

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 19-1691

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m. on April 29, 2019, on the application of **TOP OF THE BAY PET LODGE, INC.** (the "Applicant"). The Applicant is requesting two modifications to previously approved special exceptions and variances. Applicant's first modification to a special exception request is for approval of a relocation of the proposed kennel expansion and modification approved in Appeal No. 18-1682 due to site contours, stormwater management and other engineering issues unforeseen at the time of the Board of Appeals' approval. The new two-story building will be 6,200 square feet on the first floor, for use as a commercial kennel, with 833 square feet on the second floor for storage. Associated with the kennel building are four outdoor exercise paddocks totaling 19,797 square feet, and an additional 5,847 square feet of exercise area covered by a roof. The Applicant is also seeking a modification to the special exception to continue the use of an accessory structure for storage and training associated with the kennel use. The Applicant is also requesting variances of the required 200-foot minimum setback per the Talbot County Code for the kennel building to be located no closer than 95.7 feet from the western property line, 118.8 feet from the eastern property line, and 225.6 feet from the northwest property line. The exercise paddocks are to be located no closer than 49 feet from the western property line, 86 feet from the eastern property line, and 156.6 feet from the northwest property line. The existing storage and training building is located 21.8 feet from the western property line.

The Application is a renewed and modified version of Appeal No. 18-1682, approved by the Board of Appeals (the “Board”) on September 24, 2018 (the “Prior Request”). Together, Applicant’s requested modifications to the special exceptions and variances, along with the improvements and renovations sought that comprise the reason for these requests, shall be referred to as Applicant’s “Project.” Due to site contours, stormwater management and other engineering issues unforeseeable at the time of the September 24, 2018 hearing, the site for Applicant’s Project as approved in the Prior Request was no longer feasible.

The Property comprises 10.7 acres, more or less, and is located at 6026 Ocean Gateway, Trappe, Maryland 21673 in the Agricultural Conservation (“AC”) zoning district. It is shown on tax map 48, grid 5 as parcel 113. Gregory Strong, professional handler and owner of Top of the Bay Pet Lodge, Inc. (“Top of the Bay”), owns the property. The request is made in accordance with Chapter 190 Zoning, Article III, §190-13; Article III, §190-64; Article III, §190-118; and Article IX, §190-180 of the *Talbot County Code* (the “Code”).

Present at the hearing for the Board were Phillip Jones, Chairman; Frank Cavanaugh, Vice Chairman; members Paul Shortall, Jr. and John Sewell, and alternate member Gregory Gannon. Mr. Strong appeared on behalf of Applicant. Bruce Armistead, Esq., 114 Bay Street C, Easton, Maryland 21601, appeared on behalf of the Applicant. Miguel Salinas, Assistant Planning Officer, and Elise Deflaux, Environmental Planner, attended the hearing on behalf of Talbot County. Approximately six additional members of the public were present. William C. Chapman was the attorney for the Board. It was noted for the record that each member of the Board had individually visited the site.

The following exhibits were offered and admitted into evidence as Board’s Exhibits as indicated:

1. Application for a Modification to the Special Exception Modification and Non-Critical Area Variance with Attachment A.
2. Tax Map of subject property.
3. Notice of Public Hearing for advertising in *The Star Democrat* newspaper.
4. Newspaper Confirmation.
5. Notice of Public Hearing and Adjacent Property Owner List.
6. Standards for a Modification to the Special Exception.
7. Standards for Non-Critical Area Variance.
8. Staff Report prepared by Elisa Deflaux.
9. Planning Commission Recommendation with Decision Summary attached.
10. Sign Maintenance Agreement.
11. Maryland State Highway Administration email, received March 21, 2019.
12. Independent Procedures Disclosure and Acknowledgment Form.
13. Authorization Letter.
14. Aerial Photo of subject property.
15. Board of Appeals decision No. 18-1682.
16. Email from Dan Watson, received April 4, 2019.
17. Floor Plan and Elevations Plans.
18. Aerial Site Plan.
19. Site Plan prepared by Fink, Whitten & Associates, LLC.
20. Letter from Bruce Armistead, Esq., dated March 1, 2019.

The following exhibits were offered and admitted into evidence as Applicant's Exhibits as indicated:

1. Revision to Sheet 2 of Exhibit 1.
2. Illustration of setbacks.

Chairman Jones read Rule 14 A. of the Board's Rules of Procedure on the record.¹ Upon motion and seconded, the Board unanimously approved a waiver of the one-year refiling prohibition for "the same or substantially the same claim for relief" for good cause shown.

Mr. Armistead entered into evidence a revision to sheet two of Board's Exhibit 1, displaying the correct boundary lines between the Property and adjacent parcels. He stated that the owners of all parcels shown on the revised Exhibit 1 received notice of the revision. Mr. Armistead said the reason for a second hearing for the Project is one of logistics. When Mr. Strong appeared before the Board on September 24, 2018, he said, Mr. Strong needed conceptual approval from the Board before making a major investment. Mr. Armistead said Applicant's modifications to the Prior Request will entail the same use and same structures and same scope as those involved in the Board's approval on September 24, 2018; however, the location of the proposed facilities will be canted differently than the Prior Request. Mr. Armistead said the current Application moves the proposed facility slightly north, and in some cases, the distance from the proposed facility to property lines increases, while in others cases it is slightly closer.

Mr. Armistead said the Prior Request did not address one of the accessory structures located on the Property, used for storage and indoor training. This structure was on the Property prior to Mr. Strong's ownership, he said, and is 21 feet from a property line. Mr. Armistead said the required 200-foot setbacks from the east and west property lines overlap in some places.

¹ See [talbotcounty.gov/uploads/File/Appeals/Rules/Resolution No. 139.pdf](http://talbotcounty.gov/uploads/File/Appeals/Rules/Resolution%20No.%20139.pdf): "No application for a special exception of a variance asserting the same or substantially the same claim for relief shall be received or heard by the Board for a period of one year following the date of the Board's original decision; provided, however, that the Board, in its discretion, may waive the one-year refiling prohibition for good cause shown upon a majority vote of the Board."

Applicant's Exhibit 2 is an illustration of the setback requirements on the Property illustrating these overlaps and the overall difficulty or impossibility in meeting the setback requirements. Mr. Armistead asked the Board to incorporate all relevant portions of the Appeal No. 18-1682, including the Board's opinion, the prior site plan, testimony and responses and the prior Talbot County Department of Planning and Zoning staff report prepared by Elisa Deflaux. He said the Property was granted special exceptions in the 1960s, first as a hunting dog facility, before Mr. Strong purchased the Property in 1984. The current facility houses up to 100 dogs at one time; however, Mr. Armistead said there are only a few days out of the year when that number is even approached. He described Applicant's facility as unique in that it does not house many "transient" dogs; rather, there is a steady "resident" population of dogs placed by owners in the long-term care of Mr. Strong, a nationally renowned show dog handler and trainer. The current facility, Mr. Armistead said, is outdated, including deficiencies in staff accommodations. He said most of the facts supporting the special exception and variance criteria in the Application are no different than in the Prior Request.

Mr. Strong, who testified at length about his background in the September 24, 2018 hearing, supported by the testimony of several current and former clients, outlined the type of facility he operates and plans to continue under the Project, saying he "turned a gun dog kennel into a base for show dogs." He said he added services for local dogs to his show dog services many years ago, and employs around 13 people. The population of dogs at the facility fluctuates seasonally, he said, with summer and holidays being the busiest times of year. Mr. Strong said he is able to avert potential concerns of too many dogs on the Property by adjusting his daily rates, with the goal of maintaining a comfortable number. At time of the hearing, he said, there were approximately 45 dogs on the Property. There are usually at least 30 dogs on the Property.

Mr. Strong said he conducted a survey of three years: 2013, 2015 and 2018. Across those three years, he said, were 12- to 15-day spans each year where the facility reached a population of 80-90 dogs. Only one day in the three surveyed years, Mr. Strong said, did the population reach 100 dogs. He said that in at least 25 years since he's operated Top of the Bay, there were usually fewer than 12 days out of the year when the population approached 80-90 percent capacity.

Currently, Mr. Strong said, the facility suffers from numerous workplace inefficiencies. Among them, he said, are: employees with nowhere to eat meals but a grooming room; a customer lobby that is too small, inefficient draining and "chasing water around" while disinfecting; and groomed dogs having to walk through muddy areas or rain.

Mr. Strong said he has invested significantly into noise abatement. Currently, the facility features a bank of individual, "open air" outdoor exercise areas. Under the Project, a roof will be placed over those areas, with additional corrugated, perforated kinetic panels backed by insulation installed. This material, he said, can also be hung in baffles to further abate noise. Mr. Strong said the individual runs will have plexiglass coverings. The outside paddock area, he said, comprises 5,000 square feet and generally has two dogs at one time, usually of the opposite sex. Dogs are supervised during 20-minute runs in the outside paddock, he said. Under the Project, dogs in the outside paddock will not be able to see cars pulling up to the facility, reducing one frequent cause of barking, Mr. Strong said. Mr. Armistead said most of the activity in the new facility that could result in barking will be confined to indoor or enclosed areas. Mr. Strong said he had never received any nuisance complaints until receiving opposition during the Initial Request. Approximately six years ago, he said, he began visiting neighboring properties in anticipation of renovations and the special exception and variance process, and received no comments from neighbors at that time. In the fall of 2018, Mr. Strong said, he wrote letters to

owners of neighboring properties, inviting them to visit, but none visited. After submitting the site plan in the Initial Request, he said, he invited each neighbor personally to the Property, but none came.

In response to a question from Mr. Armistead about a landscaping plan, Mr. Strong said the east side of the driveway to the facility will be planted with sugar maples, canopy trees will be placed along the backside of the facility, and shrubbery on the east, west and north sides.

In response to questions from the Board about noise on the Property, Mr. Strong said he did not test sound levels at the property lines, but that barking has an average decibel level of 80 dBA. Mr. Strong said dogs can hardly be heard on the backside of the facility, and that the design of the two wings branching out of the facility utilizes noise abatement products and structure to reduce noise. Two homes lie to the east of the Property. A Board member asked Mr. Strong what would happen if the noise level exceeded 60 dBA at the property line in violation of the Talbot County Noise Ordinance, Code Chapter 92 (the "Noise Ordinance"). Mr. Strong said he would eliminate runs on that side of the Property or incorporate solid wall structures and other remedies. When reminded by a Board member that, even if the special exception modifications and variances are granted, he must comply with the Noise Ordinance, Mr. Strong said he was taking a gamble in investing in a state-of-the-art facility designed to reduce noise. Mr. Armistead said the county created a standard in enacting the Noise Ordinance in 2018, and the Applicant must comply; the Application is not requesting a waiver or deviation from the Noise Ordinance.

A Board member stated that the Planning and Zoning staff report supported comments from Mike Mertaugh of the Public Works Department recommending widening the first 50 feet of the entrance lane to the Property. Mr. Strong said he has never had problems with emergency

vehicles being able to access the Property. Twice, he said, fire trucks entered the Property in response to false alarms. Mr. Strong said he has a 40-foot mobile home and a 30-foot trailer on the Property, and that delivery trucks routinely access the Property, and none have had problems doing so. Mr. Strong said, however, that he does plan to widen the first 50 feet of the entrance lane and will be permitted to wait until after construction to do so. He said he has operated at the same capacity for years, will continue to do so, and does not anticipate any increase in customer traffic as a result of the Project.

A Board member said he made his site visit at 1 p.m. to see how loud the dogs on the Property were and noticed that, 100 feet from the current facility, Route 50 was louder than the dogs. The houses affected by the Project, the Board member said, are closer to – and directly exposed to – Route 50. Route 50 is not subject to the Noise Ordinance. Mr. Strong said he wondered if a dBA reading was able to discern between highway noise and dogs barking.

Mr. Armistead asked Mr. Strong questions regarding each of the special exceptions and variance criteria. He asked the Board to incorporate Mr. Strong's responses to the same criteria inquiries in the September 28, 2019 hearing. New responses by Mr. Strong included that the primary difference between the Application and the Prior Request is that the proposed facility will shift slightly north from the location previously approved; that a new septic system – detailed at length in the opinion for Appeal No. 18-1680 – has been installed, and that he is recommitted to incorporating noise-abatement technologies.

The Board invited comments from members of the public in attendance.

Dan Watson, 8404 Aveley Meadow Lane, Easton, MD 21601, testified regarding the Noise Ordinance. Mr. Watson said he does not live near the Property and is not affected by the Project. He said he does not doubt the authenticity of Mr. Strong's intent to comply with the

Noise Ordinance, and that he had read the Board's opinion in Appeal No. 18-1682. Mr. Watson said the Board's finding that the Initial Request "would not create a nuisance," and references that the Applicant would adopt methods to ensure the Noise Ordinance would not be violated, caught his attention. Mr. Watson said the opinion implied that the Applicant was free of concern regarding the Noise Ordinance, and that on the record in this hearing, no waiver of the Noise Ordinance was mentioned. Mr. Watson said notwithstanding any finding of the Board in the instant matter, the record should state for this Application, and any application when noise is at issue, that an approval grants no waiver of any provision of the Noise Ordinance.

Leslie Steen, 21748 Camper Circle, Tilghman, MD 21671, testified in opposition to the Application. Ms. Steen said she is not directly affected by the Project. Contrary to the staff report, she said, there have been complaints against the Applicant. Four people testified against the Project at the Planning Commission in opposition to the Project, Ms. Steen said, including a neighbor she said built a straw wall as an attempt to buffer noise from the Property. Ms. Steen said the Project cannot comply with the Noise Ordinance, and that a sound expert and testimony from the manufacturer of noise abatement materials is needed. No one at the hearing, she said, is able to judge what the noise level will be under the Project. If the Board approves the Application, she said, it will be authorizing something "that will immediately break the law."

Tyler Willis, 5952 Ocean Gateway, Trappe, Maryland, testified in opposition to the Application. Mr. Willis said he represented the owners of a nearby farm as well as "other neighbors" (Mr. Willis is not an attorney). Mr. Willis said the Applicant presented non-specific noise abatement solutions as "lip service" to the Noise Ordinance and neighbors' concerns, and that a working system that abates sound needs to be in place before the Board approves the Application. He said the problem with noise at the Property goes back years, and that a former

county enforcement officer came to the property 15-20 years ago to take a noise reading but could not get the measuring equipment to work. New testing equipment, he said, is inadequate, and the Board should require the installment of a monitoring system to give constant feedback to the Planning and Zoning office. In response to questions from Mr. Armistead, Mr. Willis said he lives about 800 feet southwest of the kennel facility, that he has not studied the site plan but saw the Project would move the facility slightly to the north, further from Mr. Willis' home. He said he suspected he will still be able to hear dogs barking, and that the Property is too small for the Project. Mr. Willis said he is in contact with residents of Williamsburg Village, which he described as a minority community, who are "slowly becoming aware of the mega-expansion" that is "landing on their doorstep." Asked by Mr. Armistead to define Williamsburg Village, Mr. Willis said it was north of the Property. Shown a map of the Property and adjacent properties, Mr. Willis said the map does not show Williamsburg Village. He said properties on Llandaff Road could sometimes hear barking from the Property.

Mr. Strong said the incident requiring a decibel reader 15-20 years ago that Mr. Willis described was for a speaker that broadcast telephone ringing on the Property, that Mr. Willis was the party who complained, and that the problem was remedied.

Mr. Armistead said there is a misconception about the Board approval process. While he respects Ms. Steen's comments, he said, the role of the Board is to make a decision based on evidence. If there are problems after approval, he said, there will be consequences.

Mr. Cavanaugh said that, although the Project would not be permitted under the Code if it were a new venture, Applicant and its predecessors have existed on the Property as a kennel for decades, bringing business to Talbot County, including customers from around the United States and the world. He said the facility needs to be modernized. Noise, Mr. Cavanaugh said, is a big

issue in Talbot County. The Board cannot say, based on the evidence presented, that the Applicant will break the law, he said. However, if the kennel facility becomes a nuisance, Mr. Cavanaugh said, the Applicant will be back before the Board regarding the special exceptions. He said it appeared the Applicant met the criteria for special exception modifications and variances. Mr. Shortall and Mr. Gannon agreed with Mr. Cavanaugh. Mr. Gannon said that the Project will involve the same number of dogs as the existing kennel facility and that with noise abatement methods described by Mr. Strong, the Project should reduce the noise coming from the facility. Mr. Strong acknowledged that he must meet the requirements of the Noise Ordinance. Mr. Sewell agreed with the previous comments and reiterated that there are enforcement mechanisms in the Noise Ordinance as well as the Board's ability to revisit special exception approvals if there are violations.

Mr. Jones said the County Council made a commercial kennel a permitted use by special exception, which recognizes that there is a potential for adverse impacts. Dogs make noise, he said, and people can hear them. Especially where this use is grandfathered in a situation like that of the Applicant, Mr. Jones said, the question is how potential adverse impacts are being addressed. Under the circumstances of a long-term use, Mr. Jones said, the Project suggests negative impacts from noise will improve upon existing conditions.

The Board then considered the application. Based on the testimony, application and exhibits, upon motion and seconded, the Board approved the requested special exception modification and variances, by a vote of five to zero.

The Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.

2. The use will be consistent with the purposes and intent of the Talbot County Comprehensive Plan (the “Comprehensive Plan”). The Comprehensive Plan supports the existence, continuation, redevelopment of and investment in small, privately owned commercial enterprises for the purpose of economic development and providing local employment and needed services to the community. The Comprehensive Plan also supports greater design flexibility for redevelopment projects that will allow for improvement or replacement of functionally obsolete, nonconforming structures and/or uses (Comprehensive Plan, Chapter 2, Policy 2.6). A kennel has been operating on the Property since the 1960s. In Appeal No. 18-1682, the Board noted specifically that Section 7.10 of Chapter 7 of the Comprehensive Plan states: “The County should support and encourage the appropriate enhancement, redevelopment and reinvestment in existing tourism related non-conforming structures and uses so that they may contribute positively to the County’s economic base.” The kennel use is also representative of the service sector, which is the largest business sector in Talbot County (Comprehensive Plan, Chapter 7, Economic Development and Tourism, II A., text). Applicant testified that the relocation and expansion of a more modern kennel structure and its associated exercise paddocks and areas are necessary to replace an older, obsolete building to: 1) improve the conditions under which pets are boarded; 2) improve the customer experience when entering the facility; and 3) improve the working conditions of staff. The proposed relocated and updated kennel structure and associated exercise areas are not intended to increase the current capacity of the dogs. Applicant maintains a population ranging from

approximately 30 to a maximum of 100 dogs, although near-capacity is reached less than 50 days (14 percent) of the year – according to testimony, much less.

3. The use will comply with the standards of the zoning district in which it is located, except as those standards may have been modified by the granting of a variance. The kennel use is permitted in the AC zoning district by special exception with a supplemental use standard for expanded setbacks of 200 feet from property lines. The Project as submitted in Applicant's exhibits will be located with greater setbacks from property lines than the existing use. Under current regulations, and due to the Property's irregular shape, the two-story kennel operation and its associated uses would need variances to be constructed, regardless of its location on the Property. The variances requested will allow the existing business operations to relocate on the Property.
4. The scale, bulk and general appearance of the use will be such that the use will be compatible with adjacent land uses and with existing and potential uses in its general area, and will not be detrimental to the economic value of neighboring property. Based upon the elevations presented by the Applicant, the Board finds that Applicant's proposed facility will be compatible with adjacent land uses. The Board further finds, from the testimony and exhibits presented, that the proposed facility will be an attractive architecturally designed improvement over the existing facility on the same site. The exercise paddocks are required to be screened in accordance with §190-40 of the Code. The facility significantly exceeds the required supplemental setback of 150 feet from Route 50 and is screened from the highway by forested and wetland areas. The proposed two-

story kennel facility is a change in height from the current one-story kennel but is of similar height and appearance to neighboring agricultural structures. The Property also contains a perimeter of forest with mature, tall trees that will provide adequate natural screening along the eastern property line and an 8-foot-tall fence on the western property line to further separate the use from adjacent properties.

5. The use will not constitute a nuisance to other properties and will not have significant adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental disturbances. The existing use on the Property, and its current operating population of approximately 30 to a maximum of 100 dogs do not appear to have any negative impacts on neighboring properties. A review of the Planning and Zoning enforcement files did not reveal any history of neighbor concerns or complaints about the Property and its business operation related to the existing kennel. It is anticipated that the proposed relocation and renovation will not have any negative implications and will, rather, improve noise emanating from the Property from existing conditions. Mr. Strong testified that noise abatement measures will include kinetic perforated metal acoustical panels lining the underside of the entire new roof structure over the rooms that house the dogs and outside exercise areas. Additional acoustic baffles will be installed on the underside of the roof structure over the outside exercise areas, as well as hanging panels of the material. The Board finds that the proposed kennel facility will create no additional trash, odors, glare, vibration air or water pollution or other

safety factors. With respect to health issues, the Board finds that the Applicant's construction of an engineered, state-of-the-art septic treatment system will solve an existing environmental health issue and result in substantial improvement over the existing conditions.

6. The use will not have significant adverse impact on public facilities or services, including roads, schools, water and sewer facilities, police and fire protection or other public facilities or services. The Project is not designed to increase the number of dogs lodged or trained at the Property over that of the current kennel operation. Therefore, there will be no additional impacts on other public facilities. Generally, there is an anticipated overall water quality benefit when a failing septic system is replaced.
7. The use will not have a significant adverse effect upon marine, pedestrian or vehicular traffic. The Board finds that the site plan illustrates that the proposed use cannot impact marine or pedestrian traffic, because there is none. The Board further finds that with no increase in the pet population, there will be no increase in vehicular traffic. The Property is located on Route 50 and utilizes its own access lane. A significant portion of the dogs are boarded at the facility for significant periods of time (one month or longer) to undergo training for regional and national dog shows. As such, the amount of traffic into and out of the Property may be minimized. The Board supports the recommendations of Mike Mertaugh of the Public Works Department contained in the staff report: "1) The first 50 feet of entrance lane (entirely on the subject lands) should be widened to a width of twenty feet or more, allowing the safe passage of two vehicles without

any need for backing out onto the public highway; 2) Post mounted delineators (reflectors) should be installed along both sides of the narrow entrance lane; 3) Signage at the west end of narrow entrance, for the benefit of eastbound traffic, detailing that there is a one lane road ahead and that opposing traffic does not stop; 4) Maintain a clear sight line between the ends of narrow entrance, including the removal of branches or trees as necessary.”

8. The use will not produce traffic volumes which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications established in Chapter 134, Talbot County Roads and Bridges Ordinance, and other applicable standards for road capacity. The Board finds from the site plan and other materials presented that the Applicant’s facility enjoys a direct access onto a major state highway (U.S. Route 50), a major arterial highway that can accommodate all vehicular traffic to and from Applicant’s facility. The Board also notes the Maryland State Highway Administration has provided a “no comment” memorandum.
9. Any vehicle access to proposed off-street parking areas and drive-in facilities will be designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on adjacent properties and on public or private roads. In addition, any resulting commercial and truck traffic should not use a residential street nor create a hazard to a developed residential area. The Board finds that the current operating conditions provide little control of both onsite circulation and relief from vehicle congestion during peak times. The new design, with a circular driveway, will provide a more organized approach for designated

drop-off and pickup locations. Applicant will be required to provide all parking on-site, and the Project will not impact adjacent properties. Applicant is providing 19 parking spaces and received a waiver from the Planning Commission for nine of the required parking spaces.

10. The use will not significantly adversely affect wildlife with respect to the site's vegetation, water resources, or its resources for supplying food, water, cover, habitat, nesting areas, or other needs of wildlife. The Property is located entirely outside the Critical Area and nontidal wetlands. Streams have been identified on the Property and will be shown on the next submittal of the site plan. The proposed facility appears to be located approximately 300 feet from the existing water features. Water quality and runoff will be improved with the new septic system, and the project will be required to address forest conservation and stormwater runoff associated with the redevelopment of the Property. The proposed kennel area is partially cleared of forest; thus, tree removal should be minimized.
11. The use will not significantly adversely affect adjacent existing agricultural uses. Based upon Applicant's testimony regarding the activities that will take place on-site and the fact that all such activities will be contained within the boundaries of the Property, the Board finds that the Project will have no impact on any adjacent existing agricultural uses. The proposed facility will be contained on the Property. There is sufficient space between the proposed modifications and the adjacent agricultural land to minimize any potential negative impacts. In

addition, the neighboring farm parcel elected to erect a 6-foot privacy fence along the line abutting the Property.

12. Unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that the literal enforcement of the provisions of this chapter would result in a practical difficulty or unreasonable hardship in enabling the applicant to develop or use this property. The Board finds that Applicant's site plan illustrates that Applicant's property is an irregularly shaped, elongated parcel with an average width in the range of 350 feet. With a required 200-foot setback from property lines for a commercial kennel use, the irregular shape of the Property, some water features, streams and slopes, the Board finds that there is no location on Applicant's property where the existing non-conforming use, which has existed for almost 60 years, can be continued or modified in a way that will comply with the required setback. Applicant has selected the highest, flattest portion of the Property for the new 132-foot-wide building and exercise paddocks.
13. The need for the variance is not based upon circumstances which are self-created or self-imposed. The Board finds that the Applicant's commercial kennel use originated under prior ownership in 1962 and has existed in substantially the same location under Applicant's ownership since 1984. Additionally, the Board finds that Applicant's property was an existing lot of record when acquired by the Applicant and has not been reconfigured by the Applicant.
14. Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance. The Board finds Applicant's reason

for the variances is to reconstruct the obsolete existing facilities to improve the conditions under which pets are boarded, to improve the owner/customer experience when entering the facility, and to improve the working conditions for Applicant's staff. Based upon the testimony of the Applicant, the Board finds that the requested variance is not intended to increase in the number of pets that can be boarded or to achieve greater profitability.

15. The variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The Board finds that Applicant's special exception use provides a needed service to the Talbot County pet-owning community, as well as to the owners of show dogs housed and trained by the Applicant. The Board further finds that Section 2.6 of Chapter 2 of the Comprehensive Plan states as follows: "In certain areas where the County Council deems redevelopment or reinvestment to be appropriate to support tourism and economic development, the County should provide greater design flexibility for redevelopment projects that will allow for improvement or replacement of functionally obsolete non-conforming structures and/or uses." The Project is not anticipated to increase traffic to and from the Property. The existing kennel facility is 400 feet from the nearest neighboring residence, and the new kennel facility will be approximately 130 feet from the closest neighboring residence. The Board notes Applicant's intent to incorporate additional noise abatement measures into the new kennel facility to reduce or eliminate noise, and onsite forest will help reduce impacts to neighboring properties.

16. The variance shall not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. The Board finds that the reconfiguration of Applicant's existing facility as proposed will be the minimum adjustment necessary to accommodate substantially the same pet population, but in improved facilities for the pets and for the administrative functions conducted by staff.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY
THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicant, **TOP OF THE BAY PET LODGE, INC.** (Appeal No. 19-1691) is **GRANTED** the requested modification of special exception and variances consistent with the evidence presented to the Board of Appeals, subject to the following conditions:

1. The Applicant shall take all of the required steps and acquire all necessary approvals, including any additional waivers necessary, required for a Major Site Plan and Landscaping Plan as spelled out in the Code.
2. The Applicant shall address forest conservation for the redevelopment of the site.
3. The kennel capacity for boarding is limited to up to 100 dogs. The Applicant will maintain a census log with the number of dogs on-site at all times.
4. The approval is subject to a determination by Talbot County Environmental Health for wastewater design flow of the commercial kennel.
5. Dogs are required to be contained within a fenced area at all times.
6. Screening and/or fencing required by the site plan shall be implemented before the occupancy or use of the new building(s).

7. Applicant shall incorporate, and comply with, a sound abatement plan comprising of measures of sound attenuation believed to comply with the Talbot County Noise Ordinance, Chapter 92 of the *Talbot County Code*, effective October 27, 2018.
8. The Applicant shall commence construction on the proposed improvements within eighteen (18) months from the date of this Decision.

GIVEN OVER OUR HANDS, this **23rd** day of July, 2019.

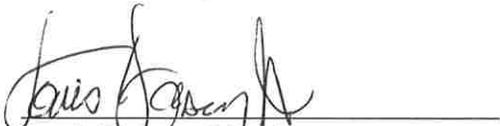
TALBOT COUNTY BOARD OF APPEALS



Phillip Jones, Chairman



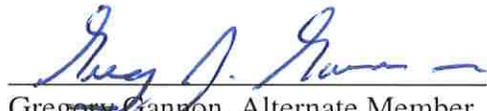
Frank Cavanaugh, Vice-Chairman



Louis Dorsey, Member



Paul Shortall, Jr., Member



Gregory Gannon, Alternate Member