

**Tax Map/Block/Parcel**  
**No. 32-17-480**  
**Case 5706**

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

**APPLICANT:** Amanda Scott  
4800 Arlington Drive  
Sykesville, Maryland 21784

**ATTORNEY:** N/A

**REQUEST:** An application for a conditional use for a commercial kennel (up to 20 dogs) with a dog grooming shop.

**LOCATION:** The site is located at 1800 Boog Road, Hampstead, MD 21074, on property zoned "A" Agricultural District in Election District 8.

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

**HEARING HELD:** May 28, 2013

**FINDINGS AND CONCLUSION**

On May 28, 2013, the Board of Zoning Appeals (the Board) convened to hear the request for a conditional use for a commercial kennel (up to 20 dogs) with a dog grooming shop. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

Amanda Scott testified as the applicant requesting a conditional use for a commercial kennel (up to 20 dogs) with a dog grooming shop. She has operated a dog grooming business for approximately sixteen years in the county. The new business would be on property located at 1800 Boog Road in Hampstead. She wanted to maintain her dog grooming business at the new location and start boarding dogs for her clients in the kennel as another phase in her business. To this end she entered into a one year lease for eleven acres with the owners (Peace) of the property at 1800 Boog Road. She planned to have a residence for her family at the same address where the dog grooming business would be. Presently, the grooming shop and kennel had to be built in the future. She stated that she had not had an occasion of dealing with a vicious dog, because she did not accept such dogs. That had been her policy and she would continue with that practice. Although she would accept all breeds of dogs, the dogs would have to be up to date on all of the required shots. When she grooms a dog the bath water would go into a septic system and not be put into the ground. Generally, she attempts to schedule dogs for grooming about one every one half hour. She picks up the dog feces accumulated as a result of her business. She intended to tell her clients to use the entrance at the lower end of Boog Road for drop offs and pickups. She intended to build a pole barn for the grooming shop. There would be one handicapped parking space and four regular parking spaces. She planned on meeting with

officials from the Health Department about the septic system needed for the business. Her hours of operation would be Tuesday from 9am to 3pm; Wednesday 9am to 3pm; Thursday 3pm to 7:30pm; Friday 9am to 3pm; and every other Saturday from 9am to 2:30pm. She did not have deliveries at the grooming shop and instead picked up most of the supplies herself.

During the hearing Amanda Scott amended her application for a conditional use. She amended the application for a commercial kennel (up to 20 dogs) with a dog grooming shop to a commercial kennel (up to 10 dogs) with a dog grooming shop.

Cori Brown, who lives on Cape Horn Road, testified that he and a majority of the neighbors opposed the granting of the conditional use. He entered into evidence Protestant Exhibit 1, which demonstrated that eleven or twelve neighbors were opposed to the project. Those people in opposition were designated in red. He noted that although many neighbors were in opposition, there were only seven contiguous properties to the property in question.

Tony Krauth, who lives on Cape Horn Road, testified in opposition to the project. His opposition was based on his claims of a loss of quality of life, loss of property values, and worse traffic conditions. He stated that Boog Road was unpaved and narrow. He stated that there were two blind curves on Boog Road. In some places two cars could not pass each other without one of them pulling off of the road. There was also a stretch of road where only one car could pass at a time. One vehicle would have to back up to allow the other car to pass. Over the past few years the road had been flooded many times. County road crews are frequent visitors to the road.

Jonathan Szczepanik, who lives on Boog Road, testified in opposition to the project. He showed the Board photographs of injuries to his three year old daughter who was bitten by a family dog. He has five children and a sixth one on the way. His wife could not live comfortably with dogs around the yard. He believed that with the addition of the grooming shop and kennel that property values would decrease. He also testified that his property was located in a residential district.

Timothy Hurley, who lives on Boog Road, testified in opposition to the conditional use. He stated that Boog Road was a dirt road and would not be appropriate for the commercial traffic generated by the business. He also believed that the grooming shop and kennel would negatively affect the character of the neighborhood. He noted that people moved to the area for peace and quiet and did not want to hear dogs at home. He lives on a blind curb and people drive fast around that curb at thirty to forty miles an hour. He did not want to hear dogs barking 24/7. He also believed that property values would decrease if the dog grooming and kennel business was permitted. He stated that fifteen nearby homeowners were opposed to this project. He noted that more cars on Boog Road would mean a greater cost to taxpayers for road repairs. He mentioned a sense of history for keeping the area the same. He also stated that the area should be preserved.

