

Tax Map/Block/Parcel
No. 37/18/330

Building Permit/Zoning
Certificate No. 83-6235

Case No. 3238

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANTS: William H. Raines, Jr. and Nancy M. Raines
525 North Springdale Road
Westminster, Maryland 21157

ATTORNEY: Charles D. Hollman, Esquire
Hollman, Hughes & Finch, Chartered
189 East Main Street
Westminster, Maryland 21157

REQUEST: A request for modification of the conditional use
for a kennel authorized in Case 1629, and such
variances as may be necessary

LOCATION: 525 North Springdale Road in Election District 2

BASES: Article 17, Section 17.2; Article 6, Sections
6.3(j) and 6.7; Article 4, Section 4.12; Article
15, Section 15.5; Ordinance 1E (The Carroll
County Zoning Ordinance)

HEARING HELD: December 29, 1989; Continued January 3, 1990

The applicants and their property are not new to the Board. This is only the latest in a series of applications. To fully understand and appreciate the latest application, a review of the prior applications and decisions is warranted. (The Board's prior decisions are attached hereto and incorporated herein.)

This web began when the applicants were contract purchasers of the subject property in 1977. They applied and were denied an application for the establishment of a kennel (Case No. 1111). Undaunted by the denial of their application,

they purchased the property and established a kennel anyway. When cited for a zoning violation for operating a kennel without Board authorization they applied "for the establishment of a kennel for more than ten dogs; and, variance requests for the reduction of the minimum required lot area of 3 acres to 2.973 acres and a reduction of the minimum distance requirements of 400 feet to about 330 feet". (Case 1629) The Board finding that the circumstances had substantially changed since 1977, granted the application. However, the Board imposed conditions upon the approval, among which were:

b. A maximum of 25 dogs is authorized in conjunction with the operation of the kennel. For clarification purposes, a dog shall not be considered to be adult until one year old.

c. Authorization of the kennel is limited to basement, attached garage, exercise yard, and ten exterior runs as presently existing.

e. The existing 6' stockade fence shall be maintained around the exercise yard as presently existing.

Not content with the limits imposed upon this authorization, the applicants applied for a permit to construct a 40' X 10' storage shed (Permit No. 83-6235) (with the intent to utilize the structure as a kennel contrary to the Board's conditions and Zoning Certificate).¹

In 1984, after the construction of the "storage shed", the Raines filed yet another application (Case No. 2183) to amend

¹Board's decision 2183 page 3.

condition 'C' of Case No. 1629. Specifically, the application in Case 2183 sought to allow "the kennel facilities to be relocated from the basement and attached garage of the existing dwelling to an accessory building with exterior runs in the rear yard." (The accessory building is the storage shed erected pursuant to the Building Permit which is the subject of a different litigation not germane here).

The application was denied by the Board. The Board's decision was affirmed first by the Circuit Court of Carroll County (CV No. 0729) and then by the Court of Special Appeals of Maryland (No. 1142). The unreported decision of the Court of Special Appeals was introduced into evidence over applicants' objection.

The present application seeks a

modification of the[ir] existing conditional use wherein they would be authorized to use the existing 10' X 40' storage building (Building Permit No. 6235) complete with runs in substitution for their authorized utilization of the basement of their existing dwelling. If granted, the applicants use would include the 10' X 40' building with runs, aforesaid, the attached garage with 10 exterior covered runs within the exercise yard which is enclosed by a 6' stockade fence for twenty-five (25) dogs. The Applicants further request such variances as may be necessary to their request. (Applicants' application)

The Board finds that the instant application is identical to the application in Case No. 2183. The Board finds that there has been no change in the facts and circumstances to warrant reversing its prior decision. In fact, the Board feels that to grant the application now would be arbitrary and

capricious since the Board would be arriving at a different conclusion from the same facts.

In Case No. 1629, the Board specifically limited the kennel authorization to "the basement, attached garage, exercise yard, and ten exterior runs as presently existing". In Case No. 2183 the applicants sought, inter alia," to allow the kennel facilities to be relocated from the basement and attached garage of the existing dwelling to an accessory building with exterior runs in the rear yard." This item is identical to the present application i.e., "authorization to use the 10' X 40' storage building in substitution of their authorized utilization of the basement of their existing dwelling."

The Record before the Board in the instant case did not generate any significant evidence of any change in circumstances since the denial in Case 2183. Rather, the record clearly establishes a clear and flagrant disregard for the Board's decisions and the Zoning Ordinance. The applicants continue to use the front yard to exercise the dogs in violation of the Board's condition in Case 1629 and the stockade fence has not been maintained.

This issue having been fully litigated before an administrative agency, a court of record and an appeals court, and there not being any change in the facts, the Board hereby

denies the application herein and the applicants are directed to abide by the conditions of Case No. 1629.

May 4, 1990
Date:

John Totura
John Totura, Chairman

Our File No. 4516-ZV
IM/dmg/Raines.r
May 3, 1990