

Tax Map/Block/Parcel
No. 37-8-8

Building Permit/Zoning
Certificate No. 94-1077

Case 3923

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

APPLICANTS: William F. Quinn and Brenda D. Quinn
3430 Uniontown Road
Uniontown, Maryland 21158

**ATTORNEY FOR
APPLICANTS:** Charles M. Preston, Esquire
188 East Main Street
Westminster, Maryland 21157

**ATTORNEY FOR
PROTESTANTS:** David K. Bowersox, Esquire
24 North Court Street
Westminster, Maryland 21157

REQUESTS: A conditional use for a kennel for more than ten dogs, and variances reducing the minimum distance requirement of 400 feet pertaining thereto to 180 feet, and the width of access driveways of 20 feet or 15 feet to 10 feet

LOCATION: 3430 Uniontown Road in Election District 2

BASES: Article 6, Sections 6.3(j) and 6.7; Article 4, Section 4.12; Article 14, Division I, Section 14.1(b)(3); Article 15, Section 15.5.4(d); Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: May 24, 1994; **CONTINUED:** June 22 and 24, 1994

On May 24, 1994, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use and variances requested for the establishment of a kennel for more than ten dogs at 3430 Uniontown Road. The public hearing was continued June 22 and 24, 1994.

Articles and Sections cited below are of Ordinance 1E.

In accordance with the provisions of Article 17, Sections 17.6.6 and 17.7 and the Board's longstanding policy of visiting sites prior to public hearing, the Board visited the site May 23, 1994 and revisited the site June 20, 1994. The purpose of the visits was for the Board to view the site and adjacent properties so that the Board would be reasonably familiar with the properties to assist in the Board's appraisal of testimony and evidence, either pro or con, presented during 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 and in

accordance with the state Open Meetings Act, the Board approved the conditional use and variances necessary for the establishment of the kennel, subject to the conditions of authorization expressed below.

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

FINDINGS OF FACT

Mr. Quinn's 108 acre horse farm is located east of Trevanion Road and north of Uniontown Road, adjoining the Historic Zoning District of Uniontown to the south and west. Mr. Quinn purchased the farm from grantors, including Robert F. Devilbiss and Elizabeth E Devilbiss, his wife, April 1, 1991. Since then, he and his wife have gradually made improvements, enhancing the appearance of the farm. Improvements on the farm include Mr. and Mrs. Quinn's home, three horse barns, one of which is identified as an outbuilding located between the Uniontown Fire Pond and the southerly property line, and the accessory building in which the kennel is proposed (Applicants' Exhibit 1). All of the buildings were built many years ago.

A grooming service, conducted as a home occupation, is located within the accessory building in which the kennel is proposed. As a home occupation, the grooming service is subject to authorization by the zoning administrator and is not part of this application.

Vehicular access to and from the premises is provided by an old private lane, ten feet in width, known as Devilbiss Lane connecting Trevanion Road with Uniontown Road (Protestants' Exhibit 5). Devilbiss Lane has evidently provided vehicular access in both directions to the farm for many years prior to the adoption of zoning in Carroll County with no evidence of vehicular or pedestrian safety problems in its use except for two incidents cited by opponents in this case.

The incidents described in this case occurred at the sidewalk paralleling Uniontown Road and the lane's connection with Uniontown Road when a child started to cross the lane at the same time that a vehicle exiting the lane approached the sidewalk. Fortunately, there were apparently no injuries, other than fright for those involved in the incidents. However, from the testimony and evidence before the Board, it appears that the lane's connection with Uniontown Road is at least similar to many other driveway connections, and as such, does not constitute a particularly dangerous traffic situation. This should not be interpreted to mean that Devilbiss Lane is a proper place for children to play. Nevertheless, drivers are responsible for operating their vehicles safely.

As shown by Applicant's Exhibit 1, Devilbiss Lane is a gravel driveway extending from Trevanion Road to the southerly property line of the farm, and is paved from the southerly property line to Uniontown Road (Applicant's Exhibit 1). This portion of the lane, including its intersection with Uniontown Road, is portrayed by photographs identified as Protestants' Exhibits 13D, 14A, 15A, and

15C-15H. Due to the length of the lane, practical difficulty and unreasonable hardship that would otherwise occur in widening the lane to either 15 feet for one-way traffic or twenty feet for two-way traffic as specified in Section 14.1(b)(3), three pullovers, eight feet in width by 40 feet in length, portrayed on Applicants' Exhibit 1, are proposed at strategic locations to facilitate two-way traffic on the lane. In driving to the kennel, customers are expected to use Trevanion Road for access about as often as Uniontown Road.

