

Tax Map/Block/Parcel
No. 31-1-346

Building Permit/Zoning
Certificate No. 90-1646

Case 3387

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

APPLICANTS: Mary Louise Mays and Kenneth R. Mays
527 Pleasant Hill Road
Owings Mills, Maryland 21117

ATTORNEY: William Hahn, Esquire
10 Church Lane
Pikesville, Maryland 21208

REQUEST: A conditional use for a kennel for more than ten dogs

LOCATION: 51 John Owings Road in Election District 7

BASIS: Article 5, Sections 5.2(c) and 5.5; Ordinance 1E
(The Carroll County Zoning Ordinance)

HEARING HELD: June 26, 1990

On June 26, 1990, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use for a kennel for more than ten dogs at 51 John Owings Road.

The Board visited the site on June 22, 1990, 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, the Board will authorize the kennel as a conditional use, subject to the conditions of authorization noted below.

The pertinent findings determining the Board's decision include the following facts.

FINDINGS OF FACT

The 24.017 acre property is located to the south of John Owings Road and to the east of Littlestown Pike (Md. Rt. 97).

As depicted on the site location map used to post the Hearing Notice on the property, the County Commissioners of Carroll County own 76.67 acres adjoining the property to the northwest. The majority of the land is north of John Owings Road. This is the site of the Carroll County Sports Complex.

The property to the northeast and east is proposed to be subdivided into a sixteen lot residential cluster subdivision. (Protestants' Exhibits 1 and 2.) The minimum required lot area for clustering in the Conservation District is two acres with a lot width of at least 175 feet. The applicants hold options to purchase proposed lots 1 and 5 of the subdivision following its recordation. If the subdivision plat is recorded as proposed, these lots will adjoin the applicants' property to the northeast. If the proposed subdivision is not recorded in accordance with the provisions of the Option Agreement, Protestants' Exhibit 10, the agreement conditionally provides that the applicants may purchase the acreage of what would have comprised lots 1 and 5.

Of the two properties adjoining the applicants' property to the southwest, one is an existing 16 acre parcel that must be recorded as a single lot subdivision to qualify for development with a dwelling, and the other is an 11 acre lot improved with a dwelling. (Protestants' Exhibits 3 and 4.) The present owners of the 11 acre property may further subdivide that property for residential purposes.

Access to the applicants' property is provided by a right of way connecting to John Owings Road about 1,000 feet east of Littlestown Pike intersection. The right of way for the driveway is located within the fee simple strip of land providing lot frontage on John Owings Road for proposed lot 1, Mizewell Keep subdivision. (Protestants' Exhibit 3.) However, the applicants' property is not part of an existing or proposed subdivision.

The proposed site is improved with a two story dwelling and a horse barn, which is centrally located on the lot. (Protestants' Exhibit 3.) The dwelling is located adjacent and east of the barn.

Part of the southerly side of the barn will be utilized for construction of the kennel facility. The facility will have ten interior and exterior runs, 4 feet in width. The interior of the facility will be about 12 feet by 40 feet and the exterior runs will extend 15 feet from the barn with the same 40 feet width. Visibility of the barn is limited by trees, topography, and distance except on the westerly side where there are less trees, and the abutting land is pasture. In addition to the kennel, three or four dogs may be kept in the dwelling.

The purpose of the dwelling is to allow the applicants to continue their long-term participation in a voluntary Newfoundland rescue association dedicated to caring for and placement of Newfoundland dogs in need. The breed is characteristically large, powerful, and quiet. They are one of the breeds suitable for use in public service. The dogs are evaluated, and, if appropriate, trained for obedience. The process of evaluation, training, and placement may require months to complete.

As proposed, establishment of the kennel will not significantly increase vehicular traffic to and from the site. Such traffic will generally result from appointments and will not cause traffic congestion nor adversely affect the residents of adjacent properties or the values of those properties. Prospective owners are interviewed and counseled at their home, not at the rescue kennel.

The applicants currently have nine dogs, three that they have adopted. The maximum number of adult dogs, one year of age or older, will be 15. Although no breeding program is proposed, litters may be delivered while dogs are in the rescue program. The applicants may also adopt such dogs less than one year old, or accept for the placement program.

