

Case 3182

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Lois Ireland
6111 Davis Road
Woodbine, Maryland 21797

ATTORNEY: James A. Urisko, Esq.
1090-C West Patrick Street
Frederick, Maryland 21701

REQUEST: A variance reducing the minimum required rear yard
from 50 feet to about 20 feet for an accessory
building.

LOCATION: 6111 Davis Road in Election District 13; Laenir
Woods subdivision, Lot 6 recorded in Carroll
County Plat Records in Book 25, Page 2. Tax Map
Reference 71-10-285.

BASES: Article 5, Section 5.5; Article 15, Section 15.5;
Ordinance 1E.

HEARING HELD: June 6, 1989

On June 6, 1989, the Board of Zoning Appeals heard testimony and received evidence pertaining to the variance request for reduction of the minimum required rear yard of 50 feet to about 20 feet for an accessory building at 6111 Davis Road. The application, testimony, and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record of this case, the Board of Zoning Appeals will deny the request. The pertinent findings include the following facts.

FINDINGS OF FACTS

The wooded 3.02 acre property is improved with a dwelling, and is identified as lot 6 of Laenir Woods subdivision. There is no evidence that physical conditions of the property restrict its use in compliance with the provisions of the Carroll County Zoning Ordinance (Ordinance 1E). The lot and adjacent properties are zoned "C" Conservation District as shown on zoning map 71B. On June 28, 1984 Lawrence Ireland, owner of the property at that time, filed Permit Application and Zoning Certificate Number 84-7948 for a 40 feet by 100 feet farm building.

Plans, apparently filed with the application, depict a shop of 20 feet by 20 feet on the first floor, and a second floor with a separate area or room of 12 feet by 20 feet designated for tool storage and a similar area or room designated for lumber storage. Neither of the remaining areas on the first or second floor were identified as to the proposed use.

The plot plan filed with the application shows the proposed location of the building to be in the southeasterly corner of the lot, 30 feet from the easterly property line and 50 feet from the southerly property line. From the setback distances entered on the application, it is evident that the front of the lot was determined to be the westerly property line abutting Davis Road; the sides of the lot to be the northerly and southerly property lines; and, the rear line to be the easterly property line. It was determined that the lot was not a corner lot. The minimum required front, side, and rear yard setbacks were entered respectively as: 50 feet, 30 feet, and 30 feet. The minimum required side and rear yard setbacks for the "C" Conservation District should have been entered as 100 feet and 50 feet respectively.

The plot plan did not show how vehicular access to the building was proposed. However, a note on the plan reads, "Use in common

driveway for lots 1 through 5, Gregory L. Haslup & remaining land of Lawrence E. Ireland." The Bureau of Zoning Administration conditioned approval of the permit and zoning certificate, prohibiting use of the building for commercial purposes, living quarters, or for animals. The building permit and zoning certificate were issued July 6, 1984. The Use and Occupancy Permit was approved by the Bureau of Permits and Inspections April 20, 1985.

Thereafter, complaints were lodged with the Zoning Administrator by the adjoining property owner to the east, Mr. Haslup, regarding the location and use of the building in violation of the provisions of Ordinance 1E. On October 31, 1988, with the complaints unresolved and unaware of the transfer of the property to the applicant in this case, Lois Ireland, the Zoning Administrator mailed a Notice of Violation to Mr. Ireland concerning the location of the building. As noted in the Zoning Administrator's memorandum of December 13, 1988 to Laurell E. Taylor, Assistant County Attorney, the certified mail was refused and returned to the Zoning Administrator November 18, 1988.

The same notice was forwarded by regular--first class--mail to Mr. Ireland the same day. Mr. Ireland responded in a letter dated November 25, 1988, indicating that the property had been transferred in the spring of 1988.

The applicant, Mrs. Ireland, testified that she bought the property from Mr. Ireland June 30, 1988; Mr. Ireland and she married on November 11, 1988; and, that she was unaware of zoning problems involving the location of the building before purchasing the property on June 30, 1988.

As also noted in the Zoning Administrator's memorandum of December 13, 1988, the transfer of the property to the then Lois Hornberger--now Lois Ireland--was not recorded in the state assessment records until November 29, 1988.

The Zoning Administrator issued a new Notice of Violation December 19, 1988 to Ms. Hornberger, as owner of the property, indicating that the building was not located on the property in compliance with the plot plan filed with Building Permit 84-7948 and the zoning regulations. The Zoning Administrator advised Ms. Hornberger that a location survey showing the location of the building could be submitted to confirm compliance with the regulations, but that the county would proceed to establish the location if the building's location was not confirmed.

