APPLICANTS: **Lois Hamrick & William Blomeier, Jr.**	**BEFORE THE**
	ZONING HEARING EXAMINER
REQUEST: A special exception pursuant to Section 267-53H(3) and Section 267-53H(4) of the Harford County Code to allow a kennel and pet grooming	**FOR HARFORD COUNTY**
	BOARD OF APPEALS
HEARING DATE: November 3, 2004	**Case No. 5444**

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Lois Hamrick & William Blomeier, Jr.

LOCATION: 4042 Grier Nursery Road**,** Wilson's Chance, Pylesville
Tax Map: 10 / Grid: 4D / Parcel: 269 / Lot: 8 / Plat: 81/65
Fifth Election District (5th)

ZONING: AG / Agricultural District

REQUEST: Special Exception pursuant to Sections 267-53H(3) and 267-53H(4) of the Harford County Code, to allow a kennel and pet grooming in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicants testified Lois Hamrick. Ms. Hamrick is currently employed by a veterinarian, and runs a pet sitting business. The proposed special exception is for a kennel which will provide specialized pet care. Ms. Hamrick explained that the proposed facility is not a traditional kennel. Her proposed business, if allowed, will provide safe, secure care for animals.

The Applicant explained that she has a great deal of experience with animals, and has an extensive background in animal health care. She has recently completed a certified pet health care technician program, and is securing her qualification as a certified kennel operator.

Ms. Hamrick identified the subject property as consisting of approximately 10.387 acres, improved by a dwelling and barn. Ms. Hamrick identified Exhibit No. 7, which is a site plan of the subject property and shows the location of the proposed pet care facility.

Ms. Hamrick explained that while the proposed kennel building would be approximately 100 feet by 50 feet in size, associated with that would be an open area of about 25,000 square foot, to be enclosed by a fence which would be used for walking and exercising the animals. The dogs boarded at the facility would be exercised as many as two to three times a day. The area in which the animals would be exercised is open, with natural grass, and contrasts sharply with the concrete animal runs contained in a typical kennel.

The materials with which the kennel will be constructed have not yet been determined, but will blend aesthetically with the other buildings on the property. A separate septic system, to be approved by the Harford County Health Department, will be installed for the animal waste.

Ms. Hamrick emphasized that there will be no dog runs associated with the kennel. There will be an open exercise area which is less stressful for animals. The animals will always be under the supervision of Ms. Hamrick or her employees. The animals will receive active exercise and will interact with Ms. Hamrick and employees.

Ms. Hamrick will also offer grooming services. A veterinarian will be on standby for emergency veterinary care. The animals will be boarded 24 hours a day, with pick-up and delivery of animals by appointment only. All pet grooming will be conducted indoors.

Ms. Hamrick agreed to a prohibition against any signage. There will be no pickup or drop off of animals before 7:00 a.m. or after 7:00 p.m.; no pickup or deliveries on Sundays; no more than three (3) dogs will be outside at the same time, and not before 7:00 a.m. or after 7:00 p.m. While there will be outdoor lighting, it will only be turned on when necessary. Ms. Hamrick will commence her business with one part-time employee.

Ms. Hamrick states she will manage in a professional manner, and the facility will not cause an adverse impact on either the neighbors or the neighborhood. She agreed to abide by certain conditions, if the approval for the requested special exception were granted. Ms. Hamrick agreed that the special exception approvals would terminate if the property were sold or if she ceased to operate the business. She also agreed to soundproof the building, and that such plans would be reviewed and approved by the Department of Planning and Zoning.

The Applicant did not agree with recommended Condition 4 of the Harford County Department of Planning and Zoning Staff Report. She did not feel that the exercise areas should be located to the rear of the kennel. She proposes that they be located to the front (the house side) and to the sides of the kennel. The outdoor exercise area is shown on Exhibit No. 7. She agreed to all other recommended conditions.

Ms. Hamrick also submitted that she would limit the number of animals to fifty (50) dogs and thirty (30) cats that would be boarded at her facility at any one time. Ms. Hamrick also stated that the outdoor pet care area would be fenced and landscaped with evergreens.

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Next for the Department of Planning and Zoning testified Anthony McClune. Mr. McClune, repeating the findings and recommendations of the Department, finds that the proposed use would meet all applicable standards. The proposed special exception would have no impact above and beyond the impact normally associated with such a use, regardless of its location within the district. Furthermore, the Applicant can meet or exceed all applicable standards.

