

OFFICIAL DECISION
BOARD OF ZONING APEALS
CARROLL COUNTY, MARYLAND

APPELLANT: Maurice R. Zent
6451 Middleburg Road
P.O. Box 126
Keymar, Maryland 21757

APPEAL: An appeal of the Zoning Administrator's Notice of Violation dated September 28, 1988 and affirmed November 28, 1988 for maintaining a junkyard, contrary to the provisions of the Carroll County Zoning Ordinance.

LOCATION: 6451 Middleburg Road in Election District 10.

BASIS: Article 17, Section 17.4; Ordinance 1E

HEARING HELD: March 1, 1989

On March 1, 1989, the Board of Zoning Appeals heard testimony and received evidence concerning the appeal of the Zoning Administrator's Notice of Violation dated September 28, 1988 and affirmed November 28, 1988, for maintaining a junkyard contrary to the provisions of the Carroll County Zoning Ordinance on the premises of 6451 Middleburg Road. The Notice of Appeal, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board will deny the appeal. The pertinent findings include the following facts.

FINDINGS OF FACT

The 2.022 acre property is improved with a dwelling, an office and repair garage, tire shed, and parking shed. The appellant, Mr. Zent, has owned and operated a bulk milk trucking business from the premises since prior to the adoption of the Carroll County Zoning Ordinance (Ordinance 1E) on August 17, 1965. As a matter of practice, vehicles and equipment that were no longer in use daily were parked or stored on the premises to either be repaired, sold, or used for spare parts to repair other

vehicles or equipment in use. This facilitates the daily operation of the business and provides a source of parts which would not necessarily otherwise be available for use in the event of mechanical failure. As noted in Appellant's Exhibit 4, a large amount of old equipment was removed from the premises in 1983-84. Mr. Zent alleges that the storage of vehicles and equipment for use of parts constitutes a conconforming use that should allowed to continue in conjunction with the bulk milk trucking business. Mr. Zent contends that the use is not a junkyard, and that it has never been considered to be a junkyard. For that reason, no certification was filed with the office of the Zoning Administrator in compliance with the provisions of Section 4.3(e) of Ordinance 1E. The Zoning Administrator acknowledges that the trucking business is a lawful nonconforming use, but has determined that the storage of vehicles without current license tags, parts of vehicles, box trailers, wooden skids, fuel tanks, motors, tire rims, and tires constitute maintenance of a junkyard.

APPLICABLE LAW

The property is zoned "A" Agricultural District as shown on Zoning Map 35A which superseded Official Zoning Map 19 on April 26, 1978 with the adoption of comprehensive Rezoning Ordinance MA (Map Amendment)-79. The original zoning was also "A" Agricultural District which was enacted with the adoption of the Carroll County Zoning Ordinance (now also known as Ordinance 1E) on August 17, 1965. The land use provisions of the "A" Agricultural District, as originally adopted and presently existing, do not list junkyards as principal permitted, conditional, or accessory uses.

Article 20, Section 20.27 of Ordinance 1E defines a noconforming use as:

"A use of a building or of land lawfully existing at the time this ordinance becomes effective and which does not conform with the use regulations of the zone in which it is located."

Article 20, Section 20.23 of Ordinance 1E, as originally adopted in 1965 (Appellant's Exhibit 3), defines a junkyard as:

"Any area where waste, discarded or salvaged materials are bought, sold, exchanged, baled, packed, stored, disassembled or handled, abandoned, including the salvaging, storing, wrecking of automobiles or other vehicles, machinery or parts thereof, house wrecking yards, used lumber yards and places for storage of salvaged building or structural steel materials and equipment."

Paragraph (b) of Section 20.23, which was added to the ordinance June 13, 1983 is not regarded as material in this case.

The first paragraph of Article 4, General Provisions; Section 4.3, Nonconforming uses, of Ordinance 1E specifies:

"Any building, structure or premises lawfully existing at the time of the adoption of this ordinance, or lawfully existing at the time this ordinance is amended, may continue to be used even though such building, structure or premises does not conform to use or dimensional regulations of the zoning district in which it is located; subject, however, to the following conditions:

Paragraph (e) of Section 4.3, relevant part, states:

"The owner or operator of any existing nonconforming use involving ...junkyards shall, not later than April 17, 1966, certify in writing, on a prescribed form, to the office of the Zoning Administrator, that such nonconforming use did exist on the adoption date of this ordinance. In order that the exact nature and extent of such nonconforming use may be determined, a survey plat prepared by a professional engineer or registered surveyor shall accompany any prescribed form...."

REASONING

The bulk milk trucking business was established prior to the adoption of Ordinance 1E and is a lawful nonconforming use. The practice of parking or storing vehicles and equipment no longer in use on the premises to be repaired, or used in repairing vehicles and equipment in daily use is a different matter. Vehicles or equipment routinely repaired and returned to service are not of concern. However, storage of vehicles or equipment on the premises to supply parts for repair of vehicles or equipment in operation is, in fact, a junkyard as originally defined in Section 20.23 of Ordinance 1E. The appellant's assessment that the vehicles and equipment are an essential element of the business does not alter the fact that the use constitutes a junkyard. The provisions of Article 4, Section 4.3(e) are mandatory. In order to preserve the use as a lawfully existing nonconforming use, the appellant was obligated to timely file the required certification with the Zoning Administrator. The certification was not filed, and the compelling evidence of this case is that the use of the property for storage of vehicles and equipment, no longer in use, to be used in repairing vehicles and equipment in daily use constitutes a junkyard.

To the extent that past enforcement of the provisions of Ordinance 1E has been primarily directed at storage of used automobiles on the premises, and not been comprehensive, such partial enforcement was in error.

CONCLUSION

The Board of Zoning Appeals hereby denies the appeal of the Zoning Administrator's Notice of Violation dated September 28, 1988 and affirmed November 28, 1988. Due to the particular circumstances in this case, the Board directs that the date to comply with the Zoning Administrator's order shall be, and is hereby, extended to not later than October 30, 1989. If the

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order can not be complied with timely, the Zoning Administrator may, upon good cause shown, authorize an extension of time until April 30, 1990.

April 26, 1989
Date

John Totura
John Totura, Chairman