

CHARLES N. & BARBARA A. JONES
13209 Greensburg Road
Smithsburg, MD 21783

APPEAL NO. AP2006-093

Appellants

OPINION

This action is an appeal charging administrative error for denying the establishment of a commercial kennel and a request for variances from the minimum 400 feet setbacks from adjacent property lines to 143 feet rear yard, 115 feet left side yard, 145 feet right side yard and 170 feet front yard setbacks. The subject property is located at 13209 Greensburg Road, Smithsburg, MD 21783, is owned by the Appellants, and is zoned Rural Village.

A public hearing was held before a full Board on July 19, 2006. The Appellants offered evidence and testimony in support of the appeal. Neither opposing testimony nor evidence was presented to the Board.

FINDINGS OF FACT

The following findings of fact are made by the Board, based upon the testimony given and all data and other evidence presented, and upon a study of the specific property involved, as well as the neighborhood:

1. Appellants seek to establish a commercial kennel on the subject property.
2. The subject property, prior to the rural rezoning, was zoned Agricultural.
3. The subject property is surrounded by properties that are zoned Agricultural.
4. Appellants' neighbors are in support of the request.
5. Received and filed with the Board was a memorandum from Kathy A. Kroboth, Washington County Zoning Coordinator, advising that the appeal is consistent with the Comprehensive Plan.

6. Received and filed with the Board was a memorandum from Terrence P. McGee, Chief Engineer, Washington County Engineering Department, advising that the Department took no exceptions to the subject request.

RATIONALE

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Zoning Ordinance for Washington County, Maryland. A special exception is defined as “a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood.” Section 28.62. Section 25.6 of the Ordinance directs the Board to consider the following factors, as applicable, in rendering its decision: (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 such 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 structure; (h) the decision of the courts; (I) the purpose of these regulations as set forth herein; (j) the type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.

The proposed use is compatible with the Comprehensive Plan and the existing neighborhood. This property is surrounded by Agriculturally-zoned parcels, and Appellants’ neighbors are in support of this proposed use. It appears that this property may have been overlooked during the rural rezoning and should have remained an Agricultural district. No evidence was presented that the proposed use was incompatible with the neighborhood; disruptive of neighbors’ quiet enjoyment of their properties; detrimental to surrounding property values; generative of excessive odors, dust, gas, smoke, fumes, vibrations, or glare; generative of traffic that would exceed the capacity of existing infrastructure; or that the proposal was an inappropriate use of land or structure. Strict compliance would be unduly burdensome and, in fact, impossible and would fail to advance the spirit and purpose of the Ordinance.

This Board has authority to grant a variance upon a showing by the Appellant of practical difficulty or undue hardship. Sections 25.2(c) and 25.56, Zoning Ordinance for Washington County, Maryland. “Practical Difficulty” may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variances would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of

the Ordinance and secure public safety and welfare. Section 25.56(a).

The instant property is unique amongst others in the immediate vicinity due to its size and shape. The proposed use is permitted, and lesser relaxations are impracticable given the unavailability of additional land. Moreover, as previously mentioned, the use will be compatible with adjacent properties, and thus, this grant will not violate the spirit of the Ordinance.

Based upon all of the testimony and evidence presented, this Board finds that the requested special exception does not adversely affect the public health, safety, security, morals, or general welfare, nor does it result in dangerous traffic conditions, or jeopardize the life and property of neighborhood residents. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED this 18th day of August, 2006.

By: Spence Perry, Chair