Mr. McClune stated that the subject property is located in a rural area, with no major residential developments surrounding it. The area is a mix of both agricultural and residential. The boarding facility can be located without impact to any adjoining property.

Mr. McClune specifically addressed sight distance issues along Grier Nursery Road, and found them to be adequate. Because of the varying times when customers will be picking up or delivering animals to the facility, there should be very little, if any, traffic impact.

Mr. McClune said that the Department would accept the additional conditions, as offered by Ms. Hamrick, and would agree to a modification of Condition 4, which would allow the outdoor exercise area to be located both in the front and sides of the kennel, as proposed by Ms. Hamrick. Mr. McClune added the recommended condition, however, that there be not more than three (3) dogs exercised at any one time in the outdoor exercise area. With that condition, the Department would agree to modification of Condition 4.

Mr. McClune stated the Department of Planning and Zoning also recommended that fencing around the outdoor exercise area should be wood, perhaps board-on-board, with an interior wire fence, and that the outdoor exercise area be screened by evergreen trees.

Mr. McClune expressed concern about the maximum number of animals to be boarded; however, he was more concerned with outdoor activity than indoor activity. He feels that there would be no or little impact on the neighborhood, provided no more than three (3) dogs are allowed in the outdoor exercise area at any one time.

In opposition testified Timothy Young of 4040 Grier Nursery Road. Mr. Young does not believe that the Applicant, with a maximum of fifty (50) dogs being boarded on the property, can possibly exercise individual animals for 2-1/2 to 3 hours a day each, and still maintain the limitation of no more than three (3) animals at any one time outdoors.

Ms. Hamrick was then recalled. Ms. Hamrick is willing to reduce the maximum number of animals boarded at any one time on the property from fifty (50) dogs to forty-five (45) dogs; and from thirty (30) cats to twenty to twenty-five (20-25) cats.

Ms. Hamrick stated that the business would be closed on Sundays, with no pickup before 7:00 a.m., and nothing after 8:00 p.m.

There was no other evidence or testimony given in opposition.

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APPLICABLE LAW:

Section 267-53H(3) of the Harford County Code permit kennels and provides:

> *"(3) Kennels. These uses may be granted in the AG, VB, B1 and B2 Districts, provided that all buildings for the shelter of animals and all runways shall be located at least two hundred (200) feet from any lot line."*

Section 267-53H(4) of the Harford County Code permits pet grooming and provides:

> *"(4) Pet grooming. This use may be granted in the AG, VB, B1 and B2 Districts, provided that:*
>
> *a. The activity takes place inside a complete enclosed building.*
>
> *b. No animals may be kept overnight, except those owned by the proprietor."*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject property is a little over 10 acres in size, is zoned agricultural, and is located in a rural/agricultural district of Harford County. The property is improved by an attractive single-family home and a barn.

The Applicant who is experienced in the kennel business and possesses an apparent fondness for animals, wishes to construct what she calls an "upscale" kennel with a pet grooming facility.

A kennel is a special exception under the Harford County Zoning Code and is allowed in the Agricultural District, provided that all buildings and runways are located at least 200 feet from any lot line. It is found, based on the evidence of the record, (Applicant's Exhibit No. 4), that the Applicant is fully able to meet this specific requirement for a kennel.

Pet grooming, which is allowed only by way of a separate special exception, is also allowed in the Agricultural District, provided the activity takes place inside a completely enclosed building and that no animals are kept overnight, except those owned by the proprietor.

It is found that the applicable condition of the pet grooming special exception is fully met, i.e., the grooming activity shall take place only inside a completely enclosed building. The condition that no animals be kept overnight is not be applicable provided the kennel special exception is granted, which allows for overnight boarding of animals.

Accordingly, it is found that the Applicant is fully able to meet the specific requirements of Sections 267-53H(3) - Kennels and 267-53H(4) - Pet Grooming.

The Applicant must further meet the generalized, but no less mandatory, conditions of Section 267-9I – Limitations, Guides and Standards. It is found the Applicant is fully able to meet those requirements as follows:

(1) The number of persons living or working in the immediate area.

The primary land use of the area of the subject property is agricultural. No major residential developments exist which would be affected by the proposed use. The use is, in fact, in keeping with the agricultural character of this mixed agricultural/residential area.

(2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

The proposed use will be located off Grier Nursery Road, which is paved. There is adequate sight distance on Grier Nursery Road. There was no testimony that the road network will be adversely affected by the proposed use, and it is found that there will be no such adverse impact on the road network.

