

IN THE MATTER OF	:	BEFORE THE
WESLEY & REBECCA JENSON	:	
t/a ARROWWOOD SHEPHERDS, INC.	:	HOWARD COUNTY
Petitioners	:	BOARD OF APPEALS
	:	Case No. BA 09-030C

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### **DECISION AND ORDER**

On June 29, 2010, the Howard County Board of Appeals ("Board") met to consider the amended petition of Wesley and Rebecca Jenson, t/a Arrowwood Shepherds, Inc., (the "Petitioners"), to alter an approved conditional use for a dog kennel and pet grooming establishment in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District, filed pursuant to Section 131.J of the Howard County Zoning Regulations (the "Zoning Regulations").

All members of the Board were present at the hearing and Chairperson Albert Hayes presided. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The Petitioners were represented by Andrew H. Robinson, Esquire. Rebecca Jenson, Andy Flacks and Mary Ellen Harvey testified in support of the Petition. Bonny Becraft, Raymond J. Becraft, Jr., and David Owens testified in opposition to the petition.

Because this matter is before the Board of Appeals pursuant to its original jurisdiction, the hearing was conducted in accordance with Section 2.209 of the Howard County Code. The notice of hearing had been advertised and the property posted, according to regulations. The Board members indicated that they had viewed the property as required by the Zoning Regulations.

Prior to the introduction of testimony, the following items were incorporated into the record by reference: the appropriate provisions of the Howard County Charter; the appropriate provisions of the Howard County Code; the Howard County Zoning Regulations, the Department of Planning and Zoning Technical Staff Report dated March 8, 2010, the General Plan for Howard County; the General Plan of Highways; and the Amended Petition and Plat submitted by the Petitioner.

### **FINDINGS OF FACT**

Based on the evidence presented at the hearing, the Board of Appeals makes the following Findings of Fact:

1. The Petitioners, Wesley and Rebecca Jenson, are the owners of the subject property, known as 3101 Florence Road, which is located in the 4<sup>th</sup> Election District on the northeast side of Florence Road, about 200 feet south of Jennings Chapel Road in Woodbine (the "Property"). The Property is referenced on Tax Map 13, Block 9 as Parcels 137.

2. The Property is a trapezoidal-shaped parcel consisting of about 5.13 acres. The Property has about 500 feet of frontage on Florence Road and narrows to the rear lot line where it is about 269 feet wide. The Property is about 515 feet deep along its west side and 673 feet deep along its east side lot line.

3. The Property is improved with a two-story, single-family dwelling located in the southeast portion of the lot about 175 feet from Florence Road and about 80 feet from the east side lot line. A 6-foot tall fence encloses a small area behind the house. About 90 feet to the southeast of the house is a detached two-bay garage situated about 50 feet from Florence Road. A gravel driveway beginning along the center of the Florence Road frontage runs southeast to the house and garage.

The area around the buildings is predominantly open lawn. A vegetated buffer runs along the road frontage. The west and north portions of the Property are wooded. The Property slopes moderately from the southeast to the north and west.

4. All vicinal properties are similarly zoned RC-DEO. To the north and west of the Property is Parcel 22, a 54.87-acre farm governed by an agricultural land preservation easement. To the east is Parcel 33, a 90.87-acre farm parcel also covered by an agricultural land preservation easement. A one-story, single-family detached dwelling fronting Florence Road is located in the southern portion of Parcel 33 about 400 feet from the Property line. Across Florence Road to the south are Parcels 23 and Lot 1 of Parcel 333, each of which is improved with a two-story, single-family detached dwelling.

4. Florence Road is a major collector roadway with two travel lanes and 20 feet of paving within an existing variable width and a proposed 60-foot wide right-of-way. The speed limit in the area of the Property is 30 mph. The DPZ technical staff report indicates that the visibility from the proposed entrance road is over 550 feet in each direction.

5. The 2000 General Plan designates the Property as a "Rural Conservation" land use.

6. The Property will be served by private water and septic facilities.

7. On January 17, 2007, in BA 05-033C, the Board of Appeals granted Petitioners Wesley and Rebecca Jenson, t/a Arrowwood Shepherds Inc., a Conditional Use on the Property for a dog-training and kennel facility for up to 10 dogs. On August 17, 2009, The Board of Appeals granted Petitioners Wesley and Rebecca Jenson, t/a Arrowwood Shepherds Inc., a two-year extension of time to obtain a building permit and a three-year extension to substantially complete construction of the Conditional Use.

8. The Petitioners are proposing to alter the approved Conditional Use for a dog-training and kennel facility pursuant to Section 131.J. of the Zoning Regulations as follows:

A) Petitioners no longer propose to construct the kennel building and/or any related outdoor or indoor kennel runs associated with the same. As such, the Petitioners' use of the Property shall be limited to (i) the dog training activities previously approved under the Conditional Use; (ii) parking related to the dog training activities; and (iii) the housing of Petitioners' personal pets.

