

Case 3172

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Edison Padilla Cardoza, Sr.
3817 Niner Road
Finksburg, Maryland 21048

ATTORNEY: Hans Phillips, Esq.
10 South Street, 5th Floor
Baltimore, Maryland 21202

REQUESTS: A conditional use for a contractor's equipment storage yard; and, variances reducing the minimum required lot area, and minimum yard requirements and distance requirements pertaining to the equipment storage yard and two agricultural buildings.

LOCATION: 3817 Niner Road in Election District 4.

BASES: Article 6, Sections 6.2(a), 6.3(e), and 6.7;
Article 4, Section 4.12; Article 15, Section 15.5;
Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: June 5, 1989

On June 5, 1989, the Board of Zoning Appeals heard testimony and received evidence concerning the requested conditional use and variances noted above. The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. The pertinent findings include the following facts:

FINDINGS OF FACT

The property is composed of two parcels having areas of 2.439 acres and .0544 of an acre for a total of 2.4934 acres. The property is improved with a dwelling, garage, and several accessory structures as depicted on the plot plan filed with the application. From inspection of the plot plan, the width of the lot is approximately 185 feet as scaled at the midpoints of the side property lines. As the lot does not abut Niner Road,

vehicular access is provided by right of way extending between Niner Road and the property. The parking and storage area for the contractor's equipment, as shown on the plot plan is to the rear of the dwelling. The equipment to be temporarily parked or stored on the property includes a dump truck, transportation trailer, front-end loader, backhoe, air compressor, and jackhammer. The equipment is usually kept on job sites during most of the year. However, the equipment would be parked or stored on the premises at various times during the year when it would not be possible or practical to keep the equipment elsewhere. The proposed parking and storage yard does not comply with the minimum distance requirements of 400 feet as explained below.

In addition to the request for the contractor's equipment storage yard and variances pertaining thereto, variances are requested for reduction of the minimum required lot area, lot width, and minimum distance requirements governing the location of buildings or feeding pens in which farm animals are kept. The plot plan shows that the chicken coop, pen, and shop building which has been converted to shelter chickens are adjacent to, or in the case of the pen, abut the northwesterly side property line. The shed, identified as a temporary shelter on the plot plan, eight feet square, constructed under Building Permit 89-1167 was moved and is shown in the rear yard about 70 feet from the northwesterly side property line and 100 feet southeasterly side property line. Photographs introduced as exhibits by both the applicant and protestants in this case picture the accessory structures as viewed on the premises and from the adjoining property to the northwest.

APPLICABLE LAW

The property is zoned "A" Agricultural District as shown on zoning map 63B. Article 6 of Ordinance 1E, which specifies the land use provisions for the agricultural district provides for

contractor's equipment storage facilities as conditional uses in Section 6.3(e)1, subject to compliance with the minimum distance requirement of at least two times (2 x 200' = 400') the requirements specified in Section 4.12. Article 4, Section 4.12 states in relevant part;

"Any uses or buildings subject to compliance with this section shall be located at least 200 feet from:

(b) any lot of less than three acres occupied or intended to be occupied by a dwelling not located on the same lot as the said use or buildings;...."

Accordingly, the minimum distance requirement governing the contractor's equipment storage yard is 400 feet. As residential lots abut the applicant's property on each side, the variance would essentially be to waive the requirement.

Section 6.2, Principle permitted uses, of Ordinance 1E reads in relevant part:

"(a) Agriculture, as defined in Section 20.2,... provided...any building or feeding pens in which farm animals are kept, shall comply with the distance requirements specified in Section 4.12."

Article 20, Definitions; Section 20.02, Agriculture or agricultural purposes of Ordinance 1E states in relevant part:

"Agriculture or agricultural purposes shall mean the raising of farm products for use or sale, including animal or poultry husbandry...."

Section 6.7, Lot area, lot width and yard requirements specifies that for other principle permitted or conditional uses, which include agriculture, the minimum requirements are:

1. Lot area - 3 acres
2. Lot width - 200 feet
3. Front yard depth - 40 feet
4. Side yards - 30 feet
5. Rear yard depth - 50 feet

The applicant's property does not comply with the minimum requirements of lot area and lot width to be used for agriculture or agricultural purposes. The various accessory buildings and pens adjacent to the northwesterly side property line do not comply with the minimum required side yards of 30 feet for agricultural uses, or the minimum distance requirements of 200 feet to allow them to be used to shelter farm animals. The shed constructed under Building Permit 89-1167 does not comply with the minimum distance requirements to allow it to be used to shelter farm animals.

Article 17, Section 17.7 of Ordinance 1E governs the Board in considering conditional use requests. However, for purposes for brevity, this section will not be quoted.

Article 20, Definitions, Section 20.39 defines variance as:

"... a relaxation of the terms of Zoning Ordinance where such variance will not be contrary to public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship."

Article 15, Exceptions and Modifications, Sections 15.0, Generally, and 15.5, Variance, read respectively and relevantly:

"The regulations specified in this ordinance shall be subject to the following exceptions, modifications and interpretations:"

"The Board may authorize upon appeal, in accordance with Section 17.2, variances from...lot area, lot width, yard regulations,...and distance requirements, specified in Section 4.12.... The Board may grant such variance only in cases where the strict compliance with the terms of this ordinance would result in practical difficulty and unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to to grant relief without substantial injury to public health, safety and general welfare."

In accordance with the provisions of Article 17, Section 17.4.9 of Ordinance 1E, the Board extended the time to issue this decision.

REASONING

The applicant has willfully used his property in violation of the provisions of the Carroll County Zoning Ordinance, as a contractor's equipment storage yard, and for agricultural purposes to the detriment of adjoining residents and property owners.

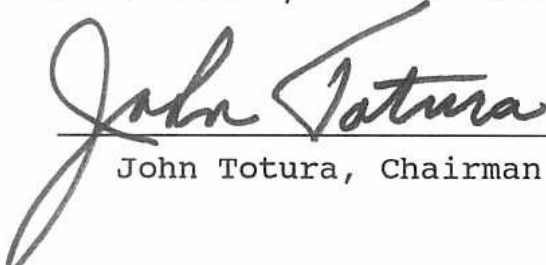
From the record of this case, it is evident that establishment of the contractor's equipment storage facility would be contrary to the provisions of Article 17, Section 17.7 of Ordinance 1E as they pertain to the orderly growth of the community, conservation of residential property values, the appropriate use of the property, and the purpose of Ordinance 1E.

In addition, the Board finds no evidence of practical difficulty and unreasonable hardship affecting the use of the property for either the contractor's equipment storage facility or the agricultural buildings. The requests for variances to the minimum requirements governing the contractor's equipment storage facility and agricultural buildings are essentially matters of convenience to the applicant, but which would detrimentally affect the adjoining residents and property owners.

CONCLUSION

The requests for the conditional use for the contractor's equipment storage yard; and, variances reducing the minimum required lot area, minimum yard requirements, and minimum distance requirements pertaining to the equipment storage yard and two agricultural buildings are without merit, and are hereby DENIED.

Sept. 8, 1989
Date


John Totura, Chairman