Ms. Hornberger responded by letter December 27, 1988, indicating that she was not aware "...of any zoning violations in connection with this property." She also indicated that she did not have a copy of the Building Permit 84-7948, and could provide no information concerning the building's location. Following a letter January 11, 1989 from the Assistant County Attorney, and a telephone conversation with a Zoning Inspector January 18, 1989, Mrs. Ireland submitted a copy of a location survey dated June 2, 1988 by the firm of Snider, Blanchard and Associates, Inc., showing the building to be 20 feet, plus or minus, from the easterly, or rear, property line.

On March 9, 1988 the Zoning Administrator issued another Notice of Violation to Ms. Lois Hornberger Ireland. The violation was described as:

"Construction of a farm building in violation of the location approved on Building Permit/Zoning Certificate 84-7948 and in violation of Section 5.5 of Carroll County Zoning Ordinance 1E."

The action ordered was: "Move the building to an approvable location."

Mrs. Ireland subsequently filed the Application for Hearing requesting "...a Variance for reduction of the minimum required rear yard from 50' to about 20' for an accessory building." Mrs.

"Accessory buildings and uses customarily incidental to any principal permitted use or authorized conditional use...." Section 5.5, Lot area, lot width and yard requirements provides that the minimum requirements for uses other than dwellings are:

- a lot area of 5 acres
- a lot width of 300 feet
- a front yard (setback) of 50 feet
- side yards (setbacks) of 100 feet
- a rear yard (setback) of 50 feet

Article 20, Definitions, of Ordinance 1E includes the following:

Section 20.01, Accessory use.

"A use of a building, lot or portion thereof, which is incidental and subordinate to the principal use of the main building or lot."

Section 20.07, Building line.

"The line established by law beyond which a building shall not extend as determined by front, side, and rear yards herein."

Section 20.16, Farm.

"An area of land used for agricultural purposes, as defined in Section 20.02 and which provides a primary source of income for the occupant or owner."

Section 20.25. Lot.

"A piece or parcel of land occupied or intended to be occupied by a principal building and its accessory buildings and uses, including all open spaces required by this ordinance, and having frontage on a street as defined herein."

Section 20.25(b), Lot frontage. (Amended 2/15/68) (in relevant part)

"The front of a lot shall be construed to be the portion nearest the street."

Section 20.33, Set back.

"The required minimum horizontal distance between the building line, as defined herein, and the related front, side, or rear property line."

Section 20.35, Street; highway; road.

"Any street existing or which may be approved by the Commission. The word 'street' shall also mean 'road', 'highway', 'boulevard', 'avenue', 'lane', or 'court'."

Section 20.39, Variance.

"A variance is a relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the 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; Section 15.0, Generally and Section 15.5, Variance, in relevant part, read respectively:

"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...yard regulations.... 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 grant relief without substantial injury to public health, safety, and general welfare."

Article 17, Board of Appeals; Section 17.2, General powers, in relevant part reads:

"The Board shall have the following powers:

(c) To authorize, upon appeal in special cases, such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions, the enforcement of the provisions of this ordinance will result in unwarranted hardship and injustice and which will most nearly accomplish the purpose and intent of the regulations of the Zoning Ordinance."

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

REASONING

The building is an agricultural or farm building; it is not customary, incidental and subordinate to the dwelling and residential use of the premises, nor is it compatible with the residential development of the subdivision. Even though the building permit and zoning certificate were issued in error, the building was erected in violation of the building permit and zoning certificate, and the minimum required side and rear yard setbacks specified in Section 5.5 of Ordinance 1E. Physical conditions of the property do not restrict its use in compliance with the provisions of Ordinance 1E. Mr. Lawrence E. Ireland, Jr., predecessor in title to the property and now husband of the applicant, Mrs. Ireland, is responsible for erection of the

building in violation of Building Permit and Zoning Certificate 84-7948. Mrs. Ireland's assertion of economic hardship and diminution of the value of her property to comply with the provisions of Ordinance 1E does not justify authorization of the requested variance. In contrast, the owners of adjacent residential properties within the subdivision rely upon proper administration and enforcement of the provisions of the zoning ordinance. In this case, authorization of the requested variance would be contrary to the intent and purpose of the Carroll County Zoning Ordinance.

CONCLUSION

The requested variance is without merit, and would be contrary to the purpose and intent of Ordinance 1E. Accordingly, the variance is hereby DENIED.

Aug. 1, 1989
Date

John Totura
John Totura, Chairman