

Case 3278

**OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND**

APPLICANT: Stephanie J. Snyder
744 Silver Run Valley Road
Westminster, Maryland 21157

REQUEST: A conditional use for a kennel for not more than
10 dogs

LOCATION: 744 Silver Run Valley Road in Election District 3

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

HEARING HELD: November 29, 1989

On November 29, 1989, the Board of Zoning Appeals heard testimony and received evidence concerning the request for a conditional use for a kennel for not more than 10 dogs at 744 Silver Run Valley Road. Mr. and Mrs. Snyder presented the case to the Board. Pamela V. Curtis, an adjoining property owner, appeared in opposition to the request represented by Mr. John E. Sibrea, attorney at law.

The Board visited the property on November 24, 1989, prior to the public hearing.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record of the case, the Board will deny the request. The pertinent findings include the following facts.

FINDINGS OF FACT

As shown on the site location map used to post the Hearing Notice, the six acre property is located on the north side of Silver Run Valley Road about 2,900 feet of Turkey Foot Road intersection. The site location map also depicts an adjacent residential subdivision on the south side of Silver Run Valley Road and two residential lots to the east on the north side of the road. Although the area was agricultural in the past, limited residential development has occurred and may continue. The property is identified as parcel 541, and is improved with a dwelling and accessory building, identified as a barn. (Applicants' annotated location survey plat.)

The plat also shows that the proposed kennel facility would be

located near the center of the property about 90 feet east of the dwelling, and 310 feet north of the front property line. The location of an existing driveway, evidently serving this property, and a driveway under construction when the property was surveyed in November of 1984 and December of 1985 are depicted. The plat indicates that the property is subject to an easement connecting to Silver Run Valley Road for ingress and egress. Testimony confirmed that the easement provides access for the adjoining property to the sides and rear, and identified as parcel 390 on the site location map. The easement is located adjacent to the westerly side property lines.

The plot plan submitted with the application shows that the property is traversed by two streams. One stream flows in a southerly direction and is located between the dwelling and the proposed kennel building. That stream intersects the second stream which is in the front yard of the property and flows from east to west.

Mrs. Snyder's plans are to breed, train, show, and sell German shorthair pointers; advertising in magazines. Boarding of dogs owned by others would be on a limited basis, probably for dogs to be shown.

The proposed kennel plans consist of a floor plan, and views of the left and right sides of the structure. The plans depict a pole shed type building, open on three sides, with an enclosed grooming room and storage room located at one end of the building. The exterior dimensions of the structure are 35 feet in width by 50 feet in length. Ten runs, 6 feet in width by 12 feet in length, are proposed within the area sheltered by the roof, adjacent to the grooming and storage room. Overhead fluorescent lighting is indicated for the runs, and two flood lights are shown on each of the four corners of the roof. A security fence, 8 feet in height, would surround the structure. The security fence would also be designed to obstruct the vision of dogs when they are in the runs.

Mrs. Snyder and her husband, moved to the premises approximately five years ago. At that time, they had four adult dogs. Until this summer the dogs were kept within the residence, except when they were allowed outside to exercise. This summer, the applicants erected exterior runs for the dogs. They had eight adult dogs at that time. The runs were located on the west side of the barn. As indicated on the annotated location survey plat, the barn is only 1.5 feet plus or minus, from the side property line. A roof, attached to the barn and extending over the runs was constructed to shelter the dogs. The runs were erected and the roof constructed without a building permit and zoning certificate. As the runs and roof encroach on the adjoining property of Mr. and Mrs. Curtis, such encroachment must be eliminated.

Mrs. Snyder testified that the dogs are bred to show and for field training. The dogs are also trained for obedience. The puppies are evaluated, and depending upon their characteristics, may be retained for up to one year. Puppies that do not exhibit desired characteristics may be sold as pets as early as eight weeks of age.

Mrs. Snyder's practice in the past has been to turn one or two of the dogs loose at one time, four times a day, for exercise. She intends to continue the practice. In the past, dogs have strayed from the property.

Mrs. Curtis, an adjoining property owner of parcel 390 depicted on the site location map, testified in opposition to the request. Mrs. Curtis expressed concerns regarding depreciation of adjacent residential property values and adverse affects upon adjacent residents resulting from dogs barking; the possibly of pollution of the stream adjacent to the proposed kennel building; the practice of allowing the dogs to run free; and, the probability of additional vehicular traffic to and from the premises using part of the driveway shared with Mr. and Mrs. Curtis.

APPLICABLE LAW

The property is zoned "A" Agricultural District as shown on zoning map 12B. The land use provisions for the agricultural district are specified in Article 6 of Ordinance 1E. Section 6.3, Conditional uses (requiring Board authorization), subsection (j) lists kennels, subject to the minimum distance requirements specified in Section 4.12 of the ordinance. In cases where more than 10 dogs are involved, the requirement increases to two times the minimum distance requirements of Section 4.12. In this case, the facility would be for 10 or less adult dogs. The distances noted on the annotated location survey plat indicate that the proposed kennel would comply with the minimum distance requirements of Section 4.12.

Article 20, Definitions; Section 20.24, Kennel, (Amended 2-15-68) of Ordinance 1E states:

"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."

In the past, the Board has accepted the notion that dogs are not adult until one year old, and that judgements regarding the quality of individual dogs for showing or field training are difficult to make earlier.

Article 17, Board of Appeals; Section 17.7, Limitations, guides and standards of Ordinance 1E governs the Board in considering conditional use requests. The provision 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 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."

In addition, the Board is governed by decisions of the courts. In the case of *Schultz v. Pritts*, 291 Md. 1, (1981) at 22, 23 the court wrote:

"We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." Citations omitted.

For purposes of clarification, a conditional use is also known as a special exception.

The Board extended the time to issue this decision in accordance with the provisions of Article 17, Section 17.4.9 of Ordinance 1E.

REASONING

Mrs. Snyder has kept from four to nine adult dogs on the premises since moving there approximately five years ago, allowing the dogs to run free daily, and to occasionally stray from the property. This practice constitutes a threat to the public, whether actual or perceived, and allowing dogs to stray from the property is in violation of the Carroll County Animal Control Ordinance. (Ordinance 26, as amended.)

The actual number of adult dogs and dogs less than one year of age that would be kept on the premises at one time will far exceed the ostensible limit of ten dogs.

The open runs will allow the sounds of dogs barking to travel almost unrestricted to adjacent residential properties, adversely affecting adjacent residents' peaceful enjoyment of their properties, and probably depreciating residential property values contrary to the purpose of Ordinance 1E.

Vehicular traffic to the property will probably increase in proportion with the number of dogs for sale, particularly and adversely affecting use of that part of the driveway shared with Mr. and Mrs. Curtis.

Due to the proximity of the proposed kennel to the nearest stream, it is probable that the streams will become polluted.

CONCLUSION

Mrs. Snyder has failed to meet her burden of proof that the proposed kennel can be conducted on the premises in accordance with the standards of the Carroll County Zoning Ordinance. Therefore, the Board of Zoning Appeals hereby denies the conditional use request for the proposed kennel for not more than ten dogs.

Jan. 19, 1990
Date

John Totura
John Totura, Chairman