

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

RUTH H. MARTIN
Appellant

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Appeal No. AP2008-052

OPINION UPON REMAND

This action is before the Board on remand from the Circuit Court for Washington County, Maryland “to consider where the proposed special exception is permitted using the limitations, guides, and standards found in Article 25, Section 25.6 of the Zoning Ordinance of Washington County, Maryland.” 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 Court did not remand this matter generally, nor did it direct us to take additional evidence or testimony. Therefore, we base our reconsidered rationale on those Findings of Fact set forth in our original Opinion of November 20, 2008. We further note, as mentioned and discussed during deliberations by the Chair, that a site visit to the property by the Chair revealed no change in the condition of the property or the condition of the kennel facilities.

The 25.6 factors, to the extent they apply, do not warrant our granting of this request. The number of people residing or working in the immediate area has no direct impact on this request, nor does this request impact negatively upon the orderly growth of the community or traffic conditions and facilities, at least from a perspective of population growth or vehicular volume. There was no evidence that the kennel use was directly impacting residents’ peaceful enjoyment of their homes or their property values, or that odors, dust, gas, smoke, fumes, vibrations, glare, and noise from the kennel negatively affected surrounding property values. The decision of the courts and the type and kind of

structures in the vicinity where public gatherings may be held are likewise non-factors in the instant application.

The salient factors that cause us to deny this application are the ones that require us to consider the most appropriate use of land and structure and the purpose of the zoning regulations. Here, the principal use of the property is as a dairy farm. It has been improved with structures that facilitate the production of milk and the raising of animals, and we feel that the most appropriate use of those land and structures is to remain as a productive agricultural facility. We continue to believe that the “most appropriate use of land and structure” for the subject parcel is as an agricultural facility engaged in the production of milk. A milk production use of the property does not raise the concerns that we have about a kennel use of the property.

Furthermore, we believe that the provisions of our zoning ordinance allow us to look beyond the offsite adverse effects that are generated by this kennel operation and to consider the onsite adverse effects occasioned by this use. The purpose of zoning in Washington County is to, *inter alia*, “protect and promote the health, safety and general welfare of the residents of Washington County;” and to “promote an improved appearance of the County with relation to the use and development of land and structures; promote the conservation of natural resources; and prevent environmental pollution.” Zoning Ordinance § 1.0. We cannot conclude that the operation of a kennel on the subject property in the manner in which it has been and is being operated furthers these objectives.

Over the past ten to fifteen years, the Appellant supplemented her income by development of a dog breeding and sales enterprise on the subject property which, as of the time of the original hearing, involved about 50 dogs. The dogs are kept in kennels similar to rabbit hutches, with pervious (mesh) floors for waste disposal. Site visits to the property revealed an unclean kennel area, lack of regular removal of dog feces, and inadequate cage area for animal exercise and movement. Our Findings of Fact noted that “there was no periodic cleanout of the kennels and the dogs lacked required rabies vaccinations.” Complaints regarding the kennel operation have been received since 2002. The Appellant has never received zoning certification for operation of the kennel, nor has she received a kennel license as required by the Animal Control Ordinance.

In short, the manner in which Appellant has and is operating the dog breeding operation does not meet the standards of this community, and we cannot countenance its continuance. To the extent that zoning is an exercise of the police power to promote the health, safety, and general welfare of Washington County residents, we cannot abide the

operation of this kennel facility on the subject property in the regrettable manner in which it is occurring. The applicant had an opportunity, during the pendency of this appeal to the Circuit Court, to address our concerns regarding the unsanitary nature of the facility and the lack of appropriate breeding and housing structures and exercise areas. She did not, and we cannot, in good conscience, allow her continuing failure to adequately and satisfactorily address these issues, mentioned by us and by the Humane Society over a year ago and reflected in various complaints received since 2002, to result in future operation of this kennel in our community.

For the foregoing reasons, this appeal is hereby DENIED by a 4–1 vote.

BOARD OF APPEALS

By: Bert Iseminger, Chair

Issued: October 16, 2009