

Tax Map/Block/Parcel
No. 62-24-289

Building Permit/Zoning
Certificate No. 95-2102

Case 4044

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANTS: Richard A. Baillet and Carole A. Baillet
4519 Old Washington Road
Sykesville, Maryland 21784

REQUEST: A conditional use for a kennel for ten or less dogs, and a variance reducing the minimum distance requirements of 200 feet pertaining thereto

LOCATION: 4519 Old Washington Road in Election District 14

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: July 27, 1995

On July 27, 1995, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use and variance described above.

Articles and Sections cited below are of Ordinance 1E.

In accordance with the provisions of 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 July 25, 1995. 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 and in accordance with the state Open Meetings Act, the Board denied the conditional use and variance reducing the minimum distance requirements of 200 feet pertaining thereto.

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

FINDINGS of FACT

Mr. and Mrs. Baillet's home is on a 7.5 acre lot located on the east side of Old Washington Road about one mile south of Bartholow Road intersection. From inspection of the site location map used in this case, a larger lot identified as Parcel 288 adjoins the northerly side property line. The lot is improved with a dwelling. Six lots of a residential subdivision adjoin the southerly side property line.

The purpose of the request is to allow the applicants to keep up to ten adult dogs on the premises. They presently have five adult Rottweilers. Three of the dogs are female and two are males. Two of the females have been spayed. The dogs are shown and one or more have won good obedience awards. One of the dogs is trained in tracking and one may be trained in search and rescue work. The unspayed female would, depending upon her condition, possibly be bred once a year. In the future, apparently another female could be bred to produce two litters a year. Mrs. Baillet has waiting list of people wishing to purchase puppies.

Currently, the dogs are kept in the home at night and during inclement weather. The dogs may be out side after 7:00 a.m. and are brought inside the home by 11:00 p.m.

As the plot plan submitted with the application depicts, five dog pens with houses are located adjacent to Mr. and Mrs. Baillet's home, parallel to and 96 feet from the northerly side property line. At least one of the pens is closer than 200 feet to the front property line, and may not comply with the minimum distance requirements from the residential lots fronting on the west side of Old Washington Road. As noted on the plot plan, the pens are minimum of 125 feet from the southerly side property line.

The dwelling does not comply with the minimum distance requirements of 200 feet specified for the kennel in Section 4.12. And due to the configuration of the parcel, it is questionable if the dog pens and houses could be located on the property in compliance with the requirements.

Adjoining and adjacent property owners opposed authorization of the kennel and reduction of the minimum distance requirements because of, but not limited to, excessive barking disturbing the peace and quiet the neighborhood; previous failure to prevent dogs kept on the premises from straying onto adjacent properties, and present concerns regarding the safety of neighbors due to dogs escaping from the pens; failure to comply with the minimum distance requirements of 200 feet pertaining to the kennel; and, depreciation of residential property values and marketability of adjacent homes because of barking and the presence of the kennel.

APPLICABLE LAW

The 7.5 acre parcel and adjoining properties west of Maryland Route 97, which bounds the easterly property line, are zoned "A" Agricultural District. (Zoning Map 62B.) The properties east of the highway are zoned "R-20,000" Residential District. (Zoning Map 63A.) The land use provisions for the district are expressed in Article 6. Section 6.3, Conditional Uses (requiring Board authorization), paragraph (j) states in relevant part:

Kennels...with runways; provided such use shall be subject to the distance requirements specified in Section 4.12,....

Section 6.7 specifies the following minimum requirements: a lot area of 3 acres, lot width of 200 feet, front yard of 40 feet, side yards of 30 feet, and a rear yard of 50 feet. The location of the dwelling, and pens appear to be in compliance.

Section 4.12, Distance Requirements, states 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; 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,
- (d) the curtilage area within a lot of 3 or more acres improved by a dwelling.

Conditional uses are defined in Article 20 as:

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.

A variance is defined in Article 20 as:

...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

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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.

Section 15.5.4, Board of Zoning Appeals, paragraph (d) reads in relevant part:

.... 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 welfare. The Board shall be guided in its decision by those considerations set forth in Section 17.7.

Section 17.7, Limitations, Guides and Standards, specifies:

Where in these regulations certain powers are conferred upon the Board or 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 both conditional use and variances. In particular, the decision in *Schultz v. Pritts*, 291 Md. 1, 22 (1981) expresses the standard that applies to the conditional use request; and, *Anderson v. Board of Appeals*, 22 Md. App. 28, 38-9 (1974) includes the standards that apply to the variance request. For purposes of this decision, it is not considered necessary to quote those standards.

REASONING

From the testimony and evidence comprising the record of this case, it is evident that authorization of the conditional use, which would allow the number of adult dogs kept on the premises to be increased from three dogs to five to ten dogs, is not appropriate for several reasons.

Although the issues of dogs straying unsupervised, in the past, from the premises and dogs escaping in the future, possibly endangering the safety of people or property in the neighborhood are debatable, the Board is convinced that Mr. and Mrs. Baillet have not met their burden of proof that establishment of the kennel, as proposed, would not pose a threat to public safety.

The noise of dogs barking disrupts the peace and quiet of the neighborhood, and presumably the disruption would increase if additional dogs would be kept on the premises. This is likely to jeopardize the values of homes in the neighborhood and their marketability--contrary to the purpose of the zoning ordinance.

Neither Mr. and Mrs. Baillet's home or the dog pens and houses that would constitute the kennel facilities comply with the minimum distance requirements of 200 feet. And, There is no evidence of practical difficulty or unreasonable hardship in the use of the parcel that would warrant reduction of the minimum distance requirements of the kennel. In fact, authorization of the variance would be merely a matter of convenience for Mr. and Mrs. Baillet, and is not urgent and necessary to allow their use of the parcel.

Accordingly, the Board is convinced that the authorization of the conditional use and variance reducing the minimum distance requirements pertaining to the kennel, as proposed, are not justified and would be contrary to intent and purpose of the zoning ordinance.

CONCLUSION

Based on the findings of fact, applicable law, and reasoning expressed above, The conditional use for the kennel for ten or less dogs and the variance reducing the minimum distance requirements of 200 feet pertaining thereto are hereby denied in accordance with the Board's oral decision at the conclusion of the public hearing.

Aug. 9, 1995
Date

Claude R. Rash
Claude R. Rash, Chairman