

Tax Map/Block/Parcel
No. 38-3-675

Building Permit/Zoning
Certificate No. 92-0296

Case 3672

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Dennis Ray Britton
1201 Hughes Shop Road
Westminster, Maryland 21158

ATTORNEY: Clark R. Shaffer, Esquire
6 North Court Street
Westminster, Maryland 21157

REQUEST: 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, if found necessary

LOCATION: 1201 Hughes Shop Road in Election District 7

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

HEARING HELD: March 24, 1992

On March 24, 1992, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use request for a kennel for not more than 10 dogs, and a variance reducing the minimum distance requirements of 200 feet pertaining thereto, if found necessary, at 1201 Hughes Shop Road. The request for the variance to the minimum distance requirements was withdrawn by the applicant during the public hearing.

The Board visited the site prior to the public hearing on March 9, 1992. At the request of Sharon Harris and Ken Harris, and Tracey Wilson and Micah Wilson received by the Board March 24, 1992, the Board revisited the site at approximately 12:45 p.m., March 26, 1992. The Board observed the dogs in their exercise pens on both occasions.

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 conditional use, subject to the conditions of authorization imposed below.

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

FINDINGS OF FACT

The 3.1030 acre lot is located on the east side of Hughes Shop Road about .68 of a mile north of Pinch Valley Road intersection. The lot is improved with a single family dwelling, a small stable, four shelters with exercise pens for dogs, and a storage shed as depicted on Applicant's Exhibit 2 and the plot plans submitted with the application. The shelters, as portrayed by photographs identified as Applicant's Exhibits 3 and 5, are located in the rear yard and consist of a shed placed on a concrete pad with attached chain link fence enclosing an exercise area for each shed. The shelter located adjacent to the southeasterly corner of the lot will either not be used to shelter dogs, or will be moved to preclude the necessity of a variance to the minimum distance requirements pertaining to the kennel as specified in Section 4.12 of the zoning ordinance.

As depicted by Applicant's Exhibits 1 and 2, trees, shrubs and flowers have been planted in the rear yard for purposes of landscaping the yard and eventually screening the shelters and exercise pens from adjacent properties. Fencing has been erected adjacent to the side and rear property lines for the purpose of retaining the dogs on the premises when they are confined in their exercise pens. The gates providing access to the exercise pens are usually locked. A privacy fence may also be erected in the future for purposes including screening and security.

Mr. and Mrs. Britton presently have 4 Siberian Huskies and 3 Rottweilers. In the past, the dogs have been usually kept within their respective shelters and exercise pens when they are on the premises. They are placed within the shelters at night. Mr. Britton testified that the dogs, when on the premises, will be kept within the exercise pens unless they are placed on leashes.

During the Board's visits to the site, the dogs were within their respective exercise pens or shelters. Some of the dogs were observed barking, but not in an unusual manner, excessively, or particularly loud.

Both Mr. and Mrs. Britton handle their dogs at dog shows. No commercial boarding, breeding, grooming, or business identification sign is proposed in conjunction with the kennel. One litter may be planned a year. As a matter of practice, placement of the prospective puppies is accomplished during advanced planning for the litter. Accordingly, no conflict need develop regarding the number of canines that the Board will conditionally authorize to be kept on the premises.

As proposed, there is no evidence that the kennel will generate significant vehicular traffic to and from the premises.

As indicated by the site location map used in this case and Applicant's Exhibits 10 and 11, the property to the north is a 43

acre farm; the property to the east is a 3 acre lot improved with a dwelling; the property to the south is a 5 acre lot improved with a dwelling and agricultural barn; and the confronting properties on the west side of Hughes Shop Road are a 131 acre farm improved with a dwelling, and a residential lot improved with a dwelling diagonally opposite the northwest corner of the premises. Only the dwelling on the 3 acre lot to the east, Mr. and Mrs. Wilson's residence, is relatively near the premises. However, the kennel shelters and exercise pens will be in excess of the minimum distance requirement of 200 feet from the dwelling. Although Mr. and Mrs. Wilson assert that the curtilage area of the lot is less than 200 feet from the shelters and exercise pens, the Board, after considering their testimony and viewing the respective properties before and after the public hearing, is convinced that their use of the premises within 200 feet of the shelters and exercise pens is, at best, a casual use; not a habitual use as expressed in the definition of curtilage area.

Although two more homes have been constructed, one adjoining and one adjacent to the property than portrayed by Applicant's Exhibit 4, the primary use of the neighboring lands is agriculture.

Opponents of the request presented testimony pertaining to the dogs barking, disturbing the peace and quiet of residents of adjacent properties; odors from the kennel; generation of vehicular traffic to and from the kennel; and, insuring that the dogs not be permitted to wander from the premises, threatening residents of adjacent properties or the public.

In addition, a letter from nearby property owners and a petition, both in opposition to the request, were introduced as Protestants' Exhibits 2 and 3 respectively. Neither the letter nor the petition are probative evidence in this case.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

Article 20, Definitions; Section 20.24, Kennel (Amended 2/15/68) specifies a kennel to be:

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.

The property and surrounding area is zoned "A" Agricultural District as depicted on zoning map 38A. 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...with runways; provided such use shall be subject to the distance requirements specified in Section 4.12....

