IN THE MATTER OF : BEFORE THE
Sean Witt : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. BA-19-042C

DEcision AND ORDER

On March 2, 2021, April 15, 2021, May 20, 2021, and June 24, 2021, the undersigned,
serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the
Hearing Examiner Rules of Procedure ("Rules"), heard the petition of Sean Witt, Petitioner, for a
Conditional Use for a Pet Day Care Facility (Section 131.0.N.39). The Petitioner provided
certification that notice of the hearing was advertised and certified that the property was posted as
required by the Howard County Code. I viewed the property as required by the Rules.

The Petitioner was represented by Christopher DeCarlo of Talkin & Oh, LLP. The
following people testified in support of the petition: Sean Witt; Robert H. Vogel, P.E., Vogel
Engineering; Mickey A. Cornelius, PE, PTOE, RSP, The Traffic Group; Bob Deltuva; Ellen Styers;
and Shane K. Wilson, Snap Wall, Inc.

There were several people who appeared in opposition to the Petition. Opponents Cynthia
and Wayne Jackson were represented by Thomas M. Meachum of Carney, Kelehan, Bresler,
Bennett & Scherr, LLC. Cynthia Jackson testified in opposition. Claire Lacey appeared and testified
in opposition unrepresented. Dave Cash appeared and testified in opposition unrepresented. Grant
Bimstefer, Jim Bimstefer and James Zoller were present during the hearing and asked questions of
the Petitioner witnesses. Other persons were in attendance but only to observe.
PROCEDURAL MATTERS

The March 2, 2021, hearing was held for the sole purpose of allowing the Petitioner to submit a revised Conditional Use Plan dated March 2020 and a Stopping Sight Distance Exhibit to Accompany the Conditional Use Plan dated March 2021. Upon admission of the March 2020 Conditional Use Plan with the March 2021 Exhibit (the “Plan”), the Plan was transmitted to the Howard County Department of Planning and Zoning (“DPZ”) for review by DPZ and issuance by DPZ of a revised Technical Staff Report. DPZ issued a revised Technical Staff Report dated April 1, 2021.

Evidentiary hearings were held on April 15, 2021, May 20, 2021, and June 24, 2021.

FINDINGS OF FACT

Based upon the preponderance of the evidence presented at the hearing and in the record, I find the following facts:

A. Property. The subject property, known as 11762 Carroll Mill Road (the "Property"), comprises 5.036 acres and is in the RC-DEO (Rural Conservation-Density Exchange Option Overlay) zoning district at Tax Map 23, Grid 14, Parcel 146.

B. Vicinal properties. To the south and east are RC-DEO zoned parcels used for Single-Family Detached Dwelling units and agricultural use. To the north is a parcel zoned RC-DEO and used for a Single-Family Detached Dwelling. To the west is an RC-DEO parcel used for agricultural purposes.

C. Roads. Carroll Mill Road has two travel lanes within a 50-foot right-of-way. While the Property has its ingress and egress off of Carroll Mill Road, the Property also borders Folly Quarter Road, a Scenic Road per the Howard County Scenic Road Map which is Map 4-3 of
PlanHoward 2030. Based on Howard County records, the speed limit on Carroll Mill Road is 25 miles per hour. Traffic count data is not available for this portion of Carroll Mill Road.

D. **Water and Sewer Service.** The Property is not in the Planned Service Area for Water and Sewer. The Property is served by private water and septic facilities.

E. **General Plan.** The Property is designated Rural Resource on the Designated Types Map of PlanHoward 2030. Carroll Mill Road is a local road. The Property borders Folly Quarter Road, a Scenic Road per the Howard County Scenic Road Map which is Map 4-3 of PlanHoward 2030.

F. **Zoning History.** There is no record of prior zoning authority decisions.

G. **Current Use.** The Property is the site of an existing single-family dwelling and a pet daycare facility\(^1\) housed in a 1500 SF newly constructed metal building with a parking area and outdoor pet exercise areas surrounded by chain link fences covered with fabric screens.

H. **Site Description.** The area proposed to be used for the pet daycare facility ("Site") is located primarily in the southwest quadrant of the Property where the Property adjoins Folly Quarter Road to the northwest and Carroll Mill Road to the southwest.

I. **Proposal.** The Petitioner proposes a pet daycare facility for up to 40 dogs consisting of a 1,500 SF building, an outdoor exercise area and a parking area. The facility will be staffed at a ratio of one employee per ten dogs. The proposed hours of operation are 6:00 a.m. to 8:00 p.m. Monday through Friday and 6:00 a.m. to 6:00 p.m. on Saturday. According to the Petition, the facility will be closed on Sunday.

