

**DECISION**  
**TALBOT COUNTY BOARD OF APPEALS**  
**Appeal No. 18-1682**

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 September 24, 2018, on the application of **TOP OF THE BAY PET LODGE, INC.** (the "Applicant"). The Applicant is requesting a modification to a special exception and a variance. Applicant's special exception request is for a modification of the special exception to relocate and enlarge an existing 2,510 square foot kennel with 670 additional square feet of storage, office and laundry facilities inside an existing residence, to a two-story kennel building 6,040 square feet in size that will include 1,824 square feet on the second floor. Associated with the proposed kennel building are four proposed exercise paddocks totaling 20,000 square feet and 2,880 square feet of exercise area. (Cumulatively, Applicant's proposed modifications to the commercial kennel facility, and additional modifications to the septic system on the Property are heretofore known as Applicant's "Proposal".) The Applicant is also requesting a modification to the condition approved by Appeal #67 in 1964 that limits the number of dogs on-site at any given time to 40, to reflect the current operating capacity of more than 40 dogs, but not to exceed 100 dogs. The Applicant is also requesting a variance of the required 200-foot minimum setback per the *Talbot County Code* for the kennel building to be located no closer than 64.3 feet from the westerly property line and 146.4 feet from the easterly property line, and with the exercise paddocks to be located no closer than 23.2 feet from the westerly property line and 99.8 feet from the easterly property line.

The Property comprises 10.7 acres, more or less, and is located at 6026 Ocean Gateway, Trappe, Maryland 21673 in the Agricultural Conservation ("AC") zone. 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 were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, members Louis Dorsey and Frank Cavanaugh, and alternate member Gregory Gannon. Mr. Strong appeared on behalf of Applicant. Bruce Armistead, Esq. and Zachary Smith, Esq., 114 Bay Street C, Easton, Maryland 21601, appeared on behalf of the Applicant. Kyle Kowalczyk of Rauch, Inc., 106 N. Harrison Street, Easton, Maryland 21601 appeared on behalf of Applicant. Miguel Salinas, Assistant Planning Officer, and Elise Deflaux, Environmental Planner, attended the hearing on behalf of Talbot County. Approximately seven additional members of the public were present. William C. Chapman was the attorney for the Board of Appeals (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 with Attachment B.

7. Standards for Non-Critical Area Variance with Attachment C.
8. Staff Report prepared by Elisa Deflaux.
9. Planning Commission Recommendation.
10. Sign Maintenance Agreement.
11. Email from David Redman, dated July 20, 2018.
12. Independent Procedures Disclosure and Acknowledgment Form.
13. Authorization Letter, dated July 2, 2018.
14. Board of Appeals Decision No. 37.
15. Board of Appeals Decision No. 49.
16. Board of Appeals Decision No. 67.
17. Aerial Photo.
18. Photos taken on July 23, 2018 by Chris Corkell.
19. Supplement to Site Plan Exhibit.
20. Site Plan by Rauch, Inc.
21. Floor Plan.
22. Floor Plan, Second Story.
23. Elevation Plans.

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

1. Letter dated July 30, 2018 from Gregory Strong to Margaret Stanley.
2. Letter dated July 30, 2018 from Gregory Strong to Joanne Murray.
3. Letter dated July 30, 2018 from Gregory Strong to Intown Management, LLC.
4. Letter dated July 30, 2018 from Gregory Strong to Angela and Vincent Brooks.

5. Aerial map dated June 12, 2018 showing approximate distances to existing facility.
6. Aerial map dated June 12, 2018 showing approximate distances to proposed facility.
7. Declaration and Agreement for operation of on-site sewage disposal system, marked "draft."
8. Letter from Beverly and Richard Tilghman dated July 26, 2018.
9. Letter from Brenda Evans, dated July 29, 2018.
10. Letter from Thomas Reynolds, dated July 26, 2018.
11. Large plat showing photo of proposed building (front).
12. Large plat showing photo of proposed building (rear).
13. Large plat showing plans of dog runs.
14. Plat of proposed floor plan by Chesapeake Green Building & Design, Inc.

The following exhibits were offered and admitted into evidence as Opposition Exhibits as indicated:

1. Letter from Tyler Willis, Kelly Willis, Ann McManus and Tracey Gsvind, dated September 24, 2018.

Mr. Armistead outlined the anticipated testimony for the Board, said that a kennel has existed as a lawful non-conforming and special exception use on the Property for almost 64 years, and emphasized that the Applicant's Proposal is not to intensify the use and that the Proposal will not increase the number of animals serviced by Top of the Bay. Mr. Armistead addressed some preliminary issues. First, he said a 200-foot setback is impossible on this Property. Second, Mr. Armistead said a complaint regarding discharge of sewage on the

Property was inaccurate, the result of a rare rainfall overflow involving a tank not utilized for sewage but rather for water for washing and other uses. Mr. Armistead said solid animal waste accumulation had been raised as a concern, but that this was also inaccurate, that solid waste is collected daily on the Property, stored and shipped offsite. Mr. Armistead said potential noise had been raised as a concern, but that the Applicant had used significant efforts in the past to reduce noise and proposes enhanced efforts moving forward. Mr. Armistead also said allegations of encroachments were inaccurate, that only one minor encroachment had occurred and was immediately rectified.

Mr. Armistead next gave an overview of the history of the Property as it relates to special exceptions. In 1961, prior owner Robert Edward Lee Andrew was granted a special exception for a kennel operation, limited to boarding and training hunting dogs, no more than 10 at a time. In 1962 a modification to the special exception was approved to allow, *inter alia*, 10 additional dogs, for a total of 20 dogs. In 1964, Mr. Andrew was granted an additional modification to the special exception to double the capacity to 40 dogs. Mr. Armistead said the Code did not, and does not currently, limit the number of dogs that could be kept at a kennel; however, the planning staff construed the approval for 20 more dogs, for a total of 40, as a limiting condition at the time. Today, Mr. Armistead said, a census of the animals at Top of the Bay averages more than 40 but less than 100, which is a maximum capacity rarely reached. Mr. Strong, he said, had no knowledge of past special exception applications, but prior to Strong's purchase of the property in 1984, more than 40 dogs at a time were kept on the Property.

Mr. Armistead noted that, prior to 2017, the Property was located in the Village Center ("VC") zone, in which operating a kennel was a legal, nonconforming use. In 2017, the County

reclassified the Property into the AC zone, in which a kennel is a permitted use by special exception, requiring Board approval for any material modification of the use.

Mr. Strong testified in support of the application. He described his history in the training and show dog industry, a field he entered in his early 20s, having been raised in upstate New York by parents who were dog breeders and exhibitors. Mr. Strong said he apprenticed under top terrier trainers in California before returning to the East Coast. Mr. Strong purchased the Property, formerly known as Bell Kennels, in 1984 and has operated a kennel on the property for more than 34 years. As the industry has evolved, he said, the current facility, which is nearly 70 years old, has become too small and outdated. Mr. Strong said he proposes building a state-of-the-art facility with indoor runs and “veterinary-style” spaces that are better for dogs; better working spaces and facilities for employees; and better access and facilities for customers.

Mr. Strong said he currently has 13 employees, that the majority of Top of the Bay’s gross income comes from in-county customers, and that two-thirds of Top of the Bay’s gross income comes from boarding, grooming and training show dogs, between 20-30 of which are usually kept on the Property at a time, for stays ranging between three months to three years. Top of the Bay’s show dog clients, he said, come from all around the United States and the world, and Mr. Strong has apprenticed others to perform the same type of show dog services he provides, including a former employee on a work visa who traveled from South Korea for the apprenticeship. Mr. Strong said he attends between 140 and 160 dog shows a year, across the U.S. and occasionally abroad.

Mr. Strong said he reviewed census records for Top of the Bay back to 2013. He said the average occupancy rate nationwide for commercial kennels is 30 percent, but that Top of the Bay’s occupancy rate is higher on average because of the show dog services offered in addition

to standard boarding. Mr. Strong said there is a period of about 44 days a year that constitute the “busy season” and will see occupancy rates of 80 percent and up, but that he found only one day in the census period that the kennel reached full occupancy. On the day of this hearing, Mr. Strong said there were eight boarding dogs along with 30 show dogs; 25-30 boarding dogs were scheduled for the following weekend. Mr. Strong said he was unaware of the 1964 special exception modification, but has regularly exceeded 40 dogs on-site since within six months of purchasing the Property. If the application is granted, Mr. Strong said, the kennel operations will not intensify or increase.

Mr. Strong demonstrated the plat of proposed dog runs to the Board. He said the Proposal will feature two wings of runs. Mr. Strong said the dogs are noisiest for about a 20-minute period when they turned out in individual 4x12-foot individual runs simultaneously, which are under cover but not enclosed. The run periods begin at 7 a.m. and end at 7 p.m. Dogs are then turned out in pairs in paddocks, where they are usually quiet, he said. The paddocks, which Mr. Strong said act as a noise buffer, approach within 20 feet of the westerly line of the Property, but Mr. Strong said that, if the application were granted, the Proposal will move the kennel operations further from the westerly line.

Mr. Strong responded affirmatively to a question from Mr. Cavanaugh as to whether the current kennel configuration is more exposed than the Proposal’s configuration. In response to a question from Mr. Armistead, Mr. Strong said he had contacted neighbors along Route 50 multiple times about the Proposal, including owners of properties that would be closer to the kennel operation should the application be granted and the project completed. Mr. Strong said he went door-to-door, inviting neighbors to share concerns or questions, and received none. He

followed with a letter to neighbors and again received no questions or concerns; he then followed with phone calls and received no responses.

Mr. Armistead entered copies of identical letters to neighbors dated July 30, 2018 as Applicant's Exhibits 1-4.

Under the Proposal, properties to the south would be further away from the kennel operation by about 300 feet, Mr. Strong said. Dense wooded areas lie between the Property and adjacent properties, he said, adding that the Applicant will construct fencing and additional plantings as an additional buffer. Mr. Strong said the intent of all aspects of the Proposal – including traffic flow – takes his neighbors into consideration. Years ago, he said, he received complaints about horns that would indicate an incoming phone call; in response, he added switches and shut off the horns at night, and now these horns are no longer in use. Applicant's Exhibits 5-6 were admitted into the record.

Mr. Strong next testified about septic system issues on the Property. In 2006, he said, in response to backup concerns, self-report these issues, consulted with engineers and environmental experts, and presented to the Talbot County Health Department (the "Health Department") a plan to replace the existing septic but with the idea that he wanted to reconfigure the entire facility in the near future and did not want to replace the septic system twice if it would eventually require relocation. Mr. Strong said a hydraulic failure occurred, but that the Health Department denied his proposed solutions over the past four years. Two years ago, he said, he capped the tank at issue and switched to a pump and haul operation.

Recently, in conjunction with the Proposal and application, Mr. Strong said, he has been working with Mr. Kowalczyk, who has submitted to and had plans for a new Sewage Disposal Area ("SDA") preliminarily approved by the Health Department, but has held off on installation



until approval of this application as he cannot justify the financial expenditure of a septic upgrade without a simultaneous upgrade of the facility.

A copy of the draft agreement between Applicant and the Health Department was admitted into the record as Applicant's Exhibit 7. Requirements in the draft agreement, Mr. Strong said, include daily metering of influent and effluent for a period of 90 days from the beginning of operation of the new system; testing every 30 days; and weekly recording for a period of three months, phasing to monthly and then quarterly recording for the lifetime of the system. It is contemplated that the metering requirement may be eliminated after a certain period of positive results.

Mr. Strong said the draft agreement is premised on an average daily discharge of up to 1,500 gallons. He said modern designs under the Proposal, including an efficient "car wash system for dogs", will lead to a more efficient use of water at the kennel facility, which currently features uneven floors that cause employees to "chase water" while cleaning. Mr. Strong said he monitored the flow of water from the Property's well himself, finding that not all of the well outflow ends up in the septic system. The maximum well flow Mr. Strong measured was 2,000 gallons, he said, and averaged under 1,200 gallons. The new septic system plans call for a maximum flow of 3,000 gallons. Mr. Strong said he would execute and abide by an agreement with the Health Department for the new septic system.

Mr. Kowalczyk testified about the septic plans. Mr. Kowalczyk said he handles onsite wastewater disposal and other environmental issues for Rauch, Inc. under the supervision of Robert Rauch, President of Rauch, Inc. and Lester Coble, Environmental Director at Rauch, Inc. Mr. Kowalczyk said the new septic system plans will be a significant improvement upon the existing system. He described details of the new septic system. Multiple tank treatment units

will include grease trap units, a settling tank and a MicroFAST® Wastewater Treatment System required by the Health Department. He described a 6,000-gallon underground storage equalization tank and a new pump and drain system that will dose each septic field twice a day with 350 gallons of effluent under low-pressure doses, which reduces the risk of microbial matting.

In response to a question from Mr. Cavanaugh, Mr. Kowalczyk said residue on concrete paths from solid animal waste, which is collected separately, currently is washed into a drain system alongside the kennel. The new system, he said, will collect all wastewater at the point of origin. Mr. Cavanaugh expressed concern that, if the Board approved a reduction of the required setbacks, more wastewater would flow toward adjacent properties. Mr. Kowalczyk said the new system would be certified to capture all effluent and wastewater from the facility. In response to a question about power outages, Mr. Kowalczyk said the treatment systems can lose power for one or two days and not lose effectiveness. The 6,000-gallon equalization tank, he said, would require pumping only if the power were out “a long time.” Using Board Exhibits, Mr. Kowalczyk demonstrated the location of the proposed new tanks, in a series near the house on the Property. Up to 1,500 gallons per day would be accommodated by the drain field alone, he said. The northwest area of the Property would be required to be maintained as a reserve area. In response to a question about freezing, Mr. Kowalczyk said this is not a major concern in this area, and that biologically created heat in the system further reduces this risk.

Mr. Kowalczyk said the existing facility features buildings and dwellings very near property lines, but the Proposal will move the majority of buildings and dwellings further from property lines. He described existing buffers of trees and vegetation as “very dense.”

Mr. Strong discussed the new facility anticipated in the Proposal with the use of Board Exhibits. He described a proposed office facility, saying that the current office is inside the house on the Property, including laundry facilities. Whereas currently there is crossover between show dog areas and boarding dog areas, the Proposal will segregate these classifications in separate wings, with separate grooming rooms, primarily as a precaution as show dogs come from all over the world and are potentially exposed to different diseases that local dogs are not. Currently the kennel, which prepares food for dogs, utilizes one kitchen. The Proposal calls for two kitchens. Noise containment under the Proposal will be built into design the structure itself, he said, which will feature runs under roofs, which Mr. Strong called a “big improvement” over open-air runs in terms of noise. He said the Proposal calls for more separation of dogs and less interaction between them. Additionally, Mr. Strong said, noise abatement will be enhanced by the use of modern noise abatement materials akin to materials used by restaurants, athletic facilities and civic structures, including placing such materials in baffles in the rafters of the new facility. Mr. Strong said he would incorporate and abide by a noise abatement plan. In response to a question from Mr. Dorsey, Mr. Strong reiterated he had never received a complaint about noise from dogs barking.

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

Katherine Ball, 28468 Sanderstown Road, Trappe, Maryland 21673, testified in support of the application. Ms. Ball said she is retired from the healthcare industry and has been a customer of Top of the Bay for five years. Despite its currently antiquated facility, she said, Top of the Bay is “cleaner than most health facilities.” Ms. Ball said she has two dogs, both of which have been trained by Mr. Strong and both of which are well-known by staff. She utilizes Top of the Bay’s services frequently when she needs to travel for her children’s activities. Ms. Ball

described the level of service Applicant provides as “excellent” and said she would “travel out of Talbot County for [that] level of care.” She described the Property as quiet at a recent visit at approximately 8 a.m. Ms. Ball said the current waiting area for customers is tiny, and that she cannot bring two dogs in at one time. She described the current facility’s layout as “tough to manage” and hoped that the Proposal takes into account different types of customer vehicles. Ms. Ball said the Board should take into consideration the desire to maintain current businesses in Talbot County, and that it would be a loss to the community if the Applicant were not permitted to improve its facility.

Marilyn Title, 5808 Widgeon Point Lane, Oxford, Maryland 21654, testified in support of the application. Ms. Title said Top of the Bay is an asset to Talbot County and to dog owners. She described Top of the Bay as “conscientious,” and nationally respected and noted Mr. Strong’s recognition by the American Kennel Club as a Handler of the Year. Ms. Title, who said she has been showing dogs for 55 years, described Mr. Strong’s reputation as “second to none in the United States.” Ms. Title said that, in 2008 when she lived in California, she sent Mr. Strong one of her show dogs, choosing him over California handlers, and did not worry about sending her dog across the country because she knew the quality of care her dog would receive. Ms. Title said she eventually moved to and purchased two homes in Talbot County to be close to Top of the Bay and subsequently became involved in local charitable organizations, which she said was all possible because of Mr. Strong. Ms. Title said she knows of owners from Japan and Canada who have had similar experiences to hers at Top of the Bay, that Talbot County is a dog-friendly environment and that granting the application to allow the new facility will enhance that status.

Steve Weems, 5954 Ocean Gateway, Trappe, Maryland 21673 testified. Mr. Weems resides on a neighboring parcel to the Property and said his biggest concern is the impact on neighboring properties, which he described as “more impact to me than what has been put forth here.” He described the proposed septic plan as “a lot of water going into the ground” and said he wondered “will it be OK during the wet time of the year?” He also expressed concern about the size of the beech trees potentially affected by the Proposal and new septic system, saying “they can’t take much disturbance.” Mr. Weems said the facility can be seen through the wooded areas separating the Property from neighboring properties in February and at other times.

Leslie Steen, 21748 Camper Circle, Tilghman, Maryland, 21671, testified, addressing concerns about potential noise from the Property. Ms. Steen said she is a member of the Noise Ordinance Task Force (the “Task Force”) and learned of this case at a Talbot County Planning Commission meeting. She said she joined the Task Force because of an historic problem in Tilghman with outdoor music and has since learned a lot about decibel levels. Ms. Steen said wooded areas between properties do not cause sound levels to diminish. She said the Board has an obligation to ensure compliance with the Talbot County Noise Ordinance, Chapter 92 of the Code, effective October 27, 2018, which makes it unlawful within the County “to make, continue to make, permit, or cause to be made or continued a noise disturbance or a noise level in excess of 60 dBA during the daytime or 55 dBA during the nighttime, except as specifically stated herein.” Ms. Steen said noise issues “won’t go away” and are “there for life” if the Board grants the application. She said that she found information on the internet indicating that a single dog can create sound reaching 80 decibels, and that a rock band performing creates sound of approximately 110 decibels. Ms. Steen advised Applicant to obtain an expert for the purpose of

ascertaining and mitigating noise levels, and requested that the Board require abatement techniques if it grants the application.

Ann McManus, 5952 Ocean Gateway, Trappe, Maryland 21673 testified in support of a letter to the Board signed by Ms. McManus, Tyler Willis, Tracey Gsvind and Kelly Willis, owners and residents of neighboring parcels to the Property, admitted as Opposition Exhibit 1. Ms. McManus said she has a clear line of sight to the kennel from her backyard and that at times the noise coming from the kennel is “excessive” and asked that the Board require noise abatement inside and outside the kennel facility. Opposition Exhibit 1 supports recommendations made by the Talbot County Planning Commission, including noise abatement and a landscaping buffer.

Mr. Armistead asked Mr. Strong to respond to the comments and opposition. Mr. Strong said his first reaction is that “it can’t get worse,” than existing conditions on the Property, so he is trying to make it better, including by reducing or eliminating opportunities for open-air barking that currently exist. Mr. Strong said he would return to the Planning Commission for site plan approval prior to obtaining building permits, and address issues raised by Ms. McManus and others, including decibel levels. He described noise-dampening products he planned to incorporate into the new facility that would mitigate any potential noise. With approval of the application, Mr. Strong said, he would begin construction of the new septic system and request permission to connect to the new facility instead of the existing facility.

In response to a question from Mr. Cavanaugh, Mr. Kowalczyk addressed the issue of tree removal. He said some trees will need to be removed in the process of building the new septic system, as roots can grow into the system and cause damage. Only those trees that are absolutely necessary to remove will be removed, he said, and Mr. Kowalczyk added that he

believes the Proposal will meet the standards of the Maryland Forest Delineation Act, which requires new plantings and a forest conservation plan. In response to a question from Mr. Gannon, Mr. Kowalczyk said there are 11 acres of room to incorporate any required new plantings.

Mr. Armistead said that Talbot County is lucky to have a “first-class operation” like Top of the Bay, and that Applicant has provided needed services to County residents for decades and attracts others from outside the area. Mr. Armistead said that, during the 34-plus years that Mr. Strong has run a commercial kennel on the Property, no issues or complaints have arisen other than the septic issue, which was promptly addressed. He noted that the Comprehensive Plan encourages the County to support businesses like Top of the Bay. Mr. Armistead submitted proposed findings for the Board’s consideration, and Mr. Jones said that ratification of proposed findings is permitted by the Code and under the Board’s procedures explained to Board members. Mr. Salinas said that, should the Board approve the application and the proposed findings, the Department of Planning and Zoning included recommendations for conditions in its report.

Mr. Cavanaugh said setbacks exist to protect property owners; however, he said, businesses have a right to exist, and under the existing setback scheme, the Applicant has no way to make improvements to his commercial kennel facilities within the configuration of the Property. Mr. Cavanaugh said the septic proposal will be an improvement to the Property. Compliance with noise limits, Mr. Cavanaugh said, will be tougher under the new Talbot County Noise Ordinance effective October 27, 2018, with recourse available to aggrieved parties, but added that Top of the Bay is an “asset to the community.”

Vice Chairman Jones said his personal experience with dogs barking is that, if there is a problem, a 200-foot setback “doesn’t do much good,” and that the owner is more important than setbacks in mitigating the noise. He cited experience with noise issues in past Board decisions, where such issues were among the factors in denying special exceptions under a less-effective noise ordinance. However, Mr. Jones said he does not always trust expert reports and testimony regarding noise, citing an example where he felt expert testimony significantly underrepresented the noise level of a helicopter.

Mr. Gannon noted that the four closest neighbors to the Property were all contacted and had no problems. He said the Proposal will reduce noise below its current level, which he said is “obviously acceptable” based on the lack of complaints.

Mr. Dorsey said he had no issue with the special exception request, as a commercial kennel has already been in use for over 60 years on the Property, and that any expansion would require a variance, because a 200-foot setback renders expansion impossible because of the configuration of the Property. Regarding noise, Mr. Dorsey said this is an issue left up to individual observations, and that the distance between the Property lines and a neighbor will make a difference. He said testimony indicated limited times when the kennel is near capacity.

Chairman Shortall noted a kennel has operated for more than 60 years on the Property. He said dogs sometimes barking is the nature of a kennel, but that not all dogs present on the Property are outside barking at one time. The septic system on the Property needs to be upgraded, Mr. Shortall said, and the Proposal is a step in the right direction.

Mr. Cavanaugh requested that staff conditions be added into a decision if the application is approved. Mr. Shortall noted that Health Department approval prior to any new structure is



covered in the staff recommendations. Mr. Cavanaugh requested that noise abatement be included as a condition in any new construction.

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 Talbot County Comprehensive Plan encourages the existence and continuation of small, privately owned commercial enterprises that provide local employment and needed services to the community. The Board notes specifically that Section 7.10 of Chapter 7 of the Plan (Economic Development and Tourism Policies) 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." Based upon a report by the staff, the Board also finds that the Planning Commission unanimously recommended approval of the special exception application, a recommendation that was based upon the Commission's determination of consistency with the Comprehensive Plan.
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 Board finds that the existing use does not conform with the 200-

foot setback for commercial kennel operations required under the current Code.

The existing facility predates the establishment of that standard and enjoys a status of “legal nonconforming” in terms of the 200-foot setback. Based upon the Application, the testimony of the Applicant, Applicant’s engineer (Rauch, Inc.), and the site plan prepared by Rauch, Inc., the Board finds that the Applicant’s proposed use will comply with all standards for this use applicable within the AC zoning district, except for the required 200-foot setback from all property lines, which has been addressed through a simultaneous application for a variance from the required setbacks.

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 presented, that the proposed facility will be an attractive architecturally designed improvement over the existing facility on the same site, and that the facility will be buffered and screened from the nearest residential properties by an area of existing heavy vegetation. Based upon the site plan submitted by the Applicant, the Board further finds that the proposed facility will be set back from the nearest major highway (U.S. Route 50) by over 300 feet and will be surrounded on the easterly side by agricultural fields. Although the proposed facility will be constructed to better accommodate reconfigured administrative and non-boarding activities, the Board finds that the proposed

facility will remain consistent in scale, bulk and general appearance with the existing facilities.

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. Based upon the testimony of the Applicant, staff and others, the Board finds that a commercial kennel operation on the subject property has harmoniously coexisted with surrounding land uses for decades, without any report or allegation of a nuisance or other adverse impact. 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 plans to construct 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. With respect to noise, the Board finds that the Applicant's plans for the new facilities include the incorporation of additional noise abatement measures to ensure no disturbance to surrounding property owners, and that the redesign of the facilities will direct noise inward as opposed to in the direction of neighboring properties.
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 Board notes from the materials presented that Applicant's proposed use does not presently adversely impact public facilities or services such as schools, water and sewer. Based upon the Applicant's

testimony regarding the historic census of the dog population and the representation that the new facility will not result in an increase in that population, the Board finds that services such as roads, police and fire protection have not been impacted by Applicant's use in the past and that there is no likelihood of any new adverse impacts resulting from the new facility.

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.
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 email from David Redman, an official with the Maryland State Highway Administration ("SHA"), dated July 20, 2018, stating that SHA has "no issue or comment on this project."
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 Applicant's site plan illustrates that Applicant's facility (including the access and off-street parking areas) are self-contained within Applicant's property and will create no conflicts with any vehicular, bicycle or pedestrian traffic, and that no residential streets or developed residential areas will be impacted by any truck or commercial traffic.

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. Based upon Applicant's testimony describing the site and the observations of Board members made during their required site visits, the Board finds that the proposed facility and use will result in no adverse impact on wildlife, because the site presently does not supply any significant food or water or any significant cover, habitat or nesting areas.
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 site, the Board finds that the proposed use will have no impact on any adjacent existing agricultural uses.
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 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.

13. The need for the variance is not based upon circumstances which are self-created or self-imposed. The Board finds from the testimony presented 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. Applicant intends to reconstruct the 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 intended only to permit a new structure that will achieve improved operational efficiencies and that with no increase in the number of pets that can be boarded, the requested variance is not intended 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 from the testimony presented 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 Board notes Applicant's intent to incorporate additional noise abatement measures into the new kennel facility to reduce or eliminate noise, and the Applicant's intent to install a new septic system to avoid any adverse environmental impact on any adjacent or neighboring properties. For those reasons, the Board finds that the variance to permit the reconstruction of Applicant's facility as shown on the accompanying site plan will not be contrary to the public interest or detrimental to adjacent or neighboring properties.
16. The variance shall not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. Based upon the site plan and the testimony of Applicant's engineer, 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. 18-1682) 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. A professional site plan with building restriction lines and buffers from environmental features shall be prepared for the Major Site Plan process.
4. 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.
5. The approval is subject to a determination by Talbot County Environmental Health for wastewater design flow of the commercial kennel.
6. Dogs are required to be contained within a fenced area at all times.
7. The Applicant shall make an application to and follow all of the rules, procedures and construction timelines as outlined by the Department of Permits and Inspections regarding new construction. Architectural construction drawings are required at the time of permit application.
8. Screening and/or fencing required by the site plan shall be implemented before the occupancy or use of the new building(s).




9. 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.
10. The Applicant shall commence construction on the proposed improvements within eighteen (18) months from the date of this Decision.

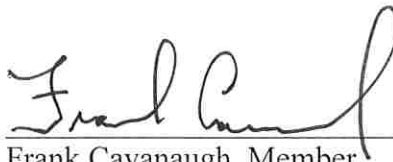
GIVEN OVER OUR HANDS, this 16 th day of January, 2019.


**TALBOT COUNTY BOARD OF APPEALS**

  
\_\_\_\_\_  
Paul Shortall, Jr., Chairman

  
\_\_\_\_\_  
Phillip Jones, Vice-Chairman

  
\_\_\_\_\_  
Louis Dorsey, Member

  
\_\_\_\_\_  
Frank Cavanaugh, Member

  
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Greg J. Gannon, Alternate Member  