James Hiatt, who lives on Cape Horn Road, testified in opposition to the project. He noted that there was a good deal of traffic on Boog Road. He also mentioned that the road was often flooded. He mentioned a problem of a dog being left for grooming and the floods came. He stated that there was a 100 yard area on the road where only one vehicle could cross the road at a time. One driver would have to back up to allow a driver coming from the opposite direction to pass. He also stated that dog feces could have an effect on the bog turtles that lived nearby. Mr. Hiatt testified that there was 1 ½ miles between the two roads reflected in Protestant Exhibit 5.

James Cobb, who lives on Cape Horn Road, testified in opposition to the project. He stated that the bridge floods and has needed many repairs.

Marsha Martin testified in favor of the project. She stated that Ms. Scott was her friend and that she had a dog that was groomed by the applicant.

Becky Barbour, who lives on Cape Horn Road, testified in opposition to the project.

Samuel Brainerd, who lives on Cape Horn Road, testified in opposition to the project.

George Schuster, who lives on Cape Horn Road, testified in opposition to the project. He owns a horse farm. He stated that Boog Road is not sustainable for the traffic it currently has. The area for the proposed grooming shop and kennel was in a low area that was prone to flooding. He suggested that noise control was difficult in a low area. He stated that at certain times dogs at other nearby kennels could be heard barking. He stated that the Board rejected an application for a kennel in 2008 at a location  $\frac{3}{4}$  miles from the present location. He mentioned another instance when the Board rejected an application for a kennel.

Other points raised by those in opposition to the proposed site included the difficulty of emergency vehicles getting to the area; vicious dogs could get loose; barking could be heard 24/7; lights to the facility would decrease the quiet enjoyment to neighbors; the smells created by the dogs; and there is frequent speeding on Boog Road;

Gretchen Peace testified in favor of the project. She was the owner of the property leased to Ms. Scott. She stated that Ms. Scott was an exceptional corporate citizen. Ms. Scott had three children of her own and planned to live at the same address where the dog grooming shop and the kennel were located. She was surprised at the numerous objections made by many neighbors. She stated that one of the neighbors was operating two businesses out of his property on Boog Road. There were deliveries and other traffic associated with those businesses. She stated that even though his daughter was bitten by a dog that Jonathan Szczepanik still had at least one dog. She noted that before the dog bit his daughter that she had told him that the same dog exhibited a mean streak. She further stated that the prior owner of the property had dog runs in the same locations years ago.

Jay Voight, the Carroll County Zoning Administrator, testified about the request for a conditional use. He examined the plat presented by Amanda Scott. He measured the distance between the proposed grooming shop and where Jonathan Szczepanik placed an "X" on the plat to represent his house. Mr. Voight stated that there was approximately 509 feet between the proposed grooming shop and Mr. Szczepanik's house. (Protestant Exhibit 8.) He stated that Section 223-71(A)(12) of the Carroll County Code of Public Local Laws and Ordinances required 400 feet between the grooming shop and the nearest house. There would also need to be an additional 100 feet for the curtilage area. So Ms. Scott's proposed grooming shop would need to comply with the 500 feet between it and the nearest house, Jonathan Szczepanik house. Since the grooming shop was closer than the house where Mr. Voight made his measurements it appeared that the proposed site and the closest house might be less than 500 feet apart. Mr. Voight testified that there were no residential zones within 1000 feet of the property in question. (Protestant Exhibit 7.) So the part of Section 223-16(A) which pertained to a residential district was not a factor in this matter.

Mr. Voight testified that the property in question was located in the Agricultural District. He mentioned many if not all of the conditional uses that could be approved for a property in the Agricultural District including: airports or airfields; cemeteries; fairgrounds and race tracks; commercial swimming pools, recreational areas; nursing homes; country inns; and bed-and-breakfast establishments.