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\(^1\) The existing facility has not been approved for Conditional Use for a Pet Daycare Facility. While the current use violates the Howard County Zoning Regulations, the hearing in this matter was to determine whether the use proposed in the Petition and as set forth on the Plan should be approved.
J. Exhibits – Petitioner

1. Aerial Map 2020
2. Photo - parking
3. Photo – parking
4. Photo - fence
5. Photo – building
6. Photo – entrance
7. Photo – toward Carroll Mill Road
8. Photo – exercise area
9. Photo – exercise area
10. Photo - fence
11. Revised Sight Distance Exhibit
12. Daily Schedule
13. Photo - sally port
14. Photo – entrance
15. Photo – desk at entrance
16. Photo – inside sally port
17. Photo – indoor pens
18. Photo – small dog area
19. Photo – exercise area outdoors
20. Revised Plan – showing additional landscaping and fence to be removed
21. Rebuttal – copies of Gmail messages

K. Exhibits - Opposition – Jackson

1. DPZ violation notice
2. Emails
3. Building permit
4. through 10 - Photos of Jackson property, etc.
11. Aerial
12. Property before construction
13. Construction Photo
14. Building permit
15. through 19. – Videos
20. Photo – from property line
21. Guest house
22. Photo
23. Through 31 – Testimonials and Facebook page comments
32. Aerial Carroll Mill
33. Video
34. Photo
35. D&O Kamens case - BA-17-020C
36. Email
L. Exhibits – Opposition – Lacey

1. Map - Orientation
2. through 22 - Photos of Site and of Jackson property

M. Testimony.

1. Robert H. Vogel, P.E., Vogel Engineering. Mr. Vogel, a professional land planning engineer, testified in detail about the Plan. He testified about the distance of the Site from the adjoining roads and properties. He testified that the parking requirement for animal hospitals was used because there is not a parking requirement specifically for pet daycare. He testified that that the parking area per the Plan would be farther from Carroll Mill Road than as it currently exists.

Mr. Vogel described the conditions on the Site, the fence lines that exist now, and the fence lines for fences to be built. Initially, he testified that there will be two chain link fences – one surrounding a larger area than the area identified as the Site and one other that surrounds just the pet exercise area located primarily in the rear of the one-story metal building. According to Mr. Vogel’s original testimony, the area between the outside fence and the interior fence is not going to be used as part of the Site.

Mr. Vogel went on to testify in detail that the proposed use would satisfy both the general criteria for conditional uses in Section 131.0.B of the Zoning Regulations and the specific criteria for conditional uses in Section 131.0.N.39 of the Zoning Regulations. Mr. Vogel then described the Stopping Sight Distance Exhibit and testified that sight distances on Carroll Mill Road were sufficient.

He further described the existing and proposed landscaping on the site.

Later in his testimony, he testified about changes to the Plan including the relocation
and removal of a fence, and the existence of installed landscaping trees along the Carroll Mill Road boundary.


Mr. Cornelius testified generally that the ingress and egress drive provides adequate sight distance and that there would not be a traffic problem because of the plan for staggered drop-off and pick-up.


Mr. Witt testified that he opened the current facility in July 2020 “due one hundred percent to hardship.” He stated:

We bought the property, started to develop everything, and there was a series of events that happened where I believe a hearing examiner still needed to be hired. So we weren't able to get on the docket as quickly as we wanted to. And then in March of 2020 and at that point we were in a very bad situation because we only had until July 2020 to get out of our home. And moving forward, we took a huge financial hit on the business we were already running. It took an 80 percent loss basically overnight because with nobody going to work and nobody traveling, our daycare business was just it was almost non-existent, basically. And put the cherry on top of all of that, my wife, who had a separate job that carried our health insurance, was laid off in June right before all of this happened. So it came down to a decision that I had to make and not one that I wanted to make. (Emphasis supplied.)

Thus, Mr. Witt testified that he started to develop the property as soon as they purchased the property. He testified that they purchased the property in August 2019 and filed the conditional use petition in October 2019 which means that he started to develop the property before the Petition was filed; long before the first hearing that was scheduled for March 2020; and before the rescheduled hearing for July 20, 2020.
Mr. Witt testified, in response to questioning by Mr. Meachum about why the July 20, 2020, hearing was requested to be cancelled, “I can't remember what the circumstances were and why that took place.”

Mr. Witt stated that he was not aware that the building permit had a condition that stated the building could not be used until the conditional use was approved. He later stated that he went forward with using the building in violation of the regulations because he had a hardship – his wife had lost her job and he basically needed income to feed his family. Yet he testified on May 20, 2021, that the reason they closed their former facility in Ellicott City in July 2020 is that they had to get out of their former home by July 2020 because they had new people moving into the Ellicott City home that he still owned with others.