B) As shown and depicted on Exhibit "A" attached hereto:

(a) the Petitioners' dog training activities shall only occur within that certain area depicted on Exhibit "A" as the "Fenced-In Training Field";

(b) the parking facility and related driveway associated with such dog training activities shall be located in that certain area depicted on Exhibit "A" as the "Parking Area" and the "Gravel Drive to Parking Area," respectively;

(c) fencing shall be constructed as shown on Exhibit "A".

C) No more than 10 dogs (exclusive of the Petitioners' personal pets) shall be kept on the Property for dog training purposes at any given time Monday through Friday;

D) No more than 15 dogs (exclusive of the Petitioners' personal pets) shall be kept on the Property for dog training purposes at any given time Saturday through Sunday;

E) No dog training activities shall occur on the Property between the hours of sunset and 9:00 a.m.;

F) No outdoor lighting shall be installed and no sound amplification devices shall be used in connection with dog training activities on the Property;

G) Class times shall be staggered as to avoid congestion from vehicles entering or exiting the Property;

H) Within 15 months of the approval of this amended petition, the Petitioners shall install a buffer of Leyland cypress trees along the fence line facing Florence Road, west of the personal residence;

I) No additional signage shall be installed on the Property with respect to the Petitioners' dog training business (provided, however, the existing signage may be relocated after the installation of the driveway running along the western property line of the Property);

J) The Petitioners request formal approval under Section 131.N.30 of the Zoning Regulations for 9 dogs which the Petitioners currently keep as personal pets within their residence.

K) The Conditional Use, as amended hereunder, shall be personal to Wesley and Rebecca Jenson and shall expire immediately in the event either Wesley Jenson and/or Rebecca Jenson does not occupy the Property as their/his/hers own personal residence.

L) Except as set forth herein, the terms, conditions, and uses set forth under the original Conditional Use and Plan, as approved under BA 05-033C, shall remain unchanged.

9. David Owens, a neighbor who resides across the street, testified that his main concerns are that he will be able to see the training area from his property and that the proposed use will generate an inordinate amount of noise. Bonny Becraft and Raymond J. Becraft Jr., neighbors who reside on a farm adjacent to the subject property, testified that they were against the Petitioners having dogs on their property.

## **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Board makes the following Conclusions of Law.

### **I. General Criteria for Conditional Uses (Section 131.B).**

A. The Howard County General Plan designates the area in which the Property is located as "Rural Conservation" land use. The proposed dog training activities for 10 to 15 dogs is of relatively low intensity. The dog training activities will be located toward the center and rear of the 5.13-acre Property. The combination of the dog training activities within a fenced-in training field and the existing residential use appears to be appropriate for the size of the property. The conditional use will have access to Florence Road, which is a major collector. Accordingly, the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district in which it is located, in accordance with Section 131.B.1.a.

B. Section 131.B.2 of the Zoning Regulations requires the Board to determine whether the proposed use at the Property will have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses.

Virtually every activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Board is not whether the proposed dog training activities has adverse effects. The proper question is whether those adverse effects are greater at the proposed site than they would

be elsewhere within other RC Districts of the County. While the Protestants' concerns about negative views and noise generated from the dog training facility are understandable, no evidence was placed before the Board demonstrating any adverse effects above and beyond those ordinarily associated with the proposed use in the RC District.

The Board concludes for the reasons stated below, that the Petitioners have met their burden in presenting sufficient evidence establishing that this proposed use meets the requirements of the Zoning Regulations.

1. The Petitioners' proposed use will be limited to dog training activities and parking related to the dog training activities and the housing of the Petitioners' personal pets. No kennel building and/or any related outdoor or indoor kennel runs are proposed. The proposed use will be of relatively low intensity since it will be limited to 10 dogs during the week and a maximum of 15 dogs during the weekend. The dogs will be trained within a fenced-in training field and no dog training activities shall occur on the Property between the hours of sunset and 9:00 a.m. The parking is located at the rear of the Property and away from any nearby residences. Furthermore, any noise generated from the dog training activities will be buffered by distance and existing trees. Waste material will be disposed of on site. The Board concludes that the use will not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with a dog kennel in the RC zoning district as required by Section 131.B.2.a.

