Case No. 2871

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPELLANT:	John D. Myers, Jr. 460 Bachman Valley Road Westminster, Maryland 21157
ATTORNEY:	Charles E. Stoner, Esq. 188 East Main Street Westminster, Maryland 21157
APPEAL:	A Notice of Violation dated September 21, 1987, issued by the Zoning Administrator regarding the use of the property for sale of goods in violation of the regulations for the "A" Agricultural District, and in violation of the conditional use approved by the Board of Zoning Appeals in Case No. 2674.
LOCATION:	On property located on the West side of Littlestown Pike (Md. Rt. No. 97) about 1,900 feet North of Stone Road intersection in the Third (3rd) Election District of Carroll County.
BASES:	Article 17, Section 17.4; Zoning Ordinance 1E.
HEARING HELD:	December 31, 1987

On December 31, 1987, the Board of Zoning Appeals heard an appeal by John D. Myers, Jr., from a Notice of Zoning Violation issued September 21, 1987. The pertinent findings by the Board include the following:

By a Decision dated March 26, 1987, the Board of Zoning Appeals of Carroll County approved Appellant's request for a conditional use for the establishment of a "farm market," 40 feet by 60 feet, for the sale of "farm commodities" on Appellant's farm located at 2510 Littlestown Pike (Md. Rte. No. 97) in the

Third (3rd) Election District of Carroll County. The property is zoned "A" Agricultural District as shown on Zoning Map 30B.

At the time, Appellant informed the Board that he intended to sell primarily fresh produce, but that he would also offer for sale a small quantity of processed goods, specifically: jams, jellies, cider, apple butter, baked goods prepared by Appellant's daughter, and canned peaches. In approving the conditional use, the Board warned Appellant that "particular care must be exercised to ensure that the farm market not become a grocery or convenience store exhibiting typical commercial characteristics." Article 6, Sections 6.3(t) and 6.7, among others, of Zoning Ordinance 1E furnished the bases for the Decision.

On September 21, 1987, the Zoning Administrator issued a Notice of Violation against Appellant grounded upon Appellant's "use of property for sale of goods in violation of the regulations for the "A" Agricultural District, and in violation of the approval granted by the Board of Appeals in Case 2674." The specific violation, as set forth in the Complaint and Field Inspection Record (the document that gave rise to the violation notice), consisted of Appellant's selling "milk, eggs, orange juice, soda, chips, pretzels, canned goods, Motts apple juice, Motts applesauce, bread, pies, pastries, ice cream, large candy and nut display, large display of McCutcheons brand of jellies and jams, dried flower arrangements, in addition to the fresh produce being offered for sale." The Zoning Inspector estimated

in the Complaint and Field Inspection Record that "approximately 50 percent of the items offered for sale are commercially packaged." As a corrective measure, the Notice of Violation directed Appellant to "discontinue sale of goods other than farm produce in season." This appeal ensued, and a hearing before the Board was held on December 31, 1987.

DISCUSSION

The sole question for the Board is a legal one: whether Zoning Ordinance 1E and the conditional use approved in Case No. 2674 permit sale of the items listed in the Zoning Inspection and Field Record. The Board concludes from the Ordinance that, with some very limited exceptions, sale of the items cited in the violation is not allowed.

Although both the Applicant and the Board used terms such as "farm market" and "farm commodities" in Case No. 2674, they are incorrect and misleading.[1] The conditional use here involved is a "roadside stand." Section 6.3(t) of the Ordinance authorizes roadside stands as conditional uses in districts zoned "A" Agricultural and limits the stands to "the sale of fresh fruits, vegetables, and other farm produce in season." The

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[1]In an "A" Agricultural District, there is no such thing as a conditional use for a "farm market."

Ordinance manifestly does not authorize Appellant to operate a grocery store, yet most groceries commence existence as agricultural products. The Ordinance imposes some limits on the agricultural products that roadside stands may sell.

The plain language of Section 6.3(t) restricts roadside stand operators to the sale of unprocessed items: fresh fruit, fresh vegetables, and other fresh farm produce,[2] regardless of where grown.[3]

Webster's Third International Dictionary (1976) unequivocally defines "fresh" as "newly produced, gathered or made: not altered by processing (as by canning, pickling in salt or vinegar, or refrigeration)." (Emphasis added.)

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[2]Grammatically, the word "fresh" can be read either as modifying "fruit" only or as modifying all three categories: fruit, vegetables, and produce. "Fresh" obviously modifies all three terms. It would be absurd to require the sale of all fruit in a fresh state while permitting vegetables to be canned, frozen, and otherwise processed.

[3]Section 6.3(f) does not mandate that the items be grown on the premises. The distance from which the produce can be shipped, however, is not at issue in this appeal, despite some discussion of the topic during the hearing.

Moreover, the definition of "produce," in relation to farm products, appears to exclude articles processed out of their natural states. For example, Webster's Third International Dictionary defines produce, in part, as "agricultural products (as fresh fruits and vegetables)." (Emphasis added.)

Ballentine's Law Dictionary (3d ed. 1969) states that in its broad sense, "produce" means anything grown or manufactured, but in its limited sense, "produce" means "products of the farm, particularly those marketed daily or at least weekly, such as milk, other things from the dairy, fruits, and vegetables." (Emphasis added.)

Counsel for appellant relies upon Kimball v. Blanchard, 7 A.2d 394 (N.H. 1939) and Farmland Industries v. Zoning Hearing Board of Pequea Township, 442 A.2d 395 (Pa. Cmwlth. 1982), in which courts construed the terms "farm produce" and "farm products," respectively, as encompassing some manufactured or processed items such as ice cream (Kimball v. Blanchard) or "fruits, vegetables, eggs, milk, butter, lard, poultry and meat which have not been substantially processed or commercially packaged, bottled, or canned" (Farmland Industries, 442 A.2d at 397).

The two cases, of course, do not constitute binding precedent. More important, however, is the fact the laws before the New Hampshire and Pennsylvania courts did not by their terms limit the sales to "fresh" fruit, vegetables, and produce "in season." Section 6.3(t) differs in that crucial respect. In

allowing the sale of ice cream as "farm produce," the Kimball Court pointed out: "If there had been any intention to restrict the farmer's sales to farm produce in its natural state, the qualifying phrase could easily have been employed." Kimball v. Blanchard, 7 A.2d at 396. This is precisely the situation hypothesized in Kimball. The County's legislative body chose the qualifying terms "fresh" and "in season" to restrict Section 6.3(t) sales to produce in its natural state.[4]

CONCLUSION

Based upon the above findings and discussion, as well as the testimony and evidence constituting the record, the Board concludes that Appellant must restrict his sales to fresh fruit, fresh vegetables, and other fresh produce in season. The Board affirms the Zoning Violation, except to the extent that the violation notice is for goods Appellant professed an intention to sell at his initial hearing. Under the authority of Permanent Financial Corp. v. Montgomery County, 308 Md. 239, 518 A.2d 123 (1986), the Board finds that Appellant may continue to sell those items not in compliance with Section 6.3(t) that he stated a

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[4]Subsections 6.3 (i) and (q) demonstrate the Commissioners' awareness of the distinction between processed farm products, customary and incidental products, and fresh produce in season.

definite intention to sell during the hearing in Case 2674, to wit: jams, jellies, cider, apple butter, baked goods prepared by appellant's daughter, and canned peaches.

Feb. 5, 1988
Date:

John Totura
John Totura, Chairman