He first testified that the reason they wanted a larger space to operate his pet daycare business is so “we could separate all the dogs in our care by size and demeanor.” He later admitted that they moved to a different location because the location they had been using did not allow pet daycare and in fact had received zoning violation notices. Mr. Witt admitted during his May 20, 2021, cross exam that he lied to the enforcement officer with Howard County. He also admitted that the real reason they changed locations is because they were facing an enforcement action, not because they wanted more space for segregating dogs of different sizes and demeanors.

Mr. Witt acknowledged that the existing fence is within the 50 foot setback area. He stated that he initially placed the fence within the setback because “I checked with zoning and Howard County. And at that time, I didn't realize that for a conditional use
you had to have the fence line setback 50 feet. So that is completely my fault and I will be rectifying that.”

When asked about the noise that comes from the building, he stated that the metal building creates an echo and that in addition to the original insulation he had to install additional sound proofing panels. Then, when questioned about the noise that continued to emanate from the building, he testified on April 15, 2021, about the soundproofing: “The soundproofing is being put up as we speak. I put up another 20 pounds myself, but it’s not completed yet. It is not completed yet now. *It’ll be done by next week.*” Then, on May 20, 2021, in response to cross-examination, Mr. Witt stated, “That’s another system that we’ve been working on with [a] Company that’s going to be coming in and putting in panels along the wall and the panels along the ceiling to cut down on the reverb in the inside.” He stated that his understanding is that “[y]ou can hear dogs outside if you're outside from inside the building, only if you're standing in front of the front door.”

Regarding overnight boarding, Mr. Witt stated that:

No, it was never my wife's intention, mine or my wife's intention to do overnight boarding. We are daycare people. We don't really feel comfortable having dogs stay here overnight. That's really not something that we're interested in pursuing.

He then stated, in response to questioning by Claire Lacey, “And there's definitely not any overnight boarding, correct?” Witt: “That is correct.”

Mr. Witt stated in response to direct exam by Mr. DeCarlo, that, despite what the original petition stated, he now plans to be open on Sundays. He also admitted upon redirect by his attorney that he intentionally started the construction of the building,
installed the fence, and installed a parking area, all of which he knew were not in compliance with the plan set forth at the presubmission meeting. He admitted that he was advised by counsel that he should not be building and operating until approval was received, yet he continued to do so.

Mr. Witt testified that currently he has about 15 dogs per day and that he is requesting approval for up to 40 dogs per day. He stated that he does not intend to have over 30 dogs but wants approval for 40 as a “safety valve.” On cross exam, Mr. Witt testified that he has never had more than 15 dogs at the Carroll Mill facility.

On rebuttal, Mr. Witt testified that he would not conduct overnight dog boarding and referred to emails that he had recently sent to customers declining to board their dogs.


Ms. Jackson testified that she and her family (her husband and son) live at the property directly across Carroll Mill Road from the Property – 3925 Folly Quarter Road (“Jackson property”). They settled on their property in January 2020 and commenced occupancy in March 2020.

Ms. Jackson testified that there have been several instances when she has witnessed dogs at the Property off leash. She stated that she and her family ride horses and that an off leash dog could be catastrophic if it ran up on a horse under saddle. Ms. Jackson also stated that she can hear the dogs barking from well inside her property lines. She submitted several audio and video/audio recordings of the barking to demonstrate the sound heard.

Ms. Jackson submitted copies of Facebook page comments from the Facebook page of the Petitioner’s business that include testimonials of customers who have boarded
Ms. Jackson testified that neither her property nor any properties along either Folly Quarter Road or Carroll Mill Road have buildings such as the one on Petitioner’s Property in the front yard or in the front of the properties along those roads. She submitted aerial photographs of the area about which she testified. She testified that the land across Carroll Mill Road from the Petitioner’s pet daycare is her property and that the part of her property that is directly across from the Site is a residential home. She stated that there is no dense vegetation between her property and the Site that screens the Site from her property. She also testified that screening any property from the Site would be very difficult because the Site is located on higher ground than the road as one looks from her property. She submitted photos showing the elevation and lack of screening.

Ms. Jackson stated that in addition to her family who reside on her property, her property includes a horse barn which houses 16 horses. She stated that Claire Lacey is the property manager and farm operations manager. The horses are there for training for driving and riding as well as breeding. She testified that her family has noticed horses reacting to the noise from the dogs. And my daughter has an experience, a dangerous one that we think might have been related to the barking by virtue of the fact that at the time it occurred, I was recording barking. And so we can't really know for sure that that's what the horse reacted to. But he did try to throw her off and it did happen to be at the exact same time that I was trying to record the noise.