Section 4.12, Distance Requirements (Amended 7/5/77) states:

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.

Of the requirements, only paragraph (d) applies in this instance.

The provisions of Section 6.7, Lot Area, Lot Width and Yard Requirements, do not specifically list kennels. Therefore, the requirements for Other Principal Permitted or Conditional Uses are applicable. They include a lot area of 3 acres, a lot width of 200 feet, a front yard of 40 feet, side yard of 30 feet, and a rear yard of 50 feet.

Section 20.09 defines a conditional use 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 17, Board of Appeals; Section 17.2, General Powers, states in relevant part:

The Board shall have the following powers:

- (b) To hear and decide conditional uses to the ordinance upon which such Board is required to pass.

In addition, the Board is governed by Section 17.7, Limitations, Guides and Standards, which specifies:

Where in these regulations certain powers are conferred upon the Board of 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.

The Board is also governed by decisions of the courts. In the case *Schulz v. Pritts*, 291 Md. 1, 20-21, (1981) the decision read:

Generally, when a use district is established, the zoning regulations prescribe that certain uses are permitted as of right (permitted use), while other uses are permitted only under certain conditions (conditional or special exception use). In determining which uses should be designated as permitted or conditional in a given use district, a legislative body considers the variety of possible uses available, examines the impact of the uses upon the various purposes of the zoning ordinance, determines which uses are compatible with each other and can share reciprocal benefits, and decides which uses will provide for coordinated, adjusted, and harmonious development of the district. (Footnote omitted.) (Citations omitted.)

Because the legislative body, in reaching its determination, is engaged in a balancing process, certain uses may be designated as permitted although they may not foster all of the purposes of the zoning regulations and, indeed, may have an adverse effect with respect to some of these purposes. Thus, when the legislative body determines that the beneficial purposes that certain uses serve outweigh their possible adverse effect, such uses are designated as permitted uses and may be developed even though a particular permitted use at the particular location proposed would have an adverse effect above and beyond that ordinarily associated with such uses. For example, churches and schools generally are designated as permitted uses. Such uses may be developed, although at the particular location proposed they may have an adverse effect on a factor such as traffic, because the moral and educational purposes served are deemed to outweigh this particular adverse effect.

When the legislative body determines that other uses are compatible with the permitted

uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. (Citations omitted.)

On Page 22, 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.)

REASONING

By definition, up to three adult dogs can be kept on the premises without conflicting with the provisions pertaining to kennels, or the necessity of complying with the minimum distance requirements.

In considering the record of this case relative to the provisions of Section 17.7 and the standard expressed in *Schulz v. Pritts*, it appears that those in opposition to the request are particularly concerned with the possibility of dogs escaping from the premises, threatening the safety of neighbors and the public, and barking that would disrupt the peace and quiet of residents of adjacent properties, depreciating property values. However, their concerns are not substantiated by probative evidence.

It is evident that Mr. and Mrs. Britton are responsible individuals, who provide particular care and shelter for their dogs. While it is evident that their dogs bark, it is less evident that such barking is unusual, excessive, or particularly loud. Although the barking is obviously noticeable, due in part to the open space and relative quietness of the adjacent farmland, it is not of such magnitude as to preclude authorization of the kennel in accordance with the standard expressed in *Schulz v. Pritts*. Moreover, the kennel shelters and exercise pens will comply with the minimum distance requirements and the variance is not an issue.

Contrary to the concerns of those in opposition of the request, it is unlikely that a dog, or dogs, would escape from the premises. Furthermore, there is no evidence that the dogs are, or would become, vicious. While appropriate security

precautions are prudent, the circumstances in this case are not indicative of any dire consequences resulting from authorization of Mr. and Mrs. Britton's request, subject to the conditions of authorization imposed below.

CONCLUSION

In accordance with the Findings of Fact, Applicable Law, and Reasoning expressed above, the Board finds that the request for the establishment of the kennel as a conditional use is consistent with the provisions of Section 17.7 and the standard expressed in *Schulz v. Pritts*. Accordingly, the Board hereby authorizes the conditional use, subject to the following conditions, which are imposed in order to promote the intent and purpose of the zoning ordinance:

1. Operation of the kennel shall be limited to not more than six adult dogs. For purposes of this decision and clarification, dogs are not considered to be adults until one year of age.
2. Not more than one litter of dogs shall be maintained on the property during a year. In accordance with the applicant's testimony, it is understood that five to seven puppies comprise an average litter of either Siberian Huskies or Rottweilers.
3. The shelter and exercise pen located in the southeasterly corner of the property shall either not be used to keep dogs, or shall be moved to a location in compliance with the minimum distance requirements pertaining to the kennel as specified in Section 4.12 of the zoning ordinance.
4. No commercial boarding, grooming, or breeding shall be conducted in conjunction with operation of the kennel.
5. No kennel identification sign is authorized.
6. Due to the particular circumstances in this case, the authorization for the kennel is restricted solely to the applicants, and shall not inure to the benefit of assigns or heirs. This condition shall not preclude reapplication by others to this Board in the future for a kennel on the premises in accordance with the provisions of the zoning ordinance.

April 8, 1992
Date

John Totura
John Totura, Chairman