

Tax Map/Block/Parcel
No. 12-16-427
Case 5730

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Daniel & Patricia Dalton
4219 Turkeyfoot Road
Westminster, MD 21158

ATTORNEY: Clark R. Shaffer

REQUEST: A request for a conditional use for a commercial cattery with runways for more than 10 cats and a variance from the required 400 ft. to 302 ft. more or less on Main property, 78 ft. more or less on Martin property, 60 ft. more or less on Treadway/Kritsings property, 107 ft. more or less on Harter property and 274 ft. more or less on Cross property.

LOCATION: The site is located at 4219 Turkeyfoot Road, Westminster, MD 21158, on property zoned "A" Agricultural District in Election District 3.

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

HEARING HELD: November 26, 2013

FINDINGS AND CONCLUSION

On November 26, 2013, the Board of Zoning Appeals (the Board) convened to hear a request for a conditional use for a commercial cattery with runways for more than 10 cats and a variance from the required 400 ft. to 302 ft. more or less on Main property, 78 ft. more or less on Martin property, 60 ft. more or less on Treadway/Kritsings property, 107 ft. more or less on Harter property and 274 ft. more or less on Cross property. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

Daniel Dalton testified as the owner of the property and the co-owner of the proposed business. He and his wife Patricia Dalton currently have seventeen cats living in the residence with them. For the most part only one of the seventeen cats desires to go outside of the house. Both of them commute to work. One commutes to Baltimore and the other commutes to Washington, D.C. The couple wanted to establish a home based small business. In their research they discovered that there was a deficiency of boarding for cats in the area. He

described typical boarding for cats as being left in a cage in a separate room at a dog kennel. His concept for the cat boarding was to offer premium care for cat boarding. He planned to build a structure approximately 46 by 20 feet near his present residence. The cats that would be boarded would be housed in individual suites and condos. He would also have a lifetime care room for cats who would spend the remaining days of their lives at the facility. The name for the establishment would be Happy Paws. The building would include many windows in order to provide the cats with a natural light source. All of the cats at the boarding facility would remain inside the structure. Some cats would be offered suites that would allow for them to access a small area on the outside. This outside area would be off of the ground and outside of a window. These suites with outside access for the cats would be at the rear of the building and away from the road. The cats would have different levels in their suites and condos, because cats like to jump to different levels.

He and his wife anticipated that they would have 23-30 cats in suites/condos and 5 cats in the lifetime care area. He estimated that the individual suites would be four feet by seven feet. Pickup and drop-offs would be by appointment only. The proposed hours of operation would be Monday through Friday 8:00 am to 6:00 pm.; 8:00am to 2:00 pm Saturday; and as needed on Sundays. He considered short term boarding to be less than 30 days. Longer term boarding would be more than 30 days. There would be a restroom in the cattery building. Therefore, he realized that the property would have a need for a septic system for the cattery building. The cats would not be able to roam around the outside of the cattery, but would remain inside. Only the cats with suites which had access to the outside could ever be found outside of the facility. The cats would not have access to each other. In that way there would be no fighting between cats. However, the cats in the lifetime care area would be acclimated to be with other cats, since they would be at the facility until their remaining days on earth. The range in prices for the boarding would be between \$15 and \$30 per day for the premium boarding.

He spoke to Carolyn "Nicki" Ratcliff of the Carroll County Humane Society about this project. She believed there was a need for a cattery in the county. She also believed that the proposed cattery would be a welcomed addition in the county. She had a concern about the air filtration system. The Human Society would be responsible for providing a license to the facility.

John E. Lemmerman testified as an expert witness in land use consulting and design. He stated that he supervised the drafting of the zoning sketch found in the Board file. He stated that a stream runs through the property. He also stated that there were steep slopes on the property. He testified that three quarters of the property at the rear were impractical for use. Another part of the property was for agricultural uses as farmland. The positives for placing the cattery building near the house included: it would not invade farmland; the business would be in close proximity to the house; and the business would share the existing entrance to the residence. In that way no other part of the property would be disturbed to create a separate entrance for the cattery.

Laura Shipley testified on behalf of the Daltons. She has been a veterinarian for fourteen years. She takes care of the Daltons seventeen cats. She stated that the Daltons are exemplary in the handling of their personal cats. They do what is in the best interest of their cats. She

believed that there was a strong need for a cattery in the county. She had a concern about the air filtration system in the cattery building.

Donald Bennett testified as a neighbor of the Daltons. He stated that the Daltons talked to him about the cattery. He found the Daltons to be good neighbors. He hoped that the business did take off. He had a concern of whether the Daltons could convert the cattery to a kennel. He also had a concern whether the cattery could add grooming in the future.

Jay Voight, the Zoning Administrator, testified in the case. He stated that citizens in the county could have as many cats as they wished to have. However, a cattery was considered a commercial business. He provided an October 18, 2013 memo as to whether a person applying for a cattery had to have Board approval since it is not specifically listed in the Zoning Ordinance as a conditional use. In that memo he determined that "a Cattery is considered to be a conditional use as stated in Art. IX §223-71 (12) and must have the approval of the Board of Zoning Appeals." He believed that a cattery should be considered the equivalent of a kennel. In both instances the business was designed to board animals for a fee other than personal pets of the owner.

Based on an October 25, 2013 letter from Philip R. Hager, Secretary, Planning & Zoning Commission and an October 22, 2013 memorandum from Lynda Eisenberg, Chief, Bureau of Comprehensive Planning, the property was consistent with the policies and recommendations contained in the Carroll County Master Plan, the Carroll County Master Plan for Water & Sewerage, and other functional plans. The Planning staff did not believe that the creation of a cattery would have an adverse impact on the immediate neighborhood. The Board accepted and agreed with these findings.

There was a good deal of discussion about whether the Board should consider granting a conditional use for a cattery. The Board considered whether it had the authority to create a law sanctioning a cattery when it was not specifically mentioned in the zoning code. One member of the Board abstained from the vote, because he did not believe that the Board should create code or law for the county. The other Board members found that they had the authority to interpret whether a cattery would be allowable in the county as a conditional use. The notion that the cattery should be viewed like a kennel was accepted by the Board. As to the variance requests the Board found that there would be limited visits by customers to the cattery. The cats would be dropped off and picked up. There would not be many deliveries for the cattery. Dust and odors was not a concern either in an Agricultural District. The cats would be kept inside of the cattery building and the noise would be minimal. The cattery building would be a nice looking building and aesthetically pleasing.

The Board was convinced that authorization of the request with regard to 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 request for a

conditional use for a maximum of 35 cats at the cattery. For all of the reasons that the Board granted the conditional use, the Board also granted the requested variance.

12-5-13

Date



Harvey Tegeler, 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 Article 66B, Section 4.08 of the Annotated Code of Maryland Rules of Procedure.

Pursuant to Section 223-192C 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.

Y:\BZA\FORMS\Decision format.doc
Dalton1