Ms. Jackson testified that approval of the Petition would be at the cost of their personal use and enjoyment of their property.
5. **David Cash.**

Mr. Cash testified that his parents were the previous owners of the property now owned by the Jacksons. He stated that the property was part of the Charles Carroll estate. He stated that the home was built in 1936 by the then owners of the Pimlico Racecourse and that “anyone that lives in Howard County or has been around Howard County knows this home and knows the area pretty well of what it means to the county alone.”

6. **Claire Lacey.**

Ms. Lacey testified that she operates the farm and horse facility at the Jackson property as a private farm. She trains and breeds horses. Ms. Lacey testified that she is a “nationally acknowledged expert on horses with over forty years wide ranging equine experience riding, driving, training and breeding horses. I've been involved in the management of several horse farms and advised the state of Maryland and the Maryland Horse Industry Board as an independent expert representing the needs of horses and equestrians.” She testified as follows:

Almost immediately, [after Mr. Witt] opened we started experiencing issues with horses becoming agitated and distracted. I don't expect people without equine knowledge to understand them all their needs horses of prey, animals with brains smaller than ours and bodies much bigger. They're able to react quickly to reflex pathways defending themselves by running or if unable them by spinning, rearing, kicking or other defensive behaviors.

Although some may become comfortable with a pack of dogs, the majority are not a single dog barking such as you might reasonably encounter with a neighbor, is not anywhere near as much of an issue as an outburst of barking or a group of dogs as we experience randomly with the current operation. Horses are also far more alarmed when they have incomplete information, movement without identification, noise without visual contact.
In August of 2020, shortly after Furry friends opened, it became necessary to put several of the horses in our main barn ... supplements. I had hoped it would just be a transitional thing as they acclimated to the dogs, but that has not been so.

The horses affected are the ones who are living closest to the doggy day care. This has been a very significant expense for me. None of these horses had needed anything like this prior to this situation. All of these horses have been in my care for a long time prior to this opening with no issues. All of these horses have experienced dogs on a leash inside, dogs in direct physical contact. With single dogs on farms with no issues, so it really is about the location and number of dogs and what is going on with the dogs.

... in October 2020, a horse that was being ridden became highly agitated by the dogs barking, totally panicked. It reared up on its hind legs and flipped over backwards. Thank God the rider was thrown clear, this could easily have been a fatal accident or a very serious injury due to the complete loss of trust, the horse and the situation here. It was sent away for retraining for two months at significant cost because it's hard to prove the barking was occurring and causing the accident.

The location of the day care makes it almost impossible to shield our operations from the impact of noise, even if the building were totally soundproof, the outdoor parking is still way more than you might reasonably expect from a neighbor's dog.

And the topography directs and amplifies the impact on this farm. There's a valley that runs where Carroll Mill Road continues cutting through the first ridge, that channel runs almost directly from one 11762 to the main barn at this farm. It very effectively funnels sound and odors into the valley between the main ridge and secondary ridge that the main barn is built into. The main valley is a natural amphitheater.

And we [the barking]from inside his building, from outside of this building, inside our building. And the most likely times we hear them is when we are likely to be handling the horses. The gates [at Furry Friends] are often left open on the Sally Port and we've witnessed several dogs not on a leash.

Ms. Lacey provided further testimony regarding the effect of the barking at the Site on her horses. She stated that she is unable to condition the horses to a random noise in a situation where the horses cannot see the source of the sound.
7. **Bob Deltuva.**

Mr. Deltuva testified that he has been using Mr. Witt for four years for his pet daycare needs and that Mr. Witt is good with the dogs and that he has never had any problems with Mr. Witt.

8. **Ellen Styres.**

Ms. Styres was called as a witness in rebuttal by the Petitioner. She stated that she has years of experience with horses – riding, eventing, and breaking horses, both for personal and competitive purposes. Ms. Styres stated:

I have to say, in my experience with... horses, dog barking... alone doesn't really have any kind of a bad or negative impact on horses. You know, oh, my dogs are in the barn all the time they... and I would say if it was like the dog was barking and was acting aggressively towards the horse or chasing after them, but if they're just barking from a distance away, I don't know what the problem would be with that.

Ms. Styres stated that “horse people” always have dogs and they (the dogs and horses) always seem to get along fine. She stated that if dogs are playing it is a different kind of bark and “it’s not an aggressive bark” and “I don’t know how” that [multiple dogs barking] would affect a horse “when dogs and horses coexist all the time.” Ms. Styres stated that she has not had the experience of having a dog daycare near her horses. Ms. Styres did not view the Property or the Site. She testified that she does not have experience driving horses. She also agreed that horses are not as reactive to noises when the horse can see what is causing the noise. She stated that she agrees that horses can tell if a dog is aggressive by body language (of the dog), but if the horse cannot see the dog and the dog is barking, she does not see how that can be a problem. Generally, Ms. Styres testified that horses and dogs coexist but was unable to provide any specific
testimony about her experience with multiple dogs barking randomly such as that experienced by Ms. Lacey’s horses.


