

Tax Map/Block/Parcel
No. 40-19-85-2
Case 5956

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Bonnie J. Miller, D.V.M.
418 N. Gorsuch Road
Westminster, MD 21157

ATTORNEY: Isaac Menasche, Esq.
Walsh & Fisher, PA
179 East Main Street
Westminster, MD 21157

REQUEST: A request for a Conditional Use for a Commercial Kennel and variances to adjacent properties.

LOCATION: The site is located at 418 N. Gorsuch Road, Westminster, Maryland on property zoned "A" Agricultural District in Election District 8.

BASIS: Code of Public Local Laws and Ordinances, Sections 158.070 (E)(1)(i) and 158.040.

HEARING HELD: June 28, 2016 and June 29, 2016

FINDINGS AND CONCLUSION

On June 28, 2016 and June 29, 2016, the Board of Zoning Appeals (the Board) convened to hear the request for a Conditional Use for a Commercial Kennel and variances to adjacent properties. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

Dr. Bonnie Miller testified as the applicant. She has been a veterinarian since 1983. At this time she is semi-retired. She purchased a foreclosed property in 2014 with 6.9 acres and made improvements to it. She talked to County officials about a kennel license before she moved onto the property. She was issued a private kennel license for less than 10 dogs on July 1, 2015. She stated that her dogs are usually kept in the garage. The dogs are kept in a structure that provides them with air conditioning in the summer and heat in the winter. However, three times a day, mornings, afternoons, and evenings, she lets the dogs go outside. When the dogs are outside they always have human supervision. People cannot see her dogs from the road because of her six foot privacy fence. In fact, all of her property is gated and fenced. She stated that she

has had as many as eleven dogs in her kennel. Dr. Miller considers the dogs to be her personal pets. She would breed no more than two litters per year.

Dr. Miller has participated in the dog show community since the 1960s. She has a very rare breed known as English Toy Spaniel. The dogs are her family. Sometimes the dogs are out and on the road at shows. She has handlers show the dogs for her. She sometimes breeds the dogs. She stated that she currently has eight dogs. Dr. Miller was breeding and selling dogs. She sold three dogs in 2015 and zero dogs in 2016.

She did not believe that her kennel should be considered a commercial kennel. She believed that it should continue to be a private kennel because the dogs were her pets and she did not board, groom, or train other dogs as would occur in a commercial kennel.

John Lemmerman testified as a witness. He prepared the documents in evidence as Petitioner Exhibits 5 and 6. The variances were taken from the garage where the dogs were usually kept. He did not take any measurements from the fences where the dogs would be located while outside.

Jay Voight, Zoning Administrator, testified in the case. He stated that state law allows people to have two litters of dogs a year without being considered a commercial kennel. His interpretation of the zoning ordinance meant that someone with more than ten dogs had a commercial kennel. He believed that the increased setback limits for a person having more than ten dogs applied in this situation.

Robert Canapp testified for the applicant. He has been a realtor for fourteen years. He heard dogs barking for twenty or thirty minutes sometime in December 2015 but has not heard the dogs since then. His opinion is that Dr. Miller's dogs have not affected his property values or the property values of other homes in the area. The dogs also do not affect traffic. He noted that Dr. Miller also improved the value of her property. He has lived in Carroll County since 1972.

Brad Merrell testified in favor of the application. He built the garage which housed the dogs for Dr. Miller. He noted that the applicant put up fences for the dogs. He stated that the dogs would bark for a few seconds and then stop. He stated that Dr. Miller spent a great deal of money to address the needs of her dogs.

