

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANTS: Jay R. Hoge and Deborah C. Littleton
338 North Tannery Road
Westminster, Maryland 21157

ATTORNEY: David K. Bowersox, Esquire
127 East Main Street
Westminster, Maryland 21157

AMENDED REQUEST: Conditional use for a kennel for ten or less
dogs and a variance in reducing the minimum
distance requirements pertaining thereto.

BASES: Article 5, Sections 5.2(e) and 5.5; Article 15,
Section 15.5; Ordinance 1E

HEARING HELD: March 30, 1989; Continued April 4, 1989

On March 30 and April 4, 1989, the Board of Zoning Appeals heard testimony and received evidence concerning the amended request for a conditional use for a kennel for ten or less dogs and a variance reducing the minimum distance requirements pertaining thereto on the premises of 338 North Tannery Road. The Application of Hearing as amended orally during the public hearing, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board will authorize the amended requests, subject to conditions of authorization noted below.

FINDINGS OF FACT

The ten plus acre lot is zoned "C" Conservation District as shown on zoning map 39B. The contiguous properties surrounding the lot are also zoned "C" Conservation District. The lot is improved with a dwelling, bank barn, three sheds, and an outhouse. (Applicants' Exhibit 5.) The dwelling and bank barn were established prior to the adoption of the Carroll County Zoning Ordinance (Ordinance 1E) on August 17, 1965. The bank barn may have been used to shelter farm animals until November, 1988, shortly before the applicants finished moving to the property on

December 18, 1988. The fencing establishing the exterior runs and paddock was erected shortly after the applicants moved to the premises. Vehicular access to the lot is provided by a right of way, ten feet in width, connecting to Old Tannery Road. The right of way also serves at least two adjoining residential properties abutting the northwesterly property line of the lot. The location of the right of way is shown on Protestants' Exhibit 2, which is a proposed preliminary subdivision plan of land adjacent to the applicants' property. The right of way was evidently established within a deed dated March 17, 1894 and recorded within the Carroll County Land Records in Liber B.F.C. Number 78, Folio 148, etc. Reference is made to that deed in the deed recorded in Liber 1120, page 95 conveying the property to the applicants. Photocopies are filed in the record of the case as unidentified exhibits.

The Location Survey, Applicants' Exhibit 5, filed with the application shows that the dwelling is located approximately 128 feet from the northeasterly property line and 44 feet from the northwesterly property line. The location of the bank barn is depicted on the plat, but not dimensioned. However, the scaled distance is approximately 29 or 30 feet from the northwesterly side property line which agrees with the scaled distance obtained from the preliminary subdivision plan, Protestants' Exhibit 2.

As the lot does not front directly on a county or state road, determination of the front property line rests with the discretion of the Board. Regardless of whether the northeasterly or southeasterly property line is considered to be the front property line, variances will be required for use of the dwelling, bank barn, paddock, and exterior runs. The Board will rule, for the purpose of this case, that the northeasterly property line is the front property line. The basis of this determination is the architectural orientation of the dwelling. Either the northeasterly or southeasterly property line could be

determined to be the front property line due to their alignment relative to Old Tannery Road.

The variances to the minimum required yards depend on which property line is determined to be the front property line. With the northeasterly property line determined to be the front property line, the necessary variances are to the minimum required side yard of 100 feet for both the dwelling and bank barn. Variances are also necessary to the minimum distance requirements specified in Article 4, Section 4.12, paragraphs (b) and (d) of Ordinance 1E regardless of which property line is the front property line. The variance to the minimum distance requirements of paragraph (b) pertains to Mr. and Mrs. Malinowski's property. The requirements of paragraph (d) pertain to Mr. and Mrs. Tingley's property. Inspection of the Location Survey, Applicants' Exhibit 5, indicates that the width of the lot at the midpoints of the southeasterly and northwesterly property lines satisfies the minimum requirement of three hundred feet, and no variance is necessary.

The applicants have 8 Greyhounds, 4 males and 4 females, with one of each neutered. The Greyhounds, which are registered with the American Kennel Club, are normally kept in the bank barn during the day and in the dwelling at night and when the applicants are home. The dogs are kept as pets and for showing. Breeding for replacement purposes and development of show quality dogs has resulted in 3 litters in the last 12 years. The dogs are usually quiet, but will bark if they see other dogs.

The applicants do not propose any additional adult dogs, nor to initiate commercial boarding or grooming. Climbing vines, which in time will obstruct the dogs vision, are proposed to be established on sections of the chain link fence adjacent to the northwesterly property line. The kennel, as proposed, will

not generate any significant increase of vehicular traffic to or from the premises.

The property owners and residents of the two properties adjoining the northwesterly side property line of the site, who also use the use in common right of way for access to their homes, Mr. and Mrs. Malinowski and Mr. and Mrs. Tingley, do not oppose authorization of the conditional use and variances as requested. However, they would oppose an increase in the number of dogs or a commercial kennel.

The requests were opposed by the owner of an adjoining farm, Mr. William A. Hurlock, and by parties who have contracted to purchase the farm and subdivide it for residential development. The opposition was based on the kennel being incompatible with the proposed residential subdivision and adversely affecting its development, and public safety. Review of the preliminary subdivision plan, Protestants' Exhibit 2, and Applicants' Exhibits 3, 4, and 5 confirm that the "R-40,000" Residence District and all of the proposed lots within the district are located in excess of the minimum distance requirements of two hundred feet from the applicant's dwelling, bank barn, paddock, and exterior runs. Five of the proposed lots in the "C" Conservation District adjoin the applicant's property. Four of these lots are unimproved. Neither the configuration of the lots nor the locations of the dwellings as shown on the preliminary subdivision plan can be accepted as more than possibilities. If the lots are recorded as shown, two of the dwellings and their curtilage areas--neither of which are subject to the minimum distance requirements--may be eventually established closer than two hundred feet to the kennel facilities as now proposed by the applicants. However, as the lots are only proposed and not recorded in the plat records of Carroll County, the provisions of Section 4.12 are not applicable. Mr. Hurlock's own residence and farm buildings are located on the remaining lot abutting the

applicant's property. While the residence and curtilage are located in excess of the minimum distance requirements of Section 4.12, concern was expressed regarding problems in using the use in common right of way, and vehicular traffic generated by the kennel.