Mr. Wilson is the owner of Snap Wall, a noise control contractor, and has been in the business for over 30 years. He stated that he was contacted by Sean Witt to view the building at the Site and to determine if the noise from the activity can be mitigated such that there is no sound beyond the lot lines of the Property. He explained that there would be a layer of material added to the interior of the building to reduce the echo from within the building along with additional sound blocking material. Mr. Wilson stated that Mr. Witt “wants” to hire his services to mitigate the noise. Mr. Wilson stated that in his experience with the proper material they are proposing to use, the sound should not travel beyond the lot lines. He did state, however, that he could not guarantee that result without conducting testing.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

A. General Criteria for Conditional Uses (Section 131.0.B of the Howard County Zoning Regulations).

1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.

While Howard County General Plan policies are not directly related to Conditional Use requests for pet daycare operations, the fact that pet daycare facilities were added as a conditional use category means that properly sited pet daycare facilities can be compatible with
residential and commercial areas. However, I find that the proposed pet daycare facility at the
proposed Site is not properly sited.

While the Property has its ingress and egress off of Carroll Mill Road, the Property also
borders Folly Quarter Road, a Scenic Road per the Howard County Scenic Road Map which is
Map 4-3 of PlanHoward 2030. From PlanHoward “Scenic Roads:”

The guidelines for development of land abutting scenic roads seek to
limit the visual impact from new development by clustering and locating
development away from the right-of-way, unless it is screened by
topography or vegetation, and by minimizing the removal of forest and
other vegetation. Application of these guidelines is balanced against site
constraints and other County development requirements; however, the
guidelines do not have the same enforcement authority as regulations. In
2006 a regulatory requirement was added for retention of a forested
buffer along scenic roads. Since the original scenic roads survey and
guidelines were adopted in 1994, there has been additional development
in the County. The current guidelines apply to development adjacent to
the scenic road, but nearby development that is not subject to the
guidelines may occur within the viewshed of the scenic road and impact
the scenic quality of the road. This may be more likely to occur in the
rolling, open farmland in the western portion of the County where many
designated scenic roads are located.

As stated above, Folly Quarter Road is a designated scenic road. While PlanHoward
establishes guidelines and do not have the same enforcement authority as regulations,
PlanHoward provisions should guide the consideration of the Petition, especially where the
conditional use criteria expressly direct the hearing authority to ensure the general standards are
met.

After careful review of the Plan, I find that the Plan does not limit the visual impact of
the proposed use from Folly Quarter Road by locating the Site away from the Folly Quarter Road
scenic road right-of-way or by screening the Site with adequate vegetation or by topography.
Rather, the Site is situated almost squarely within the southwestern quadrant of the Property, closer to both Folly Quarter Road and Carroll Mill Road than the residence on the Property, and at a higher elevation than Folly Quarter Road. Accordingly, the building, fences and exercise areas are all within the viewshed of Folly Quarter Road. See Lacey Ex. 22 and 18.

The building, fences and exercise areas on the Site were all constructed without any apparent attempt to screen their view from Folly Quarter Road and without any consideration of the fact that Folly Quarter Road is a scenic road.

Thus, I find that the proposed use will not be in harmony with the Howard County General Plan and PlanHoward 2030.

2. 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 site are such that the overall intensity and scale of the use(s) are appropriate for the site.

The 5.06-acre Property exceeds the one-acre minimum lot size requirement for pet daycare facilities, yet the Site is not adequately buffered from adjacent residential dwellings due to the fact that the Site is located upgrade and within 50 feet of Carroll Mill Road and within about 85 feet from Folly Quarter Road. So, while the Property is 5 times the size required for this type of use in the RC-DEO zoning district, the overall intensity of the use situated so close to the Property boundaries results in the conclusion that the overall intensity and scale are not appropriate for the Site.

Therefore, I find that 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 site are such that the overall intensity and scale of the use is not appropriate for the site.
3. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will not be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning district.

I do not find that there are adverse effects of dust, fumes, odors, intensity of lighting, vibrations or other hazards that are greater at the Site than would generally be elsewhere in the RC-DEO district.

Regarding the noise of multiple dogs barking at a time emanating from the Site, there was ample testimony and probative evidence introduced by Claire Lacey and Cynthia Jackson which established that the barking of dogs from within the building could be heard on the Jackson property and inside of the barn that Ms. Lacey uses to care for the horses in her charge. The proposed Site is directly adjacent to a longstanding horse farm at which horses are foaled and trained for driving and other specialized purposes. Ms. Lacey has extensive knowledge and experience in training horses and testified that the noise of barking dogs coming from the Site at numerous but random times has a significant detrimental effect on the horses in her care. This, as well as the fact that the Site is situated close enough to the areas in which the horses are kept and trained, leads to the conclusion that the impact of the noise from the Site (multiple dogs barking loud enough to be recorded and loud enough to cause negative reactions in horses) is greater at this location than it would be elsewhere in the same or similar zoning district.

