

Tax Map/Block/Parcel
No. 47-23-93

Building Permit/Zoning
Certificate No. 05-3720

Case 5159R

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

APPLICANT: Mark B. & Valerie M. Laird
2808 Grove Drive
Hampstead, MD 21074

ATTORNEY: N/A

REQUEST: Remand by Circuit Court – for the Board to provide sufficient findings of fact and articulate sufficient reasoning for the Court to review the Board’s decision and a request for a variance from the required 50 ft. rear setback to \pm 16 ft. for an existing building.

LOCATION: The site is located at 2808 Grove Drive, Hampstead, on property zoned “A” Agricultural District in Election District 8.

BASIS: Code of Public Local Laws and Ordinances, Chapter 223-16, 223-71 A (12) and 223-186 A (2)

HEARING HELD: February 27 & March 26, 2008

FINDINGS AND CONCLUSION

On February 26 & March 26, 2008, the Board of Zoning Appeals (the Board) convened to hear a Remand from the Circuit Court for the Board to provide sufficient findings of fact and articulate sufficient reasoning for the Court to review the Board’s decision and a request for a variance from the required 50 ft. rear setback to \pm 16 ft. for an existing building.

The subject property is 32 acres (+/-) (“the Property”). The Applicants, Mark and Valerie Laird reside on the Property. In 1995 in Case No. 3993, the Board granted the Lairds conditional use approval for a kennel on the Property for four adult dogs. However, in that same case, the Board denied the Lairds’ variance request to keep the dogs in an outdoor kennel building (the outdoor kennel) which was located 15 feet from the rear property line. The minimum rear yard setback for this use in the Agricultural zone is 50 feet.

On November 9, 2005, the Lairds filed a new application with the Board. They requested a modification of the conditional use to allow them to keep up to 10 adult dogs on the Property. The new application did not include a variance request for the outdoor kennel. One February 22, 2006, the Board, after 2 days of hearings, granted the Lairds’ application, with two conditions:

1. There shall be no more than 10 dogs kept on the Property, with no more than three breeding dogs.

2. The use is non-transferable.

The Protestants, David and Carolyn Solomon (the Solomons), who own a neighboring property, filed an appeal of the Board's decision to the Circuit Court for Carroll County. The Circuit Court, in an Opinion and Order dated October 19, 2006, affirmed the Board's decision. The Solomons noted an appeal to the Court of Special Appeals. On October 22, 2007 the Court of Special Appeals filed an unreported opinion vacating the decision of the Circuit Court and remanding the case to the Board for further proceedings. Specifically, the Court of Special Appeals directed the Board to provide sufficient findings of fact and to articulate sufficient reasoning to facilitate proper judicial review of its decision. Prior to the scheduling of the remand hearing, the Lairds on January 28, 2008 resubmitted a variance request concerning the location of the outdoor kennel. The remand and the variance application were consolidated by the Board. On remand, the Board took no testimony, but reviewed the testimony and evidence presented at the January 2006 hearings. In addition, the Board took *de novo* testimony on the variance request.

Based on the evidence and testimony presented at the hearings on January 4, 2006, January 24, 2006 and March 26, 2008, as well as a visual study by the Board of the Property and neighborhood involved made prior to the hearings on March 18, 2006 and February 20, 2008, the Board made the following findings of fact.¹

The Property is a 32 acre parcel zoned "A" Agricultural. The Property includes the Lairds' residence, pasture land, and several outbuildings. The surrounding area is rural and the Property is bordered by large swaths of open land. Up to 6 dogs are proposed to be kept in a converted barn building while the others would live in the residence. The Lairds do not and will not board other people's dogs. The dogs at issue are personal pets.

The Board found that the Lairds had carried their burden in this case and proven that the requested modification to allow the keeping of up to 10 adult dogs on the Property will not have any adverse effects above and beyond those inherently associated with such a use, wherever it may be located in the Agricultural zone. In reaching this conclusion, the Board turned to Section 223-191 of the Code of Public Local Laws and Ordinances of Carroll County, which provides:

§ 223-191. Limitations, Guides and Standards.

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, 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:

¹ Mr. David Roush, who served on the Board in 2006, was no longer a member of the Board at the time of this hearing and he did not participate in the remand or variance hearings.

- 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 chapter 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.
- J. Compatibility.
- K. Public convenience and necessity.