The proposed boarding kennel, including twelve interior and exterior runs, will adjoin the grooming shop within the existing accessory building as depicted by Applicants' Exhibit 2 and the site location map used in this case, as well as other exhibits. The building, which was built about 75 years ago, is near Mr. and Mrs. Quinn's home and is adjacent to Devilbiss Lane. The building is suitably located on the farm for use as a kennel, and its use for the kennel, as proposed and conditioned below, is reasonable and appropriate.

Mr. and Mrs. Quinn and their son will operate the kennel and plan to keep their dogs there. A maximum of twenty dogs, including puppies, are proposed to be boarded or kept in the kennel. Normally, one dog will be kept in a run unless a customer has several dogs and requests that they be kept together. The kennel will be open from 8:30 a.m. to 4:30 p.m., Monday through Saturday, and closed Sundays. The interior of the kennel will be heated and air conditioned. Dogs will be allowed in the outside runs during the day until 4:30 p.m. when they will be placed in the inside runs. Sound absorbing materials will be used inside the kennel and in the outside runs to minimize the affects of dogs barking.

The outside runs are located on the northwest, or opposite, side of the building from the dwellings fronting on Uniontown Road and will be more than 600 feet from the nearest of those adjoining properties. A wooden stockade fence, eight feet in height, will be erected outside of the exterior runs for security and sound abatement purposes. The fence will also prevent dogs in the outside runs from seeing horses or activities that would induce the dogs to bark. Arborvitae trees, about two and one-half feet tall, have been planted four to five feet apart to provide landscaping outside of the stockade fence (Applicants' Exhibit 2A).

An exercise area for dogs boarded in the kennel and groomed is proposed adjoining the northeasterly side of the kennel (Applicant's Exhibit 1).

Although the distance from the proposed kennel northwest to the nearest lot improved with a dwelling, P. 372, is noted as 180.6 feet, more or less, the fence separating the properties is located 260 feet, more or less, from the proposed kennel. The area on the easterly side of the fence nearest the kennel is used as pasture for horses on the farm.

Considerable opposition to the conditional use and variances was presented in letters written prior to the public hearing and through testimony and evidence during the public hearing. The letters express concerns and fears of adverse affects that the kennel would cause, allegations of detrimental effects, and requests that the conditional use and variances be denied. However, the letters lack substantiating probative evidence. Testimony presented during the public

hearing expressed concerns, fears, and allegations similar to those described in the letters.

The farm is subject to a Deed of Easement to the Maryland Agricultural Land Preservation Foundation (Protestants' Exhibits 1 and 11).

APPLICABLE LAW

Mr. Quinn's farm is zoned "A" Agricultural District as depicted on zoning map 37A. 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, except that where the kennel involves more than 10 dogs, the distance requirement shall be two (2) times the requirements specified in Section 4.12.

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

From testimony and evidence, the proposed kennel complies with the minimum distance requirements with the exception of the 1.604 acre lot, P. 372, owned by Robert F. Devilbiss and Elizabeth Devilbiss, and improved with their home.

For conditional uses, Section 6.7, Lot Area, Lot Width and Yard Requirements specifies the following:

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

The proposed kennel complies with the minimum requirements.

Article 20 defines the following terms:

Kenel

Property which is used or designed for the keeping, boarding, breeding, training or sale of more than three (3) dogs or other canines that are more than one year old.

Conditional uses

Uses which are specified for Board approval prior to authorization and which uses, after public hearing, may be approved conditionally or disapproved in accordance with Sections 17.2 and 17.7. 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.

Variance

A variance is a relaxation of the terms of the Zoning Ordinance in accordance with Sections 15.0, 15.2, and 17.2 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 practical difficulty or unreasonable hardship.

Article 14, Division I, Section 14.1(b) specifies minimum standards for parking facilities for all uses except single-family and two-family dwellings. Paragraph 3 reads:

Access drives which connect roads and/or parking areas shall be a minimum of twenty (20) feet wide, except for one-way access drives which shall be a minimum of fifteen (15) feet wide.

Article 15, Exceptions and Modifications; Section 15.0, Generally, and Section 15.5.4, Board of Zoning Appeals, paragraph (d) read respectively:

The regulations specified in this ordinance shall be subject to the following exceptions, modifications, and interpretations:

The Board may grant or deny the requested variance based on the evidence before it after a de novo hearing. The Board may grant a variance only in cases where the strict compliance with the terms of the ordinance would

result in practical difficulty or unreasonable hardship which have not been caused by the applicant or the applicant's predecessor in title. The Board shall not grant a variance if to do so would violate the spirit and intent of the regulation, or cause or be likely to cause substantial injury to the public health, safety and general welfare. The Board shall be guided in its decision by those considerations set forth in Section 17.7.

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.
- (c) To authorize, upon appeal in special cases, such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions, the enforcement of the provisions of this ordinance will result in unwarranted hardship and injustice and which will most nearly accomplish the purpose and intent of the regulations of the Zoning Ordinance.