While Ellen Styers testified that she has ridden and competed with horses for many years and that the horses she rides and trains do not seem to be negatively affected by the presence of dogs, her testimony actually emphasized the difference between the adverse effects from the Site close to the Jackson property and adverse effects of dogs barking at other locations within the
same or similar zoning district. The Jackson property is the situs of a training and foaling operation for horses to receive specialized training, especially in driving, and Ms. Lacey is an established expert dealing with this type of horse and behavior of this type of horse. While Ms. Styres pointed out that in her experience dogs and even groups of dogs located near where horses are boarded are usually not a problem, Ms. Lacey’s testimony demonstrates that this pet daycare facility, while potentially compatible in other agricultural areas, is not compatible at this Site.

Ms. Lacey testified that there is a direct cause and effect relationship between the sound of the barking dogs and negative reactions in her horses. She has seen behavioral changes in the horses since the pet daycare opened and has had to treat certain horses as a result.

Therefore, I find that the impact of the adverse effect of dog barking from within the building on the Site will be greater at the proposed site than it would generally be elsewhere in the RC-DEO zoning district.

4. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.

As stated above, the Site is not, and likely cannot be, adequately buffered from adjacent residential dwellings due to the fact that the Site is located upgrade and within 50 feet of Carroll Mill Road and within about 85 feet from Folly Quarter Road. So, while the Property is 5 times the size required for this type of use in the RC-DEO zoning district, the overall intensity of the use situated so close to the Property boundaries results in my conclusion that the building and the fences surrounding the pet exercise area are not adequately buffered from view from Carroll Mill
Road or from the residence to the southeast (Zoller residence) or the residence to the southwest (Jackson residence). Section 104.0 of the Zoning Regulations reads:

The Rural Conservation District is established to conserve farmland and to encourage agricultural activities, thereby helping to ensure that commercial agriculture will continue as a long term land use and a viable economic activity within the County. The RC District is also established to preserve natural features and the rural landscape, while allowing low density, clustered residential development. Residential development is to be permitted only when it is located and designed to minimize its impact on agricultural land, farming operations, and sensitive environmental features; to create attractive rural developments; and to respect existing features of the rural landscape.

While a pet daycare facility is presumed to be compatible with the uses in the RC district, the zoning designation expressly states that a goal is to create attractive rural developments and to respect existing features of the rural landscape. I find that the proposed use at the proposed Site at the location on the Property will hinder the use and/or development of adjacent land and structures more at the subject site than generally elsewhere.

The photos provided by Ms. Lacey, Ms. Jackson and even by the Petitioner show that even if the proposed landscape buffer is installed, the trees will not be tall enough to buffer the view of the building from the Jackson or Zoller residences due to the topography of the Site. Likewise, it is doubtful that the fences and building will be adequately screened from view from either Carrol Mill Road or Folly Quarter Road. The Petitioner’s Exhibits 13 and 19 show that the exercise area rises to a point as high as the roof of the metal building thus emphasizing the fact that the location of the building and conditional use area causes it to not be able to be adequately buffered (even assuming the proposed trees are installed and grow to maturity). See, People’s Counsel for Baltimore County v. Mangione, 584 A.2d 1318, 85 Md. App. 738 (Md. App. 1990)
(testimony that the proposed convalescent home would sit on the prominent or dominant terrain above the neighborhood and of the intrusion of the project into the residential neighborhood . . . was sufficient for Board to conclude that the use was not in harmony with the general purpose of the plan).

Therefore, the I find the use will hinder or discourage the development and/or use of adjacent land and structures more at the subject site than generally elsewhere.

5. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The Zoning Regulations do not contain a parking requirement for pet daycare facilities. The Petitioner proposes 6 spaces. While this is the number of spaces required for an Animal Hospital, I do not believe that an animal hospital is the best comparison, as the parking must meet the requirement that the people dropping off pets between the busy morning hours and the busy pickup hours have a place to park.

Mr. Cornelius testified that for trip generation purposes a comparable use would be a childcare facility. He stated:

... it would basically function the same as a child daycare center in terms of people dropping off pets instead of children and picking them up. So towards the end of the day, so using those type of trip rates, then it depends on how many pets are going to be at the facility, partly based upon my discussions ... serves about 15 to 20 dogs a day, which that would generate about eight vehicles in, eight vehicles out during the morning peak hour, and then the same number during the evening peak hour. He anticipates a maximum of 30 dogs at any one time, which would give you approximately 12 vehicles entering and 12 vehicles exiting during the morning and evening peak hours. The conditional use actually requests a maximum of 40 dogs ... If you use 40 dogs ...
then the maximum peak hour trips would be expected to be about 16 vehicles in and 16 vehicles out during each of the morning and evening peak hours.

