

Tax Map/Block/Parcel
No. 39/13/415

Building Permit/Zoning
Certificate No. 90-0300 -
90-0303

Case 3334

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Ray L. Owings
45 John Owings Road
Westminster, Maryland 21157

REQUEST: A request to allow the addition of four apartments
and four garages as an enlargement of the
nonconforming use

LOCATION: 609 Littlestown Pike (Md. Rt. 97) in Election
District 7

BASIS: Article 4, Section 4.3(a)(1); Ordinance 1E (The
Carroll County Zoning Ordinance)

HEARING HELD: March 27, 1990

On March 27, 1990, the Board of Zoning Appeals heard testimony and received evidence concerning the request to allow the addition of four apartments and four garages as an enlargement of the nonconforming use at 609 Littlestown Pike (Md. Rt. 97).

The Board visited the site March 22, 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 deny the request. The pertinent findings determining the Board's decision include the following facts.

FINDINGS OF FACT

The 1.2 acre property is located on the east side of Littlestown Pike, just north of the city of Westminster. It is improved with a building erected prior to the adoption of Ordinance 1E on August 17, 1965. The building is connected to public water and sanitary sewerage facilities. The building contains thirteen apartments, one of which was authorized by the Board on March 27, 1988 [1989] in Case 3114.

As depicted by the plot plan submitted with this application, Applicant's Exhibit 1, Mr. Owings proposes to construct a two-story building to the rear of the apartment building and 12 feet from the northerly side property line. Eight garages would

be located at ground level, and four apartments are proposed for the second floor.

The parking plan, which is also depicted on the plot plan, does not comply with the minimum standards for on-site parking facilities specified in Ordinance 1E. A common driveway serves the apartment building, and three semidetached dwellings authorized on June 15, 1989, in Case