A lawsuit was submitted as evidence to the Board. In that lawsuit Gretchen Peace and her company were suing Carroll County and her insurance company. The case was in Carroll County Circuit Court under case number is C-12-60574. The property that is the subject matter of the lawsuit is the Boog Road property at issue in this case. In her lawsuit Ms. Peace requested the closure of Boog Road and makes claims against the county for damages she had suffered for the failure to close the road. It was determined by counsel to the Board that this lawsuit was not germane to the land use issue to be decided by the Board.

### **FINDINGS OF FACT**

Amanda Scott came to the Board with a request for a conditional use for a commercial kennel (up to 20 dogs) with a dog grooming shop. She has operated a dog grooming business for approximately sixteen years in the county. The new business would be on property located at 1800 Boog Road in Hampstead. She wanted to maintain her dog grooming business at the new location and start boarding dogs for her clients in the kennel as another phase in her business. To this end she entered into a one year lease for eleven acres with the owners (Peace) of the property at 1800 Boog Road. She planned to have a residence for her family at the same address where the dog grooming business would be. Presently, the grooming shop and kennel had to be built in the future. She stated that she had not had an occasion of dealing with a vicious dog, because she did not accept such dogs. That had been her policy and she would continue with that practice. Although she would accept all breeds of dogs, the dogs would have to be up to date on all of the required shots. When she grooms a dog the bath water would go into a septic system and not be put on the ground. Generally, she attempts to schedule dogs for grooming about one every one half hour. She picks up the dog feces accumulated as a result of her business. She intended to tell her clients to use the entrance at the lower end of Boog Road for drop offs and pickups. She intended to build a pole barn for the grooming shop. There would be one handicapped parking space and four regular parking spaces. She planned on meeting with officials from the Health Department about the septic system needed for the business. Her hours of operation would be Tuesday from 9am to 3pm; Wednesday 9am to 3pm; Thursday 3pm to 7:30pm; Friday 9am to 3pm; and every other Saturday from 9am to 2:30pm. She did not have deliveries at the grooming shop and instead picked up most of the supplies herself.

During the hearing Amanda Scott amended her application for a conditional use. She amended the application for a commercial kennel (up to 20 dogs) with a dog grooming shop to a commercial kennel (up to 10 dogs) with a dog grooming shop. When she made this amendment to her application the previous 500 feet distance requirement needed for the twenty dogs was reduced to a 300 feet distance requirement. Section 223-71(A)(12) applies to more than 10 dogs.

Many of the neighbors in opposition to the project live on Cape Horn Road, which is a road perpendicular to Boog Road. The road connects on each end with North Cape Horn Road and at each connection the county has erected signs prohibiting vehicles larger than thirty-five feet (35') from using the road. Boog Road is a dirt road that is maintained by the County.

There were no residential zones within 1000 feet of the property in question.

Based on an April 30, 2013 letter from Philip R. Hager, Secretary, Planning & Zoning Commission and an April 30, 2013 memorandum from Scott E. Graf, Comprehensive Planner, Bureau of Comprehensive Planning, the property was consistent with the policies and recommendations contained in the Carroll County Master Plan, the Freedom Community Comprehensive Plan, and the Carroll County Master Plan for Water & Sewerage, and other functional plans. The Board accepted and agreed with this finding.

The County Code provides the “limitations, guides and standards” that are to be used by the Board when considering an application for a conditional use:

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:

- 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, religious establishments, and the like.
- J. Compatibility.
- K. Public convenience and necessity.

The seminal case of *Schultz v. Pritts*, 291 Md. 1 (1981) controls this issue. In *Schultz*, the Court of Appeals explained that when the beneficial purposes of a use outweigh possible adverse effects, such uses are permitted. *Id.* at 35-36. Conversely, when the beneficial purposes do not outweigh the adverse effects, such uses are conditional. As such, the Court of Appeals stated that “a permitted use may be developed even though it has an adverse effect upon traffic in the particular location proposed.” The Court of Appeals held that the proper standard to apply when analyzing a conditional use is “whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use.” *Id.* at 37.

The local legislature, when it determines to adopt or amend the text of a zoning ordinance with regard to designating various uses as allowed only by special exception in various zones, considers in a generic sense that certain adverse effects, at least in type, potentially associated with (inherent to, if you will) these uses are likely to occur wherever in the particular zone they may be located. *People's Counsel for Balt. County v. Loyola College in Md.*, 406 Md. 54, 94-95 (2008). In that sense, the local legislature puts on its "Sorting Hat" and separates permitted uses, special exceptions, and all other uses. That is why the uses are designated special exception uses, not permitted uses. The inherent effects notwithstanding, the legislative determination necessarily is that the uses conceptually are compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not convince the body to whom the power to grant or deny individual applications is given that actual incompatibility would occur.