What this means is that there must be space for each of those cars to park temporarily while dropping off or picking up pets. The Petitioner has stated that he wants approval for 40 dogs. If you use a Child Daycare Center as the guide, the requirement is 3 spaces per 1000 SF. Yet a Child Daycare Center with only 1500 SF (the size of Petitioner's building) would not likely be able to accommodate 40 children. The Petitioner has stated he plans to have the arrivals and pickups staggered. Assuming the staggering can be done, there will be at least 10 dogs dropped off in each of the early hours between 6AM and 10AM (based on Petitioner’s daily daycare schedule). Thus, six (6) spaces could potentially be sufficient and because the pet owners would be at the facility for only a short period, some queuing of cars in the driveway area may occur until a space becomes available. However, if the staggering is not done, there could potentially be 20 to 30 cars within a short period and 6 parking spaces would be inadequate.

Regardless, neither the parking spaces nor the driveway area are adequately screened from the public roads and adjacent properties by existing or proposed landscaping. (See Lacey Exs. 2 and 14.) Mr. Vogel testified that the parking area would be moved closer to the building than the current location of the parking area, but that would mean that the parking area would be at a higher elevation and the smaller shrub landscaping proposed to surround the parking area would not adequately buffer the parking area.

While the number of parking spaces may be appropriate to serve the particular use if the drop offs were staggered, parking areas, loading areas and driveways are not appropriately
located or buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

6. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.

The Petitioner submitted a Site Distance Analysis that was reviewed by the Development Engineering Division, which provided the following comments "revise the sight distance exhibit to comply with the distance required in Design Manual III; Table 2.01 using 35 mph on a 4% downgrade. The computations should provide an approximate stopping sight distance of 260 feet instead of the current 200 feet. To meet this requirement, please extend the sight line the additional 60 feet. If necessary, investigate relocating the driveway entrance such that the oncoming vehicle is at the top of the crest and still meets the 2-foot object height." The Petitioner submitted at the hearing on April 15, 2021, a revised Sight Distance Analysis. Mr. Vogel testified that they "just basically incorporated those comments into the exhibit."

Mr. Cornelius testified that his revised Sight Distance Analysis incorporated the comments of the Development Engineering Division and that his conclusion using the revised data points requested by the County is that "there's more than sufficient site distance for a motorist who is approaching the site traveling eastbound and westbound towards the access."

Thus, I find that this criterion has been met (subject, of course, to the Site Development Plan process).
7. The proposed use will not have a greater potential for adversely impacting 
environmentally sensitive areas in the vicinity than elsewhere.

The closest environmentally sensitive area is a stream located over 1,000 feet to the 
southwest.

*Therefore, the proposed use will not have a greater potential for adversely impacting 
environmentally sensitive areas in the vicinity than elsewhere.*

8. The proposed use will not have a greater potential for diminishing the 
character and significance of historic sites in the vicinity than elsewhere.

The closest historic site is over 4,500 feet to the southwest.

*Therefore, the proposed use will not have a greater potential for diminishing the 
character and significance of historic sites in the vicinity than elsewhere.*

B. Evaluation of petition according to Section 131.0.N.39 (Specific Criteria for Pet 
Daycare Facilities):

a. The minimum lot size shall be one acre.

The Property is 5.036 acres.

*This criterion is met.*

b. All day care business functions must be completely enclosed within a 
building. Indoor noise must not be perceptible at lot lines.

The pet daycare facility will be conducted primarily inside the building 
except for an outdoor exercise area allowed in accordance with Sec. 
131.0.N.39.7.

Testimony and probative evidence produced (videos and audio recordings) 
showed that barking from inside the facility on the Site can be heard on 
the Jackson property and inside the foaling barn on the Jackson property.

*This criterion has not been met.*
c. The Hearing Authority may set hours of operation and limitations on the number and type of pets cared for.

The Petitioner proposes the following hours of operation: Monday through Friday 6:00 a.m. to 8:00 p.m.; Saturday and Sunday 6:00 a.m. to 6:00 p.m. The stated capacity of the facility is 40 dogs and the Petitioner has requested approval for 40 dogs.

I find that the Petitioner did not adequately show that the proposed facility at the Site has capacity for 40 dogs. While there were photographs of the interior of the building, and while some of the photographs showed separate kennels within the building, it is not clear whether the interior can house up to 40 dogs.

Because I will deny the Petition, I do not need to set hours of operation and limitations on the numbers of pets cared for.

d. The facility shall not be located on a shared driveway.

The facility is not located on a shared driveway.