Paragraph (c) has not been amended since adoption of the zoning ordinance in 1965. The definition of a variance, as expressed in Article 66B of the Annotated Code of Maryland, has been amended and now cites unnecessary hardship or practical difficulty as justification for a variance instead of unwarranted hardship and injustice.

In the zoning ordinance, both the definition of a variance and the provisions of Section 15.5 have been amended to conform with Article 66B of the Annotated Code of Maryland. Paragraph (c) of Section 17.2 should also be amended for purposes of consistency.

However, the duly adopted amendments of the zoning ordinance pertaining to variances clearly identify the standards of variances to be practical difficulty or unreasonable hardship.

Therefore, in the opinion of the Board, the appropriate standard governing consideration of the variance requests is that of practical difficulty.

Section 17.7, Limitations, Guides and Standards, also governs the Board and reads:

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 considering conditional use and variance requests. The standard governing conditional uses is expressed in the decision of *Schultz v. Pritts*, 291 Md. 1, 22 (1981) as:

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.)

In considering variances, the decision in *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 39 (1974) states:

Where the standard of "practical difficulty" applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the "undue hardship" standard. In order to justify the grant of an area variance the applicant need show only that:

- "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- "2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- "3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured." (Citations omitted.)

In accordance with the provisions of Article 17, Section 17.4.10, the Board extended the time for issuing this decision.

REASONING

The Board's responsibility is to determine from the evidence before it if the conditional use and variances conform with the provisions of the zoning ordinance and either approve or deny the requests in light of the standards expressed in decisions of the courts. Unfavorable opinions, fears or unsubstantiated allegations expressed by opponents are insufficient grounds to deny the conditional use and variances.

The principal land uses of the property will continue to be Mr. and Mrs. Quinn's home and their horse farm.

The zoning district designation of the farm, "A" Agricultural District, is not affected by this decision.

Neither authorization of the conditional use for the kennel nor operation of the kennel, as requested and conditioned below, will affect the Historic Zoning District.

The potential adverse affects that the kennel might have upon adjacent residents and residential properties include disruption of the peace and quiet of the area because of dogs barking, and vehicular traffic to and from the kennel. By limiting the number of dogs that may be boarded or kept in the kennel, using sound absorbing materials inside the kennel and outside runs, erecting the security and sight barrier fence, and imposing the other conditions of authorization, the peace and quiet of the area will not be unduly affected, nor will the slight increase in vehicular traffic unduly affect the residents or businesses of adjacent properties, the values of those properties, or public interests.

In considering the factors expressed in Section 17.7 pertaining to authorization of the conditional use and variances, and the standards expressed in *Schultz v. Pritts*, and *Anderson v. Board of Appeals, Town of Chesapeake Beach*, the Board is convinced that establishment and operation of the kennel, as proposed and in compliance with the conditions of authorization, will conform with the intent and purpose of the zoning ordinance, that authorization of the variances is consistent with the standards of *Anderson v. Board of Appeals, Town of Chesapeake Beach*, and that Mr. and Mrs. Quinn have met their burden of proof pertaining to the conditional use and variances for the kennel.

CONCLUSION

Based on the findings of fact, applicable law and reasoning expressed herein, the conditional use for the kennel and variances reducing the minimum distance requirement and width of the access driveways are hereby authorized, subject to the following conditions of authorization, in accordance with the Board's determination at the conclusion of the public hearing:

1. The kennel facilities shall be as generally depicted by Applicants' Exhibits 1, 2 and 2A, including twelve inside and outside runs, erection of the wooden stockade security fence at least 8 feet in height, and landscaping of the fence with arborvitae trees. The stockade fence shall be constructed so that there is no appreciable space between individual boards of the fence to prevent dogs in the outside runs from seeing beyond the fence. The arborvitae trees shall be maintained and replaced if any become diseased or die.
2. The kennel may be open to the public Monday through Saturday from 8:00 a.m. until 4:30 p.m. Dogs shall be placed in the inside runs daily at 4:30 p.m. The kennel

shall not be open to the public Sundays.

3. Sound absorption materials shall be installed in accordance with, but not limited to, testimony describing features of the kennel, including the outside runs, and sound abatement practices employed to minimize the barking of dogs.
4. Not more than twenty dogs, including puppies, shall be kept or boarded in the kennel at one time.
5. Mr. Quinn shall provide written confirmation from the Maryland Agricultural Land Preservation Foundation to the Program Administrator of the Carroll County Agricultural Land Preservation Program and Zoning Administrator that establishment and operation of the proposed kennel, as conditioned above, does not violate the existing Deed Easement for the farm.

8-18-94
Date

Claude R. Rash
Claude R. Rash, Chairman