The Board considered each of the factors set forth above in §223-191 of the Zoning Code and the *Schultz v. Pritts* test in granting the conditional use.

A. The number of people residing or working in the immediate area concerned.

The property in question is located in the Agricultural District. The Board considered the permitted uses in the industrial zone and the relatively minimal uses of a dog grooming shop and a kennel of ten or less dogs. There are approximately seven contiguous properties to the address at 1800 Boog Road. Many of the neighbors in opposition to the project live on Cape Horn Road. The aerial photo in Protestant Exhibit 8 demonstrates that there are few houses near the proposed site.

B. The orderly growth of a community.

The orderly growth of the community would provide for the conditional use requested. There are not many people living near this property located in the Agricultural District. The nearest Residential District is at least 1000 feet away.

C. Traffic conditions and facilities.

The testimony was that once construction was completed that there would be grooming appointments for every thirty minutes. Ms. Scott picked up her supplies and there would not be a need for business deliveries to the address. One neighbor suggested that some of the clients of Ms. Scott would stay in the parking lot rather than leave during a thirty minute appointment.

D. The effect of the proposed use upon the peaceful enjoyment of people in their homes.

There was testimony that the amount of barking for the kennel of up to 10 dogs would not be substantial. The kennel would be phased in over the years and only the grooming business would be there at first. The applicant would be expected to soundproof the pole barn to be constructed. The applicant would also be expected to provide screening around the runs. One neighbor testified that when the wind was blowing in a certain direction that he could hear a dog

barking. He claimed that the dog bark was from a dog in a nearby kennel as opposed to a family dog.

E. The conservation of property values.

The Board heard opinion testimony by some neighbors in opposition that their property values would decrease. However, the Board was not swayed that the kennel and grooming shop would either increase or decrease the value of neighboring properties. Moreover, the Board believed that with proper screening the grooming shop and kennel would have little if any impact on the community.

F. The effect of odors, dust, gas, smoke, fumes, vibrations, glare, and noise upon the use of surrounding property values.

There would be a certain amount of dust created from a dirt road, which Boog Road is. More cars would necessarily mean more dust. The general number of clients expected by Ms. Scott would not be a significant impact to dust. The barking of the dogs would be lower during the grooming operations when they were inside the pole barn. The applicant would be expected to soundproof the pole barn to be constructed. The applicant would also be expected to provide screening around the runs.

G. The most appropriate use of land and structures.

The Board considered the permitted uses in the Agricultural District. The proposed use was minimal compared to some of the uses that would not require Board approval. Ms. Peace had the property on the market for a substantial period of time. The applicant now has a lease for the property.

H. The purpose of this chapter as set forth herein.

The purpose of this chapter is to allow property owners to use their property as they saw fit as long as it also fit in the legislative scheme of things. (See 223-1 of Zoning Code.)

I. Type and kind of structures in the vicinity where public gatherings may be held, such as schools, religious establishments, and the like.

The property is not nearby places where public gatherings would occur. The nearest Residential District is at least 1000 feet away.

J. Compatibility.

Dogs running around outside would not be the type of commercial business that would change the nature of the neighborhood. Mr. Graf, comprehensive planner, wrote in his April 30,

2013 memorandum that the request for a kennel and grooming facility was “compatible with the vision and goals for the area, as expressed in the plan.”

K. Public convenience and necessity.

Although most of the neighbors were in opposition to the project, the project would be a benefit to an existing Carroll County business with existing clients. Amanda Scott also plans to live with her family where she works. Property currently not being utilized would serve a useful function.

The Board was convinced that authorization of the request with regard to a conditional use for a kennel of up to 10 dogs and a grooming shop 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.

In order to promote the intent and purpose of the zoning ordinance, the Board hereby imposes the following conditions on the granting of the conditional use. The applicant will soundproof the pole barn, and the applicant will provide screening around the runs.

6-3-2013  
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.