

Tax Map/Block/Parcel
No. 61/15/36

Building Permit/Zoning
Certificate No. 90-0969

Case 3358

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

APPLICANTS: Paul DiNenna and Joyce DiNenna
2922 Old Liberty Road
New Windsor, Maryland 21776

ATTORNEY: JoAnn Ellinghaus-Jones, Esquire
1326 N. Main Street
P.O. Box 176
Hampstead, Maryland 21074-0176

REQUESTS: Requests for removal of restrictions of Board of Zoning Appeals approval of the kennel conditionally authorized in Case 2997 regarding the number of adult dogs, the breed of dogs which may be bred, the number of boarding runs and breeding runs, approval of outside portable runs, use of an existing block building for a cattery and grooming room, and a business sign on the roof eave of an existing concrete building; and, variances to the minimum distance requirements pertaining thereto

LOCATION: 2922 Old Liberty Road in Election District 9

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

HEARING HELD: May 30, 1990; July 9, 1990

FINDINGS AND CONCLUSION

This case involves a request to modify the Board's conditions regarding its approval of a conditional use in Case No. 2997. As such, the findings of fact of the prior case are particularly important and are hereby incorporated subject to the differences hereinafter noted. Hearings were held May 30, and July 9, 1990. Pursuant to Section 17.4.10 of the Ordinance, the time for rendering a decision was extended by the Board.

*Page 4 amended to read: Therefore, the kennel may be operated from 7:30 a.m. - 8:00 p.m. Monday through Saturday and 10:00 a.m. - 6:00 p.m. on Sundays.

The Applicants' request an increase of the number of adult dogs which may be kept in the kennel to 128. The Board finds the Applicants' request to be excessive in light of the restraints placed upon the Board by Section 17.7 of the Zoning Ordinance. A substantial amount of evidence was presented in opposition to all of the Applicants' requests by a neighbor who appeared at the hearings and was represented by counsel. The evidence indicated a great deal of discord and animosity among the parties but was only minimally relevant to the issues before the Board. The Board shall address the evidence presented to the extent that it was relevant to the issues at hand.

Evidence was presented that there was an incident wherein one dog in the Applicants' care was allowed to wander onto the neighbor's land and cause that neighbor concern. With the increase of the number of dogs, the Board is concerned that such incidents would increase thereby adversely affecting the neighbors quiet enjoyment of their property. In addition, testimony was introduced indicating some adverse impact of present traffic problems with the operation of the kennel, e.g., delivery trucks blocking the roadways and having to drive on the adjoining property owners land to maneuver. It is inevitable that increasing the number of dogs permitted to 128 would exacerbate the situation, i.e., more traffic, more deliveries and more barking.

However, the Board feels that increasing the number of adult dogs permitted to 75 would not cause a significant impact provided the total number of canines did not exceed 130 and provided the conditions hereinafter imposed are fulfilled. By imposing these limits and conditions, the Board feels that the Applicants can continue to breed dogs and board a large number of dogs, and yet not adversely affect the traffic conditions, property values, and the neighbor's quiet enjoyment of their property. The conditions imposed are intended to ameliorate present concerns as well as allow for some growth.

The Applicants next requested the authorization to breed different breeds of dogs. The Board was not impressed with the Applicants' reasons for this request. The primary reason presented for this request was the need that arose when the Applicants' daughter returned from college with her dogs, which she wished to breed, i.e. Cocker Spaniels, Poodles and Cockapoos. However, the request was not limited to such breeds. Therefore, to remove the restriction would permit the breeding of any breed. Different breeds have different effects upon the neighborhood and adjoining property owners. There was insufficient evidence before the Board to enable the Board to make a determination regarding the effects these dogs would have upon the neighborhood. The Board cannot in good conscious give a blanket approval for a specific breed whose impact may be ascertained, they may come before the Board with such a request.

The Applicants also requested authorization for additional runs. However, their testimony did not support such a request. Mrs. DiNenna testified that the runs could easily accommodate more dogs than they now board (or as now approved). There was testimony presented that certain dogs preferred earthen runs as opposed to concrete ones. This can be resolved with different use of the existing number of runs rather than increasing the number of outside runs which would have an adverse impact on the neighbor's quiet enjoyment of their property.

The Board also finds that the use of Block buildings for a cattery and grooming of dogs would not unduly affect the adjoining resident's peaceful enjoyment of their homes, and to be an appropriate use of the structure.

Therefore, based on the evidence presented, the Board concludes the following:

1. The number of dogs which shall be permitted in the kennel at any one time shall be a maximum 75 adult dogs. However, the total number of canines at the kennel may not exceed 130 at any given time.
2. The breed of dogs which may be bred shall remain the same, i.e., German Shepards.
3. The number of runs authorized previously shall remain the same, i.e., 35, with not more than 20 runs used in conjunction with the breeding program. Therefore, the request to modify and increase the number of runs in this condition is denied. The use of wall units to house a maximum number of 15 dogs is authorized as well as the use of a similar wall unit inside the existing kennel. The use of "portable runs" in lieu of the runs on concrete is approved.
4. The use of the existing block building for a cattery and the grooming of dogs is approved.
5. The erection of a 16 square foot sign to replace the existing sign is also approved.

These authorizations are contingent on the following requirements being fulfilled:

1. The Applicants must provide suitable parking facility on their property for 15 vehicles for the exclusive use by their clients.
2. The Applicants must submit to the Board for approval a revised site plan (drawn to scale)

reflecting the proper locations of the buildings, runs, kennel entrance and parking facilities. Said site plan, shall upon acceptance by the Board, become part of this decision and the record.

3. The means of access to the kennel must be improved so that ingress and egress may be accomplished without encroaching on the neighbors property.
4. The gate accessing the property must remain closed at all times except to allow ingress and egress of clients and deliveries.
5. The evidence presented indicated that the hours of operation were 9:00 a.m. - 6:00 p.m., Monday through Saturday, and 10:00 a.m. - 3:00 p.m. on Sunday. The Board feels compelled to place a restriction on the hours of operation in the event that Applicants wish to change their hours. Therefore, the kennel may be operated from 7:30 a.m. - 8:00 p.m. Monday through Saturday and 10:00 a.m. - 6:00 p.m. on Sundays.

Sept. 28, 1990
Date

IM/bmh/C3358DEC
September 27, 1990

John Totura
John Totura, Chairman