No commercial boarding or grooming will be conducted, and no identification sign is proposed. No employees are proposed.

Testimony and evidence presented in opposition to the kennel emphasized:

adverse affects resulting from barking dogs and vehicular traffic on the adjacent properties, the proposed residential subdivision, and the orderly growth of the community;

depreciation of property values; and,

enforcement of the distance requirements governing the kennel from proposed residential subdivision lots.

From the record, it is evident to the Board that vehicular traffic in the area will increase. However, the increase will result from establishment of the county sports complex, and residential development. The establishment of the kennel will not generate significant vehicular traffic in the area, and any such traffic that does result will neither create congestion, nor adversely affect the residents of adjacent properties or their values of the properties.

Although concerns were expressed regarding barking dogs disturbing the peace and quiet of the neighborhood, the Board is not convinced that this would be the case. The applicants are experienced in handling the breed and operating this type of kennel so as not to adversely affect the adjacent properties. Accordingly, the absence of loud, consistent barking, the Board is convinced that the establishment of the kennel, as proposed and conditioned below, will not depreciate the property values or adversely affect the orderly growth of the area.

With respect to the proposition that the distance requirements should apply to the proposed subdivision lots, the Board finds

that the provisions of the distance requirements, as written, are applicable to existing lots, but not to purposed lots.

APPLICABLE LAW

Unless otherwise noted, Articles and Sections cited below are of Ordinance 1E.

The property is zoned "C" Conservation District as shown on zoning map 31A. The adjoining properties to the southwest are zoned "A" Agricultural District. The remaining properties surrounding the site are also zoned "C" Conservation District. The land use provisions for "C" Conservation District are specified in Article 5. Section 5.2, Conditional Uses, (requiring Board authorization) (added 7/17/69) reads in relevant part:

...kennels with or without runways, provided that the minimum area is 10 acres for any of the aforesaid uses, and provided that any structure or area used for such purposes shall be subject to twice the distance requirement as specified in Section 4.12....(Amended 4-17-79)

Section 5.5, Lot Area, Lot Width and Yard Requirements, specifies for Other Uses, minimums of 5 acres for the lot area, 300 feet for the lot width, 50 feet for the front and rear yards, and 100 feet for each side yard. The proposed kennel, including the dwelling, complies with these requirements.

A kennel is defined in Article 20, Section 20.24 (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) reads:

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 by a dwelling.

As the applicants' property does not adjoin "R" Residential District; the adjoining properties are in excess 3 acres; there is no school, church, or institution for human care within 400 feet of the proposed kennel or dwelling; and, there is no evidence of a curtilage area of an existing residence on a lot of less than 3 acres within 400 feet of the proposed kennel and dwelling--the proposed kennel and dwelling comply with the distance requirements.

For clarification, Article 20, Section 20.10B defines curtilage as:

Buildings and areas in close proximity to a dwelling which are habitually used for residential purposes.

Article 17, Board of Appeals; Section 17.7, Limitations, Guides and Standards 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 a 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 relating the above provisions to the record of this case and earlier findings above, the Board finds that the applicants have met their burden of proof to establish that the proposed kennel will be compatible with the land uses permitted within the "C" Conservation District, and will not be contrary to the intent and purpose of Ordinance 1E.

CONCLUSION

Therefore, the Board hereby authorizes the kennel as a conditional use, subject to the following conditions of authorization which are imposed in order to promote the intent and purpose of the zoning ordinance:

1. Due to the particular circumstances in this case, the authorization shall be limited solely to the applicants, and shall not inure to the benefit of heirs or assigns. This condition shall not preclude reapplication by others in the future for a kennel in accordance with the provisions of the zoning ordinance.
2. Not more than fifteen adult Newfoundland dogs, age one year or older, shall be kept on the premises at one time. Not more than four adult dogs shall be maintained within the dwelling at one time.
3. In accordance with the applicants' presentation, the kennel facilities shall be limited to ten interior and exterior runs, using a portion of the existing barn for construction of the runs.

4. No commercial boarding, breeding, grooming or business sign shall be permitted in conjunction with operation of the kennel.
5. No employees are authorized in conjunction with operation of the kennel.

July 24, 1990

Date

JDN/bmh/c3387dec
July 24, 1990

John Totura
John Totura, Chairman