2. No buildings or dog runs are proposed with this use. The only proposed addition will be the additional fencing added to the existing fence to enclose the training field. The training area and associated parking will be well separated and buffered from the road and vicinal residential properties. Accordingly, the location, nature and height of structures, walls and fences,

and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. The Petitioners will provide parking spaces in a 50' x 220' area. The parking area and drive are located toward the rear of the site and will be adequately screened from Florence Road and vicinal residential properties by distance, fencing and landscaping. Consequently, parking areas are of adequate size and parking areas and driveways are properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. The access drive from Florence Road is properly located and has adequate sight distance in both directions. The proposed conditional use will receive few visitors at any one time, thus acceleration or deceleration lanes are not necessary. Consequently, the ingress and egress drive will provide safe access with adequate sight distance and with adequate acceleration and deceleration lanes where appropriate, as required by Section 131.B.2.d.

**II. Specific Criteria for Kennels and Pet Grooming Establishments (Section 131.N.30).**

A. The Property is 5.13 acres in area and exceeds the minimum lot size of 3 acres, in compliance with Section 131.N.30.a. No kennel building and/or any related outdoor or indoor kennel runs/pens are proposed with the use.

B. Section 131.N.30.b. is not applicable to this petition.

C. Section 131.N.30.c. is not applicable to this petition.



D. The proposed parking area will be adequately screened by landscaping, fencing and separated by ample space from adjoining properties and public street rights-of-way, as required by Section 131.N.30.d.

E. Any waste generated by the proposed use will be disposed of on site. The Board finds that the disposal of wastes will be such that odors or other emissions will not be perceptible at lot lines, in compliance with Section 131.N.30.e.

F. The Property has frontage on Florence Road, a major collector, in compliance with Section 131.N.30.f.

### **III. Opposition Testimony.**

Once a petitioner presents sufficient evidence establishing its proposed use meets the requirements of the statute, it is incumbent upon those opposed to the petition to show the use at the proposed location would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone. *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

The persons who testified in opposition to the proposed conditional use have not met their burden of showing the proposed use would have an atypical burden upon adjoining and surrounding properties. The speculative nature of their testimony about increased noise, safety, traffic does not sufficiently demonstrate any adverse effects unique or different from those ordinarily associated with a dog kennel and pet grooming establishment in a RC-DEO zoning district. The County Council has already determined that dog kennel and pet grooming establishment uses are presumptively compatible with RC-DEO-zoned communities. In this case,

there is insufficient credible evidence in the record to defeat this presumption.

**ORDER**

Based upon the foregoing, it is this 20<sup>th</sup> day of October, 2010, by the Howard County Board of Appeals, ORDERED:

That the amended petition of Wesley and Rebecca Jenson, t/a Arrowwood Shepherds, Inc., Petitioners, to alter a previously approved Conditional Use for a dog kennel and pet grooming establishment in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District is hereby **GRANTED**, subject to the following conditions:

1. The conditional use shall be limited to (i) dog training activities previously approved under the Conditional Use; (ii) parking related to the dog training activities; and (iii) the housing of the Petitioners' personal pets (9 dogs), as described in the amended petition and conditional use plan submitted to the Board On June 29, 2010 as Applicants' Exhibit #1, and not to any other activities, uses, or structures on the Property.
2. No more than 10 dogs (exclusive of the Petitioners' personal pets) shall be kept on the Property for dog training purposes at any given time Monday Through Friday.
3. No more than 15 dogs (exclusive of the Petitioners' personal pets) shall be kept on the Property for dog training purposes at any given time Saturday through Sunday.
4. No dog training activities shall occur on the Property between the hours of sunset and 9:00 a.m.
5. No outdoor lighting shall be installed and no sound amplification devices shall be used in connection with dog training activities on the Property.
6. Within 15 months of the approval date of this altered conditional use, the

Petitioners shall install a buffer of Leyland cypress trees along the fence line facing Florence Road, west of the personal residence.

7. The Conditional Use, as amended, shall be personal to Wesley and Rebecca Jenson and shall expire immediately in the event either Wesley Jenson and/or Rebecca Jenson does not occupy the Property as their/his/her own personal residence.

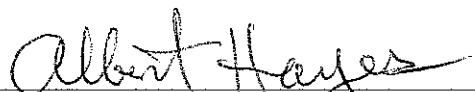
8. Neither the garage nor the rear yard of the house may be used for activities under this conditional use.