Corey Campbell testified as a witness in opposition to the application. He is a licensed real estate agent and he works for a realty company. He has made more than five hundred real estate sales. He has been involved in more than five hundred real estate sales as a team leader. The Board accepted him as an expert in the field of real estate sales. He stated that his company sold Mr. Travis Daniels his home. He stated that the proposed commercial kennel would have an impact on potential buyers. People may not want to live in a house with that many barking dogs. Mr. Daniel's house was sold for more than \$500,000. A smaller category of buyers can buy a house in that price range. He said that the commercial kennel with more than ten dogs could affect the price of the nearby homes. Twenty-five dogs would create more noise than ten dogs. He doubted that new buyers would find the commercial kennel an asset.

Mark S. Miller testified as a witness for the applicant. He had worked with animal control for approximately twenty-six years. He wrote the document in Petitioner Exhibit 2. He inspected the premises for the Humane Society of Carroll County. He found the accommodations for the dogs to be acceptable. He stated that a commercial kennel could have up to two hundred dogs. He stated that a dog fancier's kennel could have up to ten dogs. For more than eleven dogs the fancier's kennel would need to get zoning approval. When a fancier's kennel has more than ten dogs he refers them to the Zoning Office. He did not care if an individual had one hundred dogs as long as the dogs were appropriately being cared for by the

owner. He stated that Dr. Miller has a fancier's license from the Humane Society. In his expert opinion he wrote that Dr. Miller was a good candidate for a fancier's license.

Travis Daniel testified in opposition to the application. He lives next door to Dr. Miller. When he first moved into his house there was no kennel. Dr. Miller approached him about a private kennel for three or four dogs. He did not have a problem with her having four dogs. He believed that he was misled by Dr. Miller as to how many dogs she would have at the site. He stated that the number of dogs kept by Dr. Miller has a negative impact on his quiet enjoyment of his property. The dogs do bark. He had a video of the dogs barking for an extended period of time on one occasion. In the past, Dr. Miller had said that the barking dogs were not hers and the video was evidence that, indeed, her dogs barked for an extended period of time. His biggest concern was a decrease in the value of his property due to the kennel. All of the fences that Dr. Miller has on her property would let a buyer believe there was danger of a kennel. He asked why a potential buyer would want to live near a kennel with twenty-five dogs. He would not have purchased his house if he knew there would be a kennel next door. He might consider selling his property if the Board granted approval of the request for twenty-five dogs. In the spirit of compromise he stated that he could agree to Dr. Miller possessing twelve dogs with some conditions.

Herb Zinder testified in opposition to the application. His main concern was for a decrease in his property value. He used to have a real estate license. He stated if a person heard one dog it would have a negative impact on the buyer. Twenty-five dogs would be a disaster for the sale of a nearby residence. Dr. Miller had recently told him that she had eight dogs and she wanted as many as eleven dogs. He noted that one of his neighbor's champion dogs was worth \$15,000. Because of allergies and asthma he keeps his windows closed. Therefore, he rarely actually hears Dr. Miller's dogs himself. He signed a letter in Respondent's Exhibit 3.

Sandy Casick testified in opposition to the application. He stated that the current private kennel bothered him a lot. He heard the dogs barking on numerous occasions. He stated that a potential buyer would consider a kennel as a neighbor and it would lower the value of the house being sold. He noted that there were other dogs in the neighborhood that also barked. He stated that when he heard Dr. Miller's dogs barking that it was the kind of barking that indicated the dogs had a need for something. It was an annoying sound.

Nokomis Ford with the Bureau of Comprehensive Planning wrote in a June 10, 2016 memorandum that the "staff finding is that this request is consistent with the 2014 Carroll County Master Plan and would not have an adverse effect on the current use of the property."

In Respondent Exhibit 9 there are a number of letters from individuals in opposition to the application. These letters objected to the applicant being able to have up to twenty-five dogs in her kennel. They were concerned about the property values of their homes. The letters were from the following individuals: Paul and Margaret Merkel, Dennis and Cathy Luck, Herb and Margaret Zinder, Ron and Kelly Cullison, Charles and Jacqueline Tkacik, Peggy Ryan, Travis and Becky Daniel, David and Barbara Humbert, and Paul and Anna Hahn. There is also a letter in the Board's file from Patrick and Joan Larson. These objectors did not believe that a kennel with up to twenty-five dogs was appropriate for a residential area.

