

OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY MARYLAND

APPELLANT: Dr. Walter B. Koppel  
1912 Liberty Road  
Sykesville, Maryland 21784

AGENT: C.M.I. Management Company  
1912 Liberty Road  
Sykesville, Maryland 21784

APPEAL: An appeal of the Notice of Violation dated April 15, 1988 by the Zoning Administrator regarding use of an additional area for parking in connection with an approved commercial site plan without prior approval of the Zoning Administrator.

LOCATION: 1912 Liberty Road (Md. Rt. 26) in Election District 5.

BASIS: Article 17, Section 17.4; Zoning Ordinance 1E.

HEARING HELD: June 28, 1988

On June 28, 1988 the Board of Zoning Appeals heard testimony and received evidence concerning the appeal of the Notice of Violation issued by the Zoning Administrator. Based on the record of this case, the Board affirms the decision of the Zoning Administrator in issuing the Notice of Violation.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. The pertinent findings are as follows:

FINDINGS OF FACT

Mr. Frank E. Dimick of C.M.I. Management Company, appeared before the Board as authorized representative of Walter B. Koppel, appellant in this case. Dr. Koppel's letter of 24 June 1988, notes that C.M.I. Management Company and Mr. Dimick, "... are agents and managers of...Country Village Shopping Center...." Mr. Dimick owned both Country Village Shopping Center and adjoining lot 7 of South Carroll Commercial Park before selling the center to Dr. Koppel and lot 7 to Liberty General Partnership (Appellant's Exhibits 1, 2, and 6).

Country Village Shopping Center consists of two lots, one of which fronts on Liberty Road. The particular lot which is the subject of this appeal, is located between the lot fronting on Liberty Road and lots 7 and 8 of South Carroll Commercial Park subdivision located to the north. The boundaries of the lot and lot 7 include part of one and all of two common property lines as shown on the site plan and re-

vised site plan for lot 7 (Appellant's Exhibit 4 and 5). Both lots are zoned "B-G" General Business District (zoning map 74A). In the process of selling lot 7 to Liberty General Partnership, Mr. Dimick included a provision on the first page of the contract of sale dated January 7, 1985 for an easement, "...along Country Village Property line to accommodate head in parking..." (Appellant's Exhibit 1).

As originally proposed, the easement was to serve both properties. However, Mr. Dimick testified that upon advice of Mr. Donald Tracey of the Planning Office, that the mutual use easement would cause problems in complying with the requirements for site development plans, the parties agreed orally to make the provision an exclusive easement reserved to Mr. Dimick, his heirs and assigns. In any event, Appellant's Exhibit 2, the deed dated April 16, 1985 conveying lot 7 to Liberty General Partnership clearly states that the easement is reserved to the grantor, (Mr. Dimick), his heirs and assigns. The exclusive right has now passed to Dr. Koppel.

Dr. Koppel's concerns are expressed in letters to the Zoning Administrator identified as Appellant's Exhibits 6 and 7, and in a letter dated 19 April 1988 to the Zoning Administrator from Mr. Dimick. These concerns involve the use of the areas reserved by Mr. Dimick, for purposes of parking as described within the deed, Appellant's Exhibit 2, and as indicated on the revised site plan of lot 7, Appellant's Exhibit 5. Dr. Koppel contends that revision of the Country Village Shopping Center site plan to show the areas reserved in the deed and their use is not necessary. The Zoning Administrator determined that revision of the site plan is required and issued the Notice of Violation April 15, 1988.

The violation is described as:

"Use of your site contrary to the approved site plan for Country Village by the use of additional parking facilities claimed but not shown on the plan for your site."

The corrective measures were noted as:

"Submit a revised site plan which includes the additional parking facilities claimed for Country Village and all pertinent information regarding the easement."

Dr. Koppel appealed the Notice of Violation, alleging that no violation exists in the, "...use of an additional area for parking in connection with an approved commercial site, without prior approval of the Zoning Administrator...."

APPLICABLE LAW

Country Village Shopping Center is a planned business center as defined in Article 20, Section 20.34 of the zoning ordinance. Provisions of the zoning ordinance which apply in this case include:

Article 16, Administration; Section 16.2, Zoning Certificates

Article 14, Special Provisions; Division VI, Planned Business Centers, (Shopping Centers)

Article 10, "B-L" Local Business District; Section 10.4, Required Conditions, Paragraph (d).

Article 11, "B-G" General Business District; Section 11.6, Required Conditions

REASONING

Use of the property as a shopping center, or planned business center as defined in the zoning ordinance, requires compliance with the provisions of the zoning ordinance. Dr. Koppel's letter of April 7, 1988, Appellant's Exhibit 6, explains that these areas are necessary and integral to his use. Yet, neither Dr. Koppel nor Mr. Dimick has applied to the Zoning Administrator for the required Zoning Certificate to use the two areas described in the deed, Appellant's Exhibit 2.

Article 11, Section 11.6 provides that uses in the "B-G" General Business District are subject to the provisions of Section 10.4(d) of the zoning ordinance. Section 10.4(d) provides for site plan review and specifies in part:

"No Zoning Certificate shall be issued by the Zoning Administrator until the Commission or its duly authorized representative, should the Commission expressly delegate its authority, has approved the plan."

By reserving portions of lot 7 for parking, and transferring this right to Dr.

Koppel with the sale of Country Village Shopping Center, Mr. Dimick and Dr. Koppel have enlarged the site of Country Village Shopping Center contrary to the approved site plan and in violation of the provisions of Section 16.2 of the zoning ordinance.

CONCLUSION

The appeal of the Zoning Administrator's Notice of Violation is void of substantiating evidence and is without merit. Accordingly, the Board hereby affirms the decision of the Zoning Administrator in issuing the Notice of Violation.

Aug. 16. 1988  
DATE

John Totura  
John Totura  
Chairman