9. The Petitioner shall comply with all applicable Federal, State, and County laws and regulations.

ATTEST:

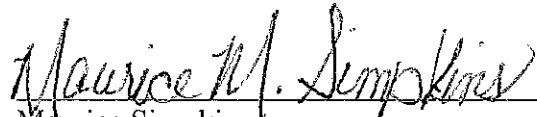
HOWARD COUNTY BOARD OF APPEALS

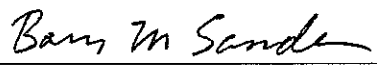
  
Ann Nicholson, Secretary


  
Albert Hayes, Chairperson


  
James Walsh, Vice Chairperson

PREPARED BY:  
HOWARD COUNTY OFFICE OF LAW  
BARBARA M. COOK  
COUNTY SOLICITOR

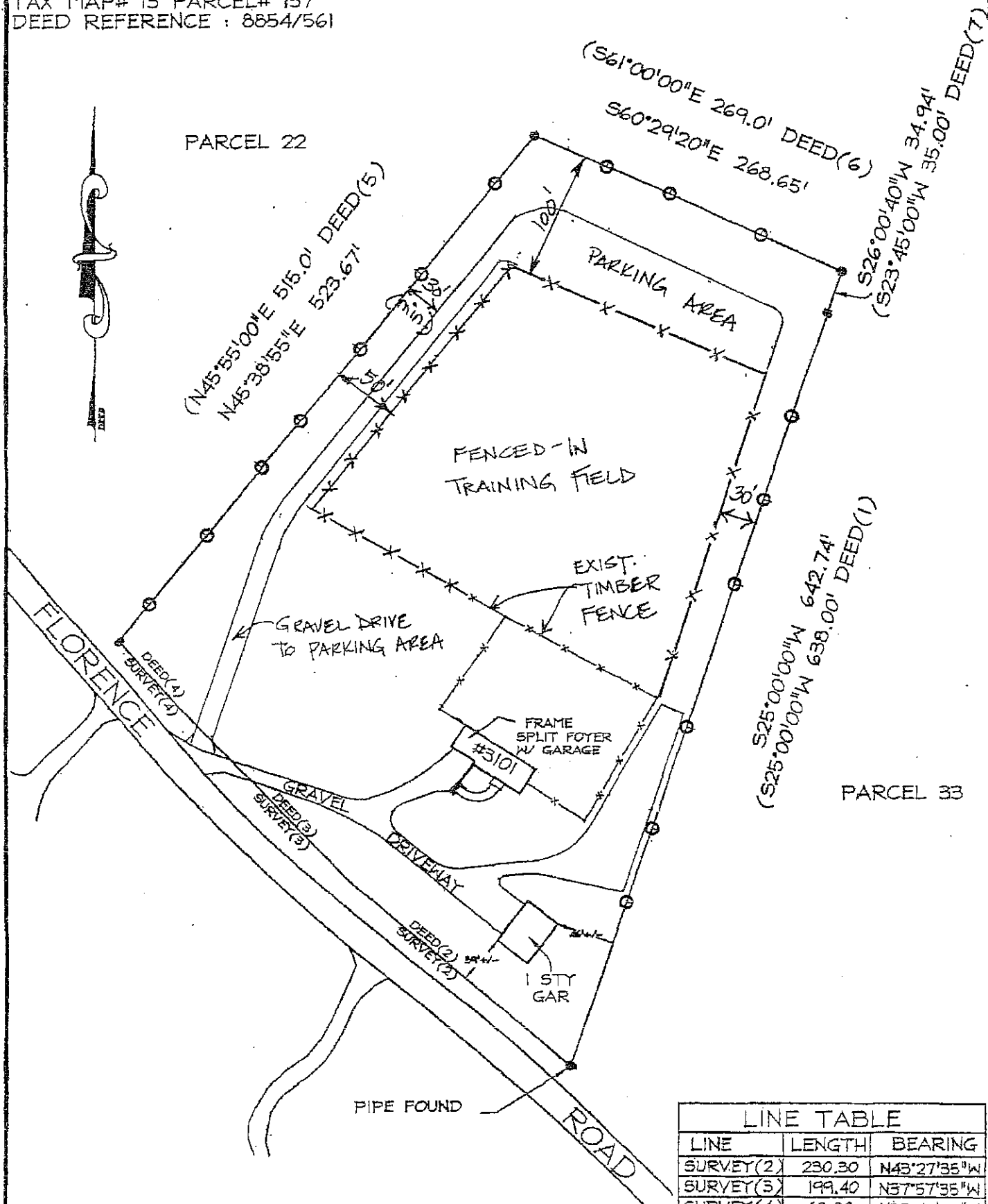
  
Maurice Simpkins

  
Barry M. Sanders  
Assistant County Solicitor

  
Henry Eagles

  
John Lederer

PROPERTY KNOWN AS:  
 3101 FLORENCE ROAD  
 WOODBINE MARYLAND 21797  
 HOWARD COUNTY, 4TH ELECTION DISTRICT  
 TAX MAP# 13 PARCEL# 137  
 DEED REFERENCE : 8854/561



LINE TABLE		
LINE	LENGTH	BEARING
SURVEY(2)	230.30	N43°27'35\"W
SURVEY(3)	199.40	N37°57'35\"W