This criterion has been met.

e. Parking areas shall be located and landscaped to minimize visibility from roads and adjacent residential properties.

As stated above in Section A.5., the parking area is not located or landscaped to minimize visibility from roads and adjacent residential properties.

This criterion has not been met.

f. There shall be no overnight boarding of pets.

The Petitioner stated that he does not intend to board pets overnight.

This criterion has been met (only by the testimony that the Petitioner, despite the clear evidence that Petitioner in the past has been boarding pets overnight, will not do so in the future).

g. Outdoor areas for walking or exercising pets may be permitted provided that pets shall not be left unattended in such an area. The Hearing Authority may set a limit on the number of pets permitted simultaneously in the outdoor area. The perimeter of this outdoor
area shall be fenced and landscaped to ensure that animals are confined to the property and to minimize the visibility of the enclosure. All fencing shall comply with all requirements for fences as noted elsewhere in Section 128.0. The petitioner must clearly delineate the outdoor area on the Conditional Use plan.

As stated above, the exercise areas are not landscaped to minimize visibility of the enclosure.

*This criterion has not been met.*

h. Disposal of wastes must be such that odors or other emissions are not perceptible at lot lines.

Ms. Lacey testified that she was able to detect odors from the Site while on the Jackson property. She testified that the topography of the two properties is such that there is a valley between them through which sound and odors are carried.

*Based on the testimony, this criterion has not been met.*

i. On an ALPP purchased or dedicated easement property, the following additional criteria are required: (1) The use shall not interfere with farming operations or limit future farming production. (2) Any new building or building addition associated with the use, including any outdoor storage and parking area shall count towards the cumulative use cap of 2% of the easement.

The Property is not an ALPP property.

*This criterion is not applicable.*

C. Hearing Examiner Discretion to Impose Limitations and Petitioner’s Veracity

If a hearing authority finds that there are criteria that could be met by the placing of requirements, limitations or restrictions within an order approving a use, the hearing authority can fashion an order that would allow a conditional use to be approved that may otherwise be denied. The Petitioner testified in response to his counsel’s questions that he will abide by any limitations or restrictions placed upon the Petitioner in any order should I approve the Petition.
subject to conditions, limitations or restrictions. In this case, such an approach would be futile.

When a hearing authority places restrictions and conditions on the use of property, the assumption is that the restrictions and conditions are necessary to ensure that the use will be compatible and that the conditions will be followed and adhered to. The Petitioner’s own actions and testimony, and the testimony and evidence submitted by others, have shown that Petitioner cannot be believed and that he has little if any respect for the zoning and land use laws to which his property is subject.

Mr. Witt testified that he bought the Property, graded the land, constructed a building, a driveway, a parking area, and fenced large parts of the Property knowing that he did not have approval for the business to exist on the Property. He began to operate the business despite having no approval to do so. He was dishonest about the reasons he did these things.

He was dishonest about why he and his family moved from the Ellicott City property. He testified under oath that it was because he wanted more space to be able to take in more dogs so “we could separate all the dogs in our care by size and demeanor.” He later admitted that they moved to a different location because the Ellicott City location they had been using did not allow pet daycare and in fact had received zoning violation notices. He admitted in this hearing that he lied to the enforcement official with Howard County about that Ellicott City property.

He was dishonest about why he started operating the pet daycare business at the Site without approval. He said it was because he and his family had to be out of their Ellicott City home, his wife had lost her job and health insurance, and he needed to make money to feed his family. He later disclosed that at the time he was co-owner of two homes, one of which he had purchased without even knowing if the business use would be approved. His claims of needing to
start the business to feed his family make no sense when it is clear he spent tens of thousands of dollars on the building and site changes without even knowing if he would receive approval to operate the business at the site.

He was dishonest about whether he had allowed overnight boarding at the Site. He repeatedly stated he did not, yet when faced with evidence showing he did, he reverted back to a promise that he would not do so in the future if the Petition were approved.

He stated the first night of his testimony that the noise insulation was virtually completed. Yet when faced with testimony from Ms. Jackson and Ms. Lacey that the barking could be heard on the Jackson property, he testified that he would hire a company to do further noise control work.

It is clear to me that Mr. Witt places no value on the law or on the authorities who are charged with enforcing the law. So, even if there a way to craft conditions in an order to ensure that an approved use would be compatible and in compliance, I am convinced that Mr. Witt would not respect and follow any such restrictions or limitations.
ORDER

Based upon the foregoing, it is this 27th day of July 2021, by the Howard County Board of Appeals Hearing Examiner:

ORDERED, that the Petition for a Conditional Use for a Pet Day Care Facility (Section 131.0.N.39) at 11762 Carroll Mill Road shall be and hereby is DENIED.

NOTICE: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard de novo by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.