

Tax Map/Block/Parcel  
No. 49-11-129

Building Permit/Zoning  
Certificate No. 94-1304

Case 3929

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

**APPLICANT:** Christopher E. Richardson  
3999 Hawks Hill Road  
New Windsor, Maryland 21776

**REQUESTS:** A conditional use for a kennel for ten or less dogs, and variances reducing the minimum required lot area of three acres, lot width of 200 feet, and minimum distance requirements of 200 feet

**LOCATION:** 3999 Hawks Hill Road in Election District 11; Little Hawks Hill subdivision, lot 2 recorded in Carroll County Plat Records in book 28, page 31

**BASES:** Article 6, Sections 6.3(j) and 6.7; Article 4, Section 4.12; Article 15, Section 15.5.4(d); Ordinance 1E (The Carroll County Zoning Ordinance)

**HEARING HELD:** June 27, 1994

Articles and Sections cited herein are of Ordinance 1E.

On June 27, 1994, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use and variances pertaining to a kennel at 3999 Hawks Hill Road.

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 June 20, 1994. The purpose of the visit 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, the Board approved the conditional use and variances reducing the minimum required lot area and lot width, subject to conditions of authorization as expressed below.

From the evidence presented during the hearing and from inspection of the site location map used in this case, the kennel complies with the minimum distance requirements of 200 feet specified in Article 4, Section 4.12. Accordingly, the variance is unnecessary.

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

### FINDINGS OF FACT

As depicted by the site location map used in this case and the plot plan submitted with the application, lot 2 of Little Hawks Hill subdivision is located on the westerly side of Hawks Hill Road about one-quarter of a mile west of Hoke Road intersection. The 1.1348 acre lot, which is of irregular configuration, is the smaller lot of a two lot residential subdivision. From inspection of the Location Survey Plat filed with the application, the width of the lot at the mid-points of the side property lines is about 162 feet. It is improved with a single-family dwelling where Mr. Richardson has resided for the last eight years.

As a hobby, Mr. Richardson keeps and trains rabbit beagles, registered with the American Kennel Club. Mr. Richardson proposes to keep no more than six adult beagles on the premises. He presently has two female and four male beagles, and plans only to replace them periodically. The dogs are sheltered in doghouses inside of pens located in the rear yard. As portrayed by photographs, Applicant's Exhibits 5-9, the kennel is screened from view from adjacent properties by a wooden stockade fence and foliage. (Applicant's Exhibits 6-8). The pens are cleaned daily to maintain a sanitary environment for the dogs. No additional doghouses or pens are proposed. Mr. Richardson transports three or four dogs elsewhere two or three times a week for field training.

Lot 1 of Little Hawks Hill subdivision adjoins lot 2 along the southeasterly and southerly property lines. The 4.7 acre lot is improved with a dwelling. In addition to the residential use of the lot, cattle are kept and pastured there (Applicant's Exhibit 2). From testimony, the distance between the kennel and dwelling, and presumedly the curtilage area of the dwelling, exceeds the minimum distance requirement of 200 feet specified by Section 4.12(d).

A driveway, crossing over lot 1, apparently provides vehicular access to two lots, presumedly created by deeds, located to the rear of lot 1 (site location map; Parcels 127 and 128). The driveway is near Mr. Richardson's property, and the sound of vehicles using the driveway may result in one or more of the beagles barking. Of course, the dogs may also bark when Mr. Richardson attends them, or if they see or scent a rabbit or other animal.

Although the site location map depicts two small lots on the opposite side of Hawks Hill Road and several other smaller lots to the north, the majority of the parcels in the vicinity are larger and characteristic of the agricultural zoning district. There are no residential zoning districts, schools, churches or institutions for human care within 200 feet of the kennel.

A small number of letters in opposition to the requests were received prior to the public hearing. The fears and objections described in the letters include the number of adult dogs and puppies that might be kept in the kennel, failure to keep the kennel clean, problems of waste disposal, immoderate breeding, adverse affects to residents of the neighborhood from the dogs barking, and depreciation of residential property values.

From the record, the allegations and fears are unsubstantiated. However, as this site is relatively small and requires variances to the minimum required

lot area and width, the Board finds that it is reasonable to prohibit breeding in conjunction with operation of the kennel. By limiting the number of adult dogs allowed on the premises, and prohibiting breeding, Mr. Richardson should be able to manage the kennel with few, if any, adverse affects to residents of adjacent properties, the values of those properties or the public interests.

APPLICABLE LAW

A kennel is defined in Article 20 as:

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.

Mr. Richardson's lot and the adjacent properties are zoned "A" Agricultural District as depicted on zoning map 49B. 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,

Article 4, General Provisions; 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.

From the record, the kennel site complies with these distance requirements.

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

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

The site complies with the minimum yard requirements, but not the minimum lot

area and width requirements.

Article 20 defines the following terms:

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 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.

In addition to the provisions of Section 17.7, the Board is governed by decisions of the courts in considering conditional use and variance requests. The standard governing conditional use cases is expressed in the decision of

*Schultz v. Pritts*, 291 Md. 1, 22 (1981) which reads:

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) the court wrote:

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

In visiting Mr. Richardson's property prior to the public hearing, the Board observed that the dogs were well cared for and that the pens and doghouses

were well screened by the stockade fence and surrounding foliage.

Agriculture and homes are the principal land uses in the vicinity of the proposed kennel. From the record, residents in the area keep dogs that may bark and it is reasonable to presume that barking attributed to Mr. Richardson's beagles may involve other dogs. It is also reasonable to infer that the barking of one dog may provoke other dogs to bark. In any event, barking dogs are common in agricultural areas. However, there is no probative evidence in this case that authorization of the kennel as conditioned below will be particularly harmful here versus elsewhere in the district.

The existing kennel facilities, as situated on the property, have little, if any, adverse affects upon the adjoining or adjacent properties, and the Board is convinced that authorization of the conditional use and variances reducing the minimum required lot area from three acres to 1.1348 acres and the lot width of 200 feet to about 163 feet, as presently existing and conditioned below, are in accord with the provisions of the zoning ordinance and decisions of the courts.

Furthermore, operation of the kennel must comply with the regulations of the Carroll County Health Department and with Ordinance No. 26, which is known as the Animal Control Ordinance.

#### CONCLUSION

In accordance with the findings of fact, applicable law and reasoning expressed herein, the conditional use and variances reducing the minimum required lot area and lot width are hereby authorized, subject to the following conditions of authorization:

1. No more than six adult rabbit beagles may be maintained on the premises at one time.
2. No breeding is authorized in conjunction with operation of the kennel.
3. No grooming, or field training shall be conducted on the premises.
4. The wooden stockade fence and natural shrubbery screening the pens and doghouses shall be maintained as long as the kennel is operated as authorized by this decision.
5. No business identification sign is authorized in conjunction with the kennel.

8-4-94  
Date

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Claude R. Rash  
Claude R. Rash, Chairman