(3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

It is found that the proposed use will have no impact on the orderly growth of the neighborhood or community or the fiscal impact on the county.

(4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

There is no evidence in the record that the proposed use would generate any objectionable odors, dust, gas, smoke, fumes, vibration, glare or noise upon the adjoining neighbors or surrounding properties. Nevertheless, dogs obviously are prone to barking under certain conditions and there is always a likelihood that the dogs, if the use is not properly conditioned, could create a noise problem in the neighborhood. For that reason, the proposal will be conditioned so as to require both soundproofing for the kennel itself, a limitation on the number of dogs which can be outdoors at one time, and a limitation on the hours when those dogs can be allowed outside. With adherence to these conditions potential noise caused by the dogs should be maintained at an acceptable level.

(5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.

Adequate public facilities are available to service the property. The Health Department will review and approve an appropriate on-site septic system for the kennel.

(6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

No evidence was presented or suggestion made that the property does not comply with this requirement. Accordingly, it is found that the proposed use complies with this condition.

(7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.

There have been no structures identified which may be potentially impacted by the proposed use.

(8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

The proposal is consistent with the 2004 Harford County Master Plan.

(9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

There are no sensitive natural features or opportunities for recreation and open space identified which would be impacted by the proposed use.

(10) The preservation of cultural and historic landmarks.

No such landmarks have been identified.

Accordingly, it is found that the Applicants can meet the generalized requirements of Section 267-9I.

Lastly, the Applicants' use must be reviewed in light of the special exception review principles provided by Schultz v. Pritts, 291 Md. 1 (1981). Briefly stated, the special exception, which is considered a compatible use in its zoning district, cannot be granted if its impact is somehow greater at the proposed location than at some other location within the district. By way of example, a gas station has inherent impacts regardless of where it may be located.

A special exception for a gas station cannot be denied simply because of those normal impacts. However, the impact of the gas station may be greater on the community if it were located next to, for instance, a water treatment plant or municipal water processing plant. Such a potential impact may be sufficient grounds to deny a gas station because the impact may be greater at the proposed location than at some other. As stated by Schultz v. Pritts:

> ". . . a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied 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 irrespective of its location within the zone."

No such impact from the proposed kennel and pet grooming operation, however, has been articulated or is found. No such impacts have been identified by either the Department of Planning and Zoning or any potential opponent. Review of the testimony in the record of the case shows no such potential impact. Accordingly, it is found that the proposed use does not have a greater impact at the proposed location than that it would if located elsewhere within the zone.

CONCLUSION:

According, it is recommended that the proposed special exceptions be granted, subject to the following conditions:

1. The Applicants shall obtain all necessary permits and inspections for the construction of the proposed building and outside exercise area.

2. The Applicants shall submit a detailed site plan, showing all existing and proposed improvements, including landscaping and lighting, to be approved through the Development Advisory Committee (DAC).

3. The building shall be insulated to reduce noise impacts on the adjacent lots and surrounding property.

4. The outside exercise area shall be located to the front dwelling side and rear of the proposed building, as shown on Applicants' Exhibit No. 7. The outdoor exercise area shall be surrounded with no less than a 4 foot high board-on-board fence, with an interior wire fence, to be fully screened by a staggered row of 6 foot high evergreen trees, with the placement, variety, and size of the initial plantings to be approved by the Department of Planning and Zoning.

5. The hours of operation shall be limited to 7:00 a.m. to 8:00 p.m., Monday through Saturday. There shall be no grooming or pick-up or deliveries on Sunday. Drop off or pick-up of pets shall be by appointment only.

6. Pets shall not be boarded outside. Outside activity shall be limited to the exercise/play area.

7. No animals shall be outside before 7:00 a.m. or after 8:00 p.m.

8. No more than forty-five (45) dogs shall be boarded or on the subject property at any one time. No more than twenty (20) cats shall be boarded or on the subject property at any one time.

9. No more than three (3) dogs shall be outside at the same time.

10. The construction and appearance of the kennel shall be compatible with the appearance of the existing dwelling on the subject property, with both compatible roof style and exterior finish.

11. The special exception approval shall terminate if the property is transferred or sold, or if Ms. Hamrick ceases to own and operate the business.

12. Outside lighting will be directed off of the property, and will be utilized only as necessary, but will not remain on continuously.

13. There shall be no signage of any nature advertising the permitted uses.

Date: December 9, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner