

Tax Map/Block/Parcel
No. 37-8-8

Building Permit/Zoning
Certificate No. 06-2622

Case 5258

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

APPELLANT: William F. & Brenda D. Quinn
3430 Uniontown Road
Uniontown, MD 21158

ATTORNEY: Charles M. Preston

REQUEST: An appeal of the Zoning Administrator's determination in a letter dated July 28, 2006, concerning the expiration of the approval granted in BZA Case 4914.

LOCATION: The site is located at 3430 Uniontown Road, Uniontown, on property zoned "A" Agricultural District in Election District 2.

BASIS: Code of Public Local Laws and Ordinances, Section 223-186 A (2)

HEARING HELD: October 31 & November 1, 2006

FINDINGS AND CONCLUSION

On October 31, & November 1, 2006, the Board of Zoning Appeals (the Board) convened to hear an appeal of the Zoning Administrator's determination in a letter dated July 28, 2006, concerning the expiration of the approval granted in BZA Case 4914. The Board made the following findings and conclusion:

On April 23, 2004, in Case No. 4924, the Board approved a request for a conditional use for a commercial kennel for up to 200 dogs at 3430 Uniontown Road. A condition (#2) was imposed that required that a site plan be submitted which addressed, among other things, tree screening and lighting to minimize the effects of the kennel or the neighborhood.

This case concerns the application of the Board's Rule 5 (d), which reads as follows:

d) Time limit on obtaining certificate.

Unless otherwise specified by the BZA, a conditional use or variance authorized by the BZA shall expire if the applicant or appellant fails to utilize the authority granted pursuant thereto within twelve (12) months from the date of authorization of the special exception or variance. The applicant or appellant shall be notified of this limitation. An extension of up to twelve (12) additional months may be granted by the BZA upon a showing of good cause. However, if a site plan becomes void in accordance with the Carroll County Code of Public Local Laws and Ordinances Chapter 103-19 (C), the variance or conditional use approval shall automatically terminate. - (Amended 03-01-05)

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On March 16, 2005, the Zoning Administrator sent a letter to the Appellants reminding them that a site plan needed to be submitted within one year of the Board's decision or the zoning or the Board's approval would be considered void. The Appellants requested an extension of one year to April 23, 2006, from the Board. The Board, in a letter dated April 21, 2005, granted the request for an extension.

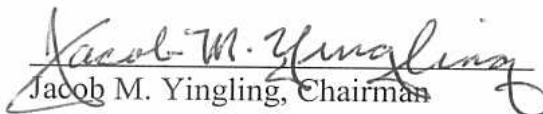
On April 19, 2005, as part of the development process, the Appellants received the approval of the County's Bureau of Resource Management of an environmental site delineation for the proposed project. On April 20, 2005, the Appellants received the approval of the County's Forest Conservation Specialist of a forest stand delineation in connection with the proposed kennel. The Appellants submitted a "pre-submittal conference" request to the Bureau of Development Review on April 18, 2006. The conference with representatives of the Appellants and the Bureau of Development Review was held on April 19, 2006. Unfortunately for the Appellants, on June 26, 2006, they were advised by the Zoning Administrator that because a site plan had not been submitted by April 23, 2006, the Board's approval had expired and the conditional use was no longer valid.

The question can be framed as follows. Did the Appellants "utilize the authority granted pursuant (to the conditional use) within 12 months from the date of authorization" in accordance with Rule 5 (d). The Bureau of Development Review interprets Rule 5 as requiring the submission of a concept plan within 12 months of Board approval unless extended by the Board. While not an unreasonable proposition, it does not appear to mirror the language of Rule 5(d). The Appellants in this matter did not rest on their haunches. Shortly after receiving their conditional use approval, they embarked on a protracted negotiation with Carroll County Health Department regarding the water and septic system proposed for the site. After their one year extension was granted, an architect was engaged, a water appropriations permit was applied for from the State of Maryland, a "pre-submittal" application was accepted by the County and a "pre-submittal" conference was held. A forest stand delineation and environmental site delineation were also submitted to the County and approved. Under the circumstances of this case, and given the uncertainty of the parties with regard to the language of Rule 5 (d), the Board finds that Appellants have acted in good faith and moved as hastily as possible to lay the groundwork for the submission of a site plan. Section 223-186 (B) allows the Board to modify the administrative determination appealed from, and "make such....determination as out to be made". Had the Appellants done nothing during this period at issue, we would have no difficulty in upholding the determination of the Zoning Administrator. However, the Board sees no reason to re-hear this matter given all that has transpired. Accordingly, we modify the Zoning Administrator's determination and rule that Appellants have complied with Rule 5 (d) in this case and may proceed through the development process.

November 29, 2006

Date

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Jacob M. Yingling, Chairman