The Board found that the applicant did not have a commercial kennel. The Board found that the applicant had a fancier's kennel as set forth in Chapter 90 of the County Code. Since the Board did not accept the kennel as commercial, the setbacks for a commercial did not apply to the case. The dogs are Dr. Miller's personal pets. She does not board, groom or train other dogs at her kennel. The code was written with a traditional kennel in mind. This situation is unique.

It is more akin to the case in Petitioner Exhibit 9. The Board believed that it was reasonable for the outcome in this case to be the same as the outcome in case 5543. The Board found that Dr. Miller did not have a commercial kennel, which was a business for boarding of other dogs, breeding more than two litters per year, and training. No boarding, grooming, training or breeding of other dogs occurs on the property.

Counsel for the applicant agreed to reduce the number of dogs requested to twenty dogs before the Board's deliberations on the matter.

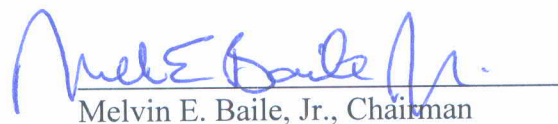
The Board granted approval of the application with some conditions. The maximum number of dogs allowed at the kennel would be twelve. Since Dr. Miller can already have up to ten dogs the increase of two additional dogs is not much of an impact. There would be no signage at the location to indicate a kennel was there. There would be no grooming of dogs that did not reside at the kennel and no boarding of outside dogs. The breed of dogs at her kennel would be English Toy Spaniel. The applicant could not breed more than two litters per year. The dogs would be allowed to be outside for one hour in the mornings, one half hour in the afternoons, and one half hour in the evenings for a total of two hours per day. Property values would not decrease by much if at all by the addition of two dogs to the kennel.

The Board found that granting 25 dogs to the applicant would be too many. Even granting the 20 dogs that the applicant reduced her application to would still be too many dogs. The evidence showed that there are people that live near Dr. Miller. The setbacks were for commercial kennels with more than ten dogs. Zoning Code section 158.070 (E)(1)(i). Even though Dr. Miller would not have a traditional kennel, 20 dogs barking in one enclosed area can and will probably be disturbing to the neighbors at times. The ordinance acknowledged that the more dogs there were in the kennel the more need there would be for setbacks for neighbors. More than 25 dogs will create as much barking noise at a commercial kennel as they would at a private fancier's kennel. The Board tried to address this situation by allowing the dogs to be outside only two hours a day. Private kennels or fancier's kennels with up to 25 dogs are not widespread in the County.

Robert Canapp was the only witness who lived nearby who was in favor of the application for up to 25 dogs. Mr. Canapp only heard Dr. Miller's dogs on one occasion. He is unable to hear any dogs while he is inside of his house. All of the other witnesses and letters in evidence were against the application.

The Board was convinced that authorization of the request for a conditional use was consistent with the purpose of the zoning ordinance, appropriate in light of the factors to be considered regarding conditional uses of the zoning ordinance, and would not unduly affect the residents of adjacent properties, the values of those properties, or public interests. Based on the findings of fact made by the Board above, the Board found that the proposed project would not generate adverse effects (i.e. noise, traffic, dust, water issues, lighting issues, property depreciation, etc.) greater here than elsewhere in the zone. The Board approved the conditional use requested by the applicant for a private fancier's kennel.

7-5-2016
Date


Melvin E. Baile, Jr., Chairman

Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court for Carroll County within 30 days of the date of the decision pursuant to Land Use Article, Section 4-401 of the Annotated Code of Maryland.

Pursuant to Section 158.133 (H)(3) of the County Code, this approval will become void unless all applicable requirements of this section are met. Contact the Office of Zoning Administration at 410-386-2980 for specific compliance instructions.

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