

Tax Map/Block/Parcel
No. 41-4-11

Building Permit/Zoning
Certificate No. 91-1013

Case 3559

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

APPLICANTS: Robert Barrett and Lisa Barrett
Faraway Kennels
4622 Lower Beckleystville Road
Hampstead, Maryland 21074

AGENT: Charles Phippen, P.A.
2305 Pot Spring Road
Timonium, Maryland 21093

REQUESTS: A conditional use for the addition of 20 kennels
and a grooming area to the existing kennels, and
a variance reducing the minimum distance
requirements of 400 feet pertaining thereto

LOCATION: 4622 Lower Beckleystville Road in Election
District 8

BASES: Article 5, Sections 5.2(b) and 5.5; 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 the conditional use request for the addition of 20 kennels and a grooming area to the existing kennels, and a variance reducing the minimum distance requirements of 400 feet pertaining thereto on the premises of 4622 Lower Beckleystville Road.

The Board visited the site June 14, 1991, 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 deny the requests for the conditional use and variance.

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

FINDINGS OF FACT

The 11 and 1/4 acre property is located on the northerly side of Lower Beckleystville Road about 700 feet east of Wynside

Lane intersection. As depicted on the site location map for this case, most of the westerly side of the property adjoins a residential subdivision of 41 lots, known as Scott's Ridge Development. At least several of the lots are within 400 feet of the existing and proposed kennel facilities. Residential development is also depicted on the site location map on the north side of Lower Beckleysville Road, to the east and west of the property. The remaining land surrounding the property appears to be large tracts. The record is silent regarding improvements and use of these tracts.

As portrayed by the plot plan filed with the application, the property's configuration is irregular. Apparently, due to the narrowness of the site, the improvements consisting of a dwelling, two barns and existing kennel facility are located over 1000 feet from the frontage of the property on Lower Beckleysville Road. Foliage screens much of the driveway from view from adjoining properties.

The existing commercial boarding and grooming kennel facilities were established prior to the adoption of Ordinance 1E on August 17, 1965. The kennel is classified as a nonconforming use for reason that kennels are not allowed in the "C" Conservation District as principal permitted uses, the kennel was never authorized by the Board as a conditional use, and the facilities do not conform with the dimensional regulations of the "C" Conservation District.

Mr. and Mrs. Barrett now propose to construct a new kennel building with a grooming area and 20 exterior runs. The existing kennel building has 16 exterior runs and 12 interior runs. Although testimony was presented that the concrete construction of the new facility would reduce the noise of dogs barking, no probative evidence was introduced to substantiate the conclusion. The 12 existing interior runs would be removed, and a covered walkway constructed to connect the buildings. The total number of kennel runs would then be 36. Mr. and Mrs. Barrett would continue to specialize in boarding and grooming. Although they have one dog of their own, which may be occasionally bred, they do not propose a commercial breeding program.

Mr. and Mrs. Barrett assert that dogs in the neighborhood are responsible for barking that disturbs the peace and quiet of nearby residents, rather than dogs kept in the kennel, and that foliage screens the kennel facilities from view from adjacent properties in Scott's Ridge Development.

The business is now licensed as a Class C kennel for 26 to 50 dogs. (Applicants' Exhibit 2.) The hours of operation are from 8:30 a.m. to 8:30 p.m. No other specific details of how the business is conducted were presented to the Board.

The property complies with the minimum requirements of ten acres of lot area for a kennel, and the kennel building complies with the minimum requirements of 50 feet for the front and rear yards.

The proposed kennel does not comply with the minimum required side yard of 100 feet, or with the minimum distance requirements of 400 feet from a lot in a residential zoning district.

Due to the irregular configuration of the property, it appears questionable as to whether or not the property complies with the minimum required lot width of 300 feet as measured from the midpoints of the side property lines as specified in Section 20.25(c)2 of the zoning ordinance. However, as the Notice of Public Hearing did not specify the necessity for a variance to the lot width, or to the minimum side yard requirement, the Board cannot consider variances to those requirements at this time.

Testimony in opposition to the request was presented by an owner and resident of an adjacent, but noncontiguous lot in Scott's Ridge Development. The objection is based on invasive barking, particularly noticeable in the evenings, and that contrary to the applicants' position, the kennel building is visible from at least one property in the subdivision.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

As depicted on zoning map 41B, the property is zoned "C" Conservation District. The lots within the residential subdivision known as Scott's Ridge Development, and portrayed on the site location map in this case, are zoned "R-20,000" Residence District. The remaining properties surrounding the site are also zoned "C" Conservation District.

