

Case 3313

**OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND**

APPLICANTS: Robert B. Stallard and Linda L. Stallard
3020 Walnut Avenue
Owings Mills, Maryland 21117

ATTORNEY: William R. MacDonald, Esq.
117 East Main Street, Suite 1-A
Westminster, Maryland 21157

REQUEST: An appeal of the Notice of Violation, dated
November 29, 1989, for maintaining a contractor's
equipment storage yard

LOCATION: 2357 Convey Drive in Election District 6

BASES: Article 17, Section 17.4; Article 6; Ordinance 1E
(The Carroll County Zoning Ordinance)

HEARING HELD: February 28, 1990

On February 28, 1990, the Board of Zoning Appeals heard testimony and received evidence concerning Mr. and Mrs. Stallard's appeal filed December 27, 1989, of the Notice of Violation, dated November 29, 1989, for maintaining a contractor's equipment storage yard at 2357 Convey Drive in Election District 6.

The Board visited the site on March 2, 1990.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board will affirm the Notice of Violation. The pertinent findings determining the Board's decision in this case include the following facts.

FINDINGS OF FACT

Vehicular access to the 2.7 acre lot is provided from Mount Ventus Road Number 1 by private roads known as Hay Drive and then Convey Drive. Hay Drive is paved for about half of its length. Convey Drive is essentially a single lane, unimproved dirt road. Nonetheless, substantial residential development has occurred in recent years on both private roads. As depicted by the site location map used to post the Hearing Notice on the property, residential lots are located around the property, except to the southeast which is a 146.65 acre parcel.

This appeal stems from a complaint to the zoning office. Mr. George Beisser, Chief of Zoning Enforcement investigated the complaint and issued the Notice of Violation. The Investigation Report prepared by Mr. Beisser indicates the lot is being used to store contractor's equipment, including:

- an 8 feet by 10 feet barn type shed
- a bulldozer
- three box trailers
- two other pieces of equipment
- piles of steel and aluminum
- other building materials

The Notice of Violation specifies that the violation involves:

Maintaining a contractor's equipment storage yard as defined in Section 20.10 in an "A" Agricultural District contrary to the provisions of Section 6.3(e) of the Carroll County Zoning Ordinance 1E.

Zoning Enforcement's and the Appellants' Joint Exhibit 1, which includes eight photographs and Joint Exhibit 2, which includes fourteen photographs, portray views of the shed, contractor's equipment, and materials. The photographs were taken by Mr. Beisser on October 26, 1989 and February 26, 1990. The Board finds that the photographs fail to portray the exceptionally offensive appearance of the contractor's equipment kept on the property.

During the visit to the property, the Board observed residential dwellings on lots adjacent to the property. The dwellings were clearly visible from Mr. and Mrs. Stallard's property. Accordingly, depending on the location of the particular dwelling, the contractor's equipment would be visible from the nearby dwellings. Without question, the storage of the contractor's equipment adversely affects the residential character of the adjacent properties, and is contrary to the purpose and intent of Ordinance 1E.

Mr. Stallard testified that he had retired from engineering, and that he has owned the property since September 15, 1980. The equipment and materials on the property are intended to be used in constructing a dwelling. However, due to taxes, it will be approximately 3 years before construction can be started. Some of the farming equipment had been abandoned on the property prior to the purchase. Mr. Stallard placed the box trailers (8 feet by 40 feet storage containers) on the property approximately six months after the purchase, or in early 1982. The storage shed and box trailers are used to store tools and lumber. He has cut

timber on the property, and stored 4,000 to 5,000 board feet of lumber on the property for use in construction of the dwelling.

Tools and lumber are stored within the storage shed and box trailers. During summertime, Mr. Stallard visits the premises at least once a month. A generator, housed within a trailer, provides electricity to operate some of the equipment. A fuel tank is located adjacent to generator to provide fuel. Mr. Stallard testified that a small bulldozer, or crawler, stored on the property is used to maintain the road. Mr. Stallard also indicated that some of the agricultural equipment would be useful in cleaning up the property and working the soil after construction of the dwelling. The Board was not convinced that the equipment and materials would be used to construct a dwelling.

Additional materials, that would not normally be considered to be building materials, may best be described as junk. The Bureau of Zoning Enforcement may wish to consider issuance of a Notice of Violation regarding the storage of such materials on the property. However, such materials are not the issue before the Board in this case.

APPLICABLE LAW

The lot is zoned "A" Agricultural District as shown on zoning map 14A. The land use provisions for that district are specified in Article 6 of the zoning ordinance. Single and two-family dwellings are principal permitted uses. Section 6.3(e)1 provides for a contractor's equipment storage facility, occupying not more than 43,560 square feet of the respective property, and complying with twice the minimum distance requirements of Section 4.12 (200 feet multiplied by 2 equals 400 feet) as a conditional use, which requires Board authorization. There is no such authorization here.

The minimum distance requirements of Section 4.12 read 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 3 acres occupied or intended to be occupied by a dwelling not located on the same lot as the said use or buildings; or,
- (d) the curtilage area within a lot of 3 or more acres improved by a dwelling

The adjoining lots, improved with dwellings, prevent compliance with the minimum distance requirements.

Article 20, Definitions; Section 20.10 defines a contractor's equipment storage facility as:

Property used for the parking or storage of equipment, vehicles or machinery used in construction; including equipment, vehicles or machinery used in excavating, earthmoving, paving or in the hauling of earth and building materials.
(Amended 4/18/88)

In accordance with the provisions of Article 17, Section 17.4.10 of the zoning ordinance, the Board extended the time for issuing this decision.

REASONING

The issue in this case is limited to Mr. and Mrs. Stallard's appeal of the Notice of Violation. The testimony and evidence clearly substantiate that the contractor's equipment has been kept on the property since early 1982, contrary to the land use provisions of the "A" Agricultural District. Specifically, the Board finds that the following items, all within the above noted definition, are violations of the zoning ordinance.

- A. the 8 feet by 10 feet barn type shed
- B. the bulldozer
- C. the three box trailers
- D. a utility trailer housing an electrical generator
- E. the fuel tank for the generator

The prospect of maintaining the contractor's equipment on the property until construction of a dwelling is completed is in complete disregard of the affects to the neighbors and the law, and is outrageous.

CONCLUSION

The Notice of Violation, dated November 29, 1989, for maintaining a contractor's equipment storage yard on the property now identified as 2357 Convey Drive is hereby affirmed.

April 10, 1990
Date

John Totura
John Totura, Chairman