The Board considered each factor in its analysis. Within regard to 223-191 (A), the Board determined that, based on the testimony of the Lairds and the Solomons, their neighbors, and a site visit made prior to the hearing, the surrounding area consists of other farms, large plots of land, wooded areas and scattered residences. The Property is far outside the population center of the town of Hampstead and is sparsely populated. As for 223-191 (B), the Board found that the keeping of up to 10 dogs as personal pets is consistent with the agricultural nature of the area, and that dog kennels are appropriate in an agricultural setting, as opposed to a residential, commercial, or industrial area. The three permitted breeding dogs are expected to produce 1 litter each per year, and the puppies are "pre-sold", so there would be no customer traffic to the Property. In addition, this would not be a commercial boarding kennel. Thus, any traffic concerns under 223-191 (C) are unfounded. Turning to 223-191 (D) and (F), the Board found that the modification of the conditional use would not adversely affect the peaceful enjoyment of the neighborhood. Several neighbors appeared in support of the Lairds. Evelyn George, a longtime resident on a neighboring property, testified that the Lairds' dogs stay on the Property and bark only when they are disturbed. Francis Boudreau, who resides in the home located closest to the outdoor kennel, told the Board that the Lairds' dogs do not bark or leave the Laird property. Edna Dubs, who lives across the road from the Lairds, testified that she never hears the Lairds' dogs barking or sees the dogs leave the Laird property. Several other letters were received by the Board in support of the Laird application. The staff comments received by the Board were weighed by the Board, including the question of possible noise and screening raised by the Planning Department and the Health Department notes on the septic system. In addition, the Board noted that these concerns will all be considered during the County's site plan approval process as per Section 103-19 A(1) of the Code, which provides in relevant portion that "all principal permitted and conditional uses in any district shall be subject to a site plan review by all applicable review agencies as determined by the Director of Planning." The only opponents to appear in person before the Board were the Solomons. The Board heard extensive testimony from the Solomons regarding the proposed modification. After weighing the evidence, the Board found the Solomons' concerns to be baseless. The Solomons gave a presentation to the Board which concluded that the grant of the modification could result in up to 210 dogs on the Property. The conclusion was persuasively contradicted by the testimony of the Lairds, who advised the Board that only 3 of the dogs will be used for breeding, with a maximum of 2 litters per year. In addition, the puppies will be "pre-sold", meaning they will be picked up by purchasers a few weeks after their birth and will therefore not be on the Laird property for very

long. Thus, there would never be a large number of dogs on the property. The Solomons also complained to the Board that the Lairds' dogs bark constantly and run on to his property. This testimony is contradicted by the Lairds and credible testimony of the other neighbors. All but the Solomons' testified that the dogs don't leave the Laird property and don't bark excessively. Furthermore, the incidents complained of by the Solomons, even if true, appear to be at most isolated incidents. In one instance, Mr. Solomon testified that he drove to the Laird property at 1:00 a.m., directed his car's headlights into the outdoor kennel and observed a dog barking loudly. The Solomons' testimony in this regard does not amount to credible evidence of excessive barking or loose dogs. Furthermore, by keeping the dogs in the enclosed, insulated, converted barn 290 feet from the Solomons' property line the Lairds will undoubtedly reduce or eliminate any noise from the dogs. The Solomons also presented extensive testimony regarding alleged runoff from the Laird property onto their property. They also alleged that soap suds from the Property have run onto their land. Based on the Solomons' testimony, the Board found no connection between the runoff and the Lairds' proposed expanded kennel. The runoff will occur whether or not the modification of the conditional use is approved, since the barn building already exists. The horse farm or any other agricultural use on the property could have easily been the source of any suds. In addition, testimony from the ecologist from the Maryland Department of Natural Resources, who was called by the Solomons as a witness, established that the runoff was associated with "impervious surfaces", and that it would be a "very simple thing to fix" with measures such as tree and vegetation plantings and water barriers. The Solomons also testified that the proposed modification to the conditional use could irreparably harm a potential bog turtle and rare vegetation habitat on their land. The evidence of the existence of these conditions on the Solomon property was sketchy at best. The existence of bog turtles on the Solomons' was never established by any witness. Furthermore, the previously mentioned ecologist saw no reason to stop the ecological restoration of the Solomon property, if the request was granted. There was no credible testimony establishing that a kennel here would damage the Solomons' property or any wildlife habitat. As for 223-191 (E), there was no evidence that property values would decrease in the area if the request was granted. The Board applied 223-191 (G), (H) and (J), and found that this remote, large agricultural property is an ideal location for the keeping of up to 10 dogs. In addition, this use is consistent with the purposes of the Agricultural district, and it will complement the farm operation. There are no public buildings which would be affected by the proposed use, as the area is sparsely populated and predominantly agricultural. The public in general would not be inconvenienced or affected in any way by the keeping of 10 pet dogs on the Laird property. 223-191 (J) (K)

Having found the above facts and applied all of the factors set forth in 223-191, the Board concluded that the Lairds had met their burden and proven that any barking or other adverse effects associated with dogs would be no greater here than elsewhere in the Agricultural zone. The Board granted the modification of the conditional use to allow for up to 10 adult dogs, with 2 conditions designed to minimize any adverse effects and to address some of the Solomons' concerns with regard to the number of dogs.

1. There shall be no more than 10 dogs kept on the Property with no more than three breeding dogs.
2. The use is non-transferable.

Turning to the variance, the Board found that, in Case No. 3993 of 1995, a variance from the required 50 foot rear yard setback to 15 feet to allow the Lairds to keep dogs in an outdoor kennel (as well as the original conditional use) was requested. The conditional use was granted.

However, at that time, the Board denied the variance, and found no evidence of practical difficulty or unreasonable hardship to support the request for a variance. No appeal was filed. Nevertheless, the Lairds, apparently unclear as to the ramifications of the Board's decision, continued to use the outdoor kennel building to house their dogs. After Case No. 5159 was remanded by the Court of Special Appeals, the Lairds resubmitted the variance request.

Section 223-192 (A) of the Code allows applicants to refile applications 2 years after they have been denied by the Board. However, the legal doctrine of *res judicata* would still apply in these cases. An unreversed final decision of the Board, passed in the exercise of its discretion upon issues of fact or upon mixed issues of fact and law is fully binding upon the parties to the case, absent fraud, mistake, or a substantial change in conditions. There is no allegation of fraud or mistake. Nor is there any evidence of a change in conditions on the Laird property or the properties in the immediate area since 1995. Therefore, the variance request is barred by the application of the doctrine of *res judicata*.

Even assuming that the Lairds were not precluded from asking for the variance again, the Board further found that the standard for granting a variance had not been met. Variances may be granted when they are not contrary to the public interest and where, owing to conditions peculiar to the Property and not the result of the actions of the applicant, a literal enforcement of the zoning regulations would result in practical difficulty or unreasonable hardship. Section 223-2. The Board found that there was ample room on this 32 acre parcel to accommodate the placement of the outdoor kennel in a location which would meet all applicable setbacks. The erection of the outdoor kennel in its current location amounted to a self created hardship which could not support the grant of a variance. As the Board stated in 1995, the current location appears to be a matter of convenience, rather than necessity.

Accordingly, the Lairds' request for variance from the 50 foot rear yard setback to 15 feet, as set forth in 223-75, was denied.

4/23/08
Date

Jacob M. Yingling
Jacob M. Yingling, Chairman

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

APPLICANT: Mark B. & Valerie M. Laird
2808 Grove Drive
Hampstead, MD 21074

ATTORNEY: N/A

REQUEST: A conditional use for a kennel for less than 10 dogs (5 personal pets and 3 for breeding purposes), and to maintain use of existing kennel approved in Case #3993, February 1995.

LOCATION: The site is located at 2808 Grove Drive, Hampstead, on property zoned "A" Agricultural District in Election District 8.

BASIS: Code of Public Local Laws and Ordinances, Chapter 223-16, 223-71 A (12) and 223-186 A (2)

HEARING HELD: January 4 & 24, 2006

FINDINGS AND CONCLUSION

On January 4 & 24, 2006, the Board of Zoning Appeals (the Board) convened to hear a request for a conditional use for a kennel for less than 10 dogs (5 personal pets and 3 for breeding purposes) and to maintain use of existing kennel approved in Case #3993, February 1995. The Board made the following findings and conclusion:

In case No. 3993 of 1995, the Applicants were granted conditional use approval for a kennel for 4 adult dogs. A variance request was denied.* The Applicants now seek approval for up to 10 dogs.

The Applicants own 32 acres, with a residence, barn and outbuilding. The property is a working horse farm. The kennel will be constructed in an existing building that was previously used for the horse breeding operation. The Applicants intend to soundproof the kennel. The dogs will be kept on the Applicants' property at all times. There will be enclosed outdoor runs for the dogs.

The new kennel will house up to 6 dogs. Three other dogs are kept in the house. This will not be a commercial boarding operation.

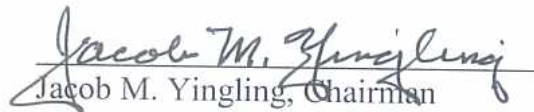
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The Board finds that enclosing the kennel outdoor will greatly minimize noise from the dogs and improve the property. Furthermore, the Board finds that any adverse effects generated by this use will be no greater here than elsewhere within the zone. According, the conditional use is granted, subject to the following conditions:

1. There shall be no more than 10 dogs kept on the property, with no more than three breeding dogs.
2. The use is non-transferable.

*It is unclear to the Board why or whether a variance was needed in case no.3993.

2/22/06
Date


Jacob M. Yingling, Chairman