The land use provisions for the "C" Conservation District are expressed in Article 5. Section 5.2, Conditional Uses (requiring Board authorization), paragraph (b) reads in relevant part:

...kennels with or without runways, provided that the minimum area is ten 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)

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

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;

Section 5.5, Lot Area, Lot Width and Yard Requirements specifies the following minimums under Other Uses, which includes kennels, and are relevant to this case:

Lot Width	-	300 feet
Front Yard	-	50 feet
Side Yard	-	100 feet
Rear Yard	-	50 feet

In considering conditional use requests, the Board is governed by the provisions of Article 17, Section 17.7 (Amended 7/12/88) including decisions of the courts.

The standard for special exceptions, which are known as conditional uses in Ordinance 1E was established in the case of *Schultz v. Pritts*, 291 Md. 1 (1981) pp 22, 23 in which 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.)

Article 20, Section 20.24, as amended February 15, 1968, 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 20.39 defines a variance as:

...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... yard regulations,...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 manner so as to grant relief without substantial injury to public health, safety and general welfare.

Article 4, General Provisions; Section 4.1, Ordinance deemed minimum regulations; uniformity and Section 4.2, Compliance with ordinance, read respectively:

The regulations set by this ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land except as hereinafter provided.

Except as hereinafter specified, no land, building, structure, or premises shall hereafter be used, and

no building or part thereof or other structure shall be located, erected, reconstructed, extended, enlarged, converted or altered except in conformity with the regulations herein specified for the district in which it is located.

Section 4.3, Nonconforming Uses, (Amended 3/17/81) reads in relevant part:

Any building, structure or premises lawfully existing at the time of the adoption of this ordinance, or lawfully existing at the time this ordinance is amended, may continue to be used even though such building, structure or premises does not conform to use or dimensional regulations of the zoning district in which it is located; subject, however, to the following provisions;

(a) Structural alterations or enlargement of any building, structure or premises which does not comply with the use or dimensional requirements of this ordinance shall be allowed only as follows:

(1) Upon application, the Board may approve structural alterations or enlargement of a nonconforming use, subject to the provision of Article 17, Section 17.6;....

Because of amendment, Section 17.6 cited above should now read 17.7.

REASONING

Even though Section 4.3(a)1 provides for the Board to authorize structural alteration or enlargement of lawfully existing nonconforming uses, subject to the provisions of Section 17.7, the Board is convinced that when the nonconforming use has been legislatively determined to be a conditional use in the respective zoning district in which the property is located, the regulations of that district are the appropriate and applicable regulations governing structural alteration or enlargement of the particular land use. As kennels are a conditional use in the "C" Conservation District, the regulations of Article 5 apply in this case.

The proposed kennel with 20 exterior runs and a greater capacity of dogs would be closer to the homes in the subdivision than the existing kennel. In the past and continuing to the present, the barking of dogs boarded in the kennel has adversely

affected at least several of the property owners and residents of Scott's Ridge Development. From the record of this case, the Board is convinced that establishment of the kennel, as proposed, would further disturb the peace and quiet of the neighborhood, depreciate property values of nearby homes in the subdivision, and harm their marketability.

Accordingly, authorization of the kennel would be contrary to the purpose of the zoning ordinance as expressed in Article 1, and the provisions of Section 17.7 regarding the effects of the proposed use on the peaceful enjoyment of people in their homes, conservation of property values, and appropriate land uses.

Furthermore, these detrimental effects, including the depreciation of property values and harm to the marketability of nearby homes particularly affected by the noise of the barking dogs preclude authorization of the kennel as a conditional use in accordance with the standard expressed in *Schultz v. Pritts*.

In considering the variance request for reduction of the minimum distance requirement of 400 feet, the Board finds no evidence of practical difficulty and unreasonable hardship in the use of the property that would justify allowing the kennel to be established as close as 50 feet from residentially zoned lots in Scott's Ridge Development. Furthermore, it is evident that even if there were some indication of practical difficulty and unreasonable hardship in the use of the property, authorization of the variance would be contrary to the intent and purpose of the zoning ordinance.

CONCLUSION

Therefore, the Board hereby denies the requests for the conditional use for the addition of 20 kennels and a grooming area to the existing kennels, and the variance reducing the minimum distance requirements of 400 feet pertaining thereto.

July 22, 1991
Date

JDN/bmh/c3559dec
July 19, 1991

John Totura
John Totura, Chairman