than 3 acres occupied or intended to be occupied by a dwelling not located on the same lot as the said use or buildings; or,
- (c) any lot occupied by a school, church or institution for human care; or,
- (d) the curtilage area within a lot of 3 or more acres improved with a dwelling."

Either (b) or (d) are applicable in this case, depending on how Mr. and Mrs. White's land is described in the deed conveying the property to them. As required by section 6.3(j), the minimum distance requirement is two (2) times 200 feet, or 400 feet.

Article 15, Exceptions and Modifications; Sections 15.0 and 15.5 read as follows:

"The regulations specified in this ordinance shall be subject to the following exceptions, modifications, and interpretations:"

"The Board may authorize, upon appeal, in accordance with Section 17.2, variances from...distance requirements specified in Section 4.12...The Board may grant such variance only in cases where the strict compliance with the terms of this ordinance would result in practical difficulty and unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to public health, safety and general welfare."

With the adoption of Ordinance T-77 amending the Zoning Ordinance, Article 17, Board of Zoning Appeals; Section 17.7, Limitations, guides and standards, now reads:

"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. In deciding such matters, the Board shall give consideration, among other things, to the following:

- (a) The number of people residing or working in the immediate area concerned.
- (b) The orderly growth of the community.
- (c) Traffic conditions and facilities.
- (d) The effect of the proposed use upon the peaceful enjoyment of people in their homes.
- (e) The conservation of property values.
- (f) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of the surrounding property values.
- (g) The most appropriate use of land and structures.
- (h) The purpose of this Ordinance as set forth herein.
- (i) Type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches, and the like."

REASONING

The thirty-seven acre property is well situated in the rural agricultural district of the proposed kennel. There is excellent vehicular access to the property, and only one of two adjacent dwellings is relatively near the proposed kennel building. Thus, the vehicular traffic generated by the kennel can be easily accommodated and is not likely to adversely affect the residents of either adjacent dwelling. Renovation and conversion of the existing building, and use of the premises for the proposed kennel are reasonable and appropriate, particularly in light of Ms. Burdette's extensive plans for the kennel facility. In addition, with Ms. Burdette's expertise in operating a kennel and training German shepherds, it is evident that the minimum distance requirements governing kennels for more than 10 dogs can be relaxed to allow the proposed use, subject to the conditions imposed below, without unduly affecting the residents of the adjoining properties or the property values.

CONCLUSION

Therefore, the Board hereby authorizes the conditional use for the kennel and variance reducing the minimum distance requirements pertaining thereto, subject to the following conditions of authorization:

1. Kennel facilities shall be restricted to not more than fifty-five 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 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 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 may request an extension of time from the Zoning Administrator in writing, stating the circumstances that prevent the 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 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.

Nov. 7, 1988
Date

John Totura
John Totura, Chairman