The owners of land adjoining the southwesterly property line, and a portion of the northwesterly property line extending northeasterly from the southwest corner of the property also opposed the requests. Proposed Lot 2, which adjoins the southwesterly property line is probably over one thousand feet south of the exterior runs and one thousand one hundred feet from the bank barn. A parcel identified as Remainder "C", which is not a buildable lot, abuts the northwesterly property line and extends northeasterly about seven hundred feet. The location of the proposed kennel exceeds the minimum distance requirements of two hundred feet in both instances. The properties are depicted on the photocopy of part of a preliminary subdivision plan for the Twigg property. The photocopied plan is part of the record of this case as an unidentified exhibit.

APPLICABLE LAW

Article 5, "C" Conservation District; Section 5.2, Conditional Uses, (requiring Board authorization) paragraph (c) of Ordinance 1E lists kennels, with or without runways, for ten or less dogs on a minimum of five acres, with any structure or area used subject to the minimum distance requirements specified in Article 4, Section 4.12 of the ordinance. Section 5.5, Lot area, lot width and yard requirements specifies, for other uses, a minimum lot width of 300 feet, a minimum front yard of 50 feet, and a minimum side yard of 100 feet. The dwelling, bank barn, exterior runs, and paddock are subject to the minimum yard requirements as specified in Section 5.5 and minimum distance requirements specified in Section 4.12.

Article 4, General Provisions; Section 4.12, Distance requirements (Amended 7-5-77) of Ordinance 1E, in relevant part, reads:

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

- (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,
- (d) the curtilage area within a lot of 3 or more acres improved by a dwelling."

Article 17, Board of Appeals; Section 17.7 (Adopted July 12, 1988) states:

"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 or 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 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."

Article 20, Section 20.24 (Amended 2-15-68) defines kennel 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 domestic animals for profit, but not including those animals raised for agricultural purposes."

Article 20, Section 20.09 defines conditional use as:

"Uses which are specified for Board of Appeals approval prior to authorization and which uses, after public hearing, may be approved conditionally or disapproved in accordance with Section 17.2. The term "conditional use" shall constitute the same meaning as "special exception" specified as one of the general powers of the Board of Appeals in accordance with Article 66B of the Annotated Code of Maryland."

Article 20, Section 20.39 defines a variance as:

"...a relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship."

Article 15, Exceptions and Modifications; Section 15.0 Generally, and Section 15.5, Variance (Amended through 2-25-76) read respectively:

"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 height, lot area, lot width, yard regulations, parking space requirements, sign regulations, and distance requirements specified in Section 4.12 and Section 14.31(c)4. 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."

In accordance with the provisions of Section 17.4.9, the Board extended the period of time for issuance of this decision.

REASONING

The circumstances involving the conditional use and variance requests for the kennel are unusual in that:

- the dwelling and bank barn were established prior to the adoption of the Carroll County Zoning Ordinance in August of 1965
- the existing configuration and area of the lot were established in 1966 when the two lots adjoining the northwesterly property line were conveyed from the property, as described in the applicant's deed
- the dogs are kept in the bank barn and exterior runs during the day when the applicant's are not home

- the dogs are kept in the dwelling all night, and other times when the applicants are home
- the dogs are allowed in the paddock only when the applicants are home
- the number of adult dogs would be limited to eight
- the species is Greyhound
- the dogs are kept as pets and for showing
- the dogs are bred infrequently for replacements and showing
- no commercial boarding or grooming is proposed
- any vehicular traffic resulting from operation of the kennel will be insignificant
- any problem which may exist with the use in common right of way providing access to the applicants' property and adjoining residences will not be affected or altered by establishment of the proposed kennel
- there is no probative evidence that authorization of the kennel, as requested, will unduly affect the residents of the adjoining dwellings or the values of their properties, the residential development of either the "R-40,000" Residence District or the "C" Conservation District as depicted by Protestants' Exhibit 2, or the public interest
- relaxation of the minimum yard and distance requirements for the kennel, as requested, will have no adverse affects, and are necessary in order to preclude practical difficulty and unreasonable hardship that the applicants would otherwise experience

CONCLUSION

Accordingly, the Board hereby authorizes the conditional use, and variances to the minimum side yard and distance requirements for the proposed kennel facilities, including the bank barn, dwelling, exterior runs, and paddock, subject to the following conditions of authorization which are imposed to promote the intent and purpose of the Zoning Ordinance:

1. Due to the particular circumstances in this case, authorization and operation of the kennel is restricted solely to the applicants for not more than eight adult Greyhounds with not more than one litter of Greyhound puppies not exceeding one year of age, at one time.
2. Operation of the kennel shall be in accordance with the applicants' testimony and these conditions.
3. No commercial activities including boarding, grooming, or erection of a kennel identification sign are authorized in conjunction with establishment of the kennel.

The applicants' attention is directed to Carroll County Ordinance Number 26, which is also known as the Animal Control Ordinance, and to any future duly adopted amendment or ordinance pertaining to kennels or dogs.

DATE

May 23, 1989

John Totura, Chairman

John Totura