

Tax Map/Block/Parcel
No. 61-15-528

Building Permit/Zoning
Certificate No. 91-0967

Case 3557

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

APPLICANTS: Maurice K. Shamer and Helen Marie Shamer
4025 Franklinville Road
New Windsor, Maryland 21776

REQUESTS: A conditional use for a kennel for not more than
10 dogs, and a variance reducing the minimum
distance requirements of 200 feet pertaining
thereto

LOCATION: 4025 Franklinville Road in Election District 9

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

HEARING HELD: June 27, 1991

On June 27, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning requests for a conditional use for a kennel for not more than ten dogs, and a variance reducing the minimum distance requirements of 200 feet pertaining thereto at 4025 Franklinville Road.

The Board visited the site June 14, 1991.

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 conditionally authorize the requests.

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

FINDINGS OF FACT

The 1.136 acre lot is located on the east side of Franklinville Road one half of a mile north of Liberty Road (Md. Rt. 26) intersection, and is improved with a single family dwelling constructed in 1987. Similar lots adjoin the property to the north and south, and two larger lots are located to the rear, or east, of the premises. The property to the west of Franklinville Road is agricultural. Dwellings are located on the lots to the north and east, and a mobile home classified as a nonconforming use is located on the lot to the south.

Mr. and Mrs. Shamer have kept as many as seven dogs, including two young boxers, in their home. One of the dogs has since died. Recently, they temporarily kept a relative's pet.

The six dogs, which are pets, are kept in the dwelling and are allowed to exercise outside. An invisible (underground) electric fence was installed with construction of the dwelling to confine the dogs to the property. The system requires that each dog wear a collar that is sensitive to the electricity in the buried cable. Each dog is then trained to understand the undesirable effects of approaching the fence. With training, the dogs learn not to attempt to leave the property.

The system is, however, not free of problems. If the electrical circuit is interrupted, the system is deactivated and must be reset to be operative.

One incident in which two young boxers left the premises, when the electrical circuit was interrupted, has occurred since 1987. At the time of the incident, the boxers had not been trained to the collar. Since then, the boxers have been trained and there have not been any more incidents of dogs leaving the property unsupervised.

A different problem developed when one or more dogs on the property to the rear and one or more of Mr. and Mrs. Shamer's dogs would bark at each other. In order to resolve the problem, a privacy fence was erected paralleling the rear property line. The fence apparently solved the problem.

As noted in Applicants' Exhibit 15, four of the dogs are:

Babe--a Chesapeake Bay, 13 years old
Sidney--an Australian shepard, 6 years old
Prince--a sheltie, 11 years old
Travis--an Australian shepard, 10 years old

The two remaining dogs are young boxers. As also noted in exhibit 15, the average life span for dogs is 10 to 14 years.

No additional dogs are to be acquired or kept on the premises, and no separate doghouses or kennel facilities are involved.

As requested, no commercial boarding, breeding, or grooming of dogs is proposed.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

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

Article 20, Section 20.09 defines conditional uses 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 variances as:

A variance is 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; Sections 15.0, Generally, and 15.5, Variance, read respectively and in relevant part:

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..., lot area, lot width, ..., and distance requirements specified in Section 4.12.... 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 matter so as to grant relief without substantial injury to public health, safety and general welfare.

The lot is zoned "A" Agricultural District as portrayed on zoning map 61B. The land use provisions for the district are expressed in Article 6. Section 6.3, Conditional Uses, (requiring Board authorization), paragraph (j) reads in relevant part:

Kennels...; provided such use shall be subject to the distance requirements specified in Section 4.12, except that where the kennel involves more than ten dogs, the distance requirement shall be two (2) times the requirements specified in Section 4.12.

Section 6.7, Lot Area, Lot Width and Yard Requirements, specifies that for other principal permitted or conditional uses the minimum requirements are:

Lot Area - 3 acres
Lot Width - 200 feet
Front Yard - 40 feet
Side Yards - 30 feet each
Rear Yard - 50 feet

Article 4, General Provisions; Section 4.12, Distance Requirements (Amended 7/5/77) specifies in relevant part:

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.

REASONING

In accordance with the circumstances in this case, conditional authorization of the conditional use and variance to allow not more than the six dogs presently kept by Mr. and Mrs. Shamer on the property should not significantly affect the residents of adjacent properties, or the values of those properties.

Three of the six dogs are approaching the end of their life expectancy and will not be replaced. All of the dogs are pets, sheltered in the dwelling, and are usually confined to the premises. With reduction, by attrition, of the number of dogs to three or less, the land use will no longer be classified as a

kennel, and the authorizations of the conditional use and variance will be unnecessary.

CONCLUSION

Therefore, the Board hereby authorizes the conditional use and necessary variances pertaining to the kennel, 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, the authorizations are specifically restricted to Maurice K. Shamer and Helen Marie Shamer, and shall expire when the premises are no longer used as a kennel as defined and regulated by the zoning ordinance. The authorizations shall not inure to the benefit of heirs or assigns.
2. The authorizations are specifically limited to the particular dogs now comprising the kennel, and identified as the two young boxers, and:

Babe--a Chesapeake Bay, 13 years old
Sidney--an Australian shepard, 6 years old
Prince--a sheltie, 11 years old
Travis--an Australian shepard, 10 years old
3. If any dog dies, it shall not be replaced, except that this condition shall not preclude the keeping of three adult dogs as now allowed by the provisions of the zoning ordinance and as may be amended in the future.
4. In conjunction with these authorizations, the invisible electric fence shall be maintained in good repair at all times, and the system must be operable and activated when any dog is allowed out of the dwelling to prevent the dog, or dogs, from straying from the premises.
5. No commercial boarding, breeding, or grooming of dogs shall be conducted on the premises in association with operation of the kennel.
6. No business identification sign is authorized for display in association with the kennel.

July 12, 1991
Date

JDN/bdc/C3557DEC
July 11, 1991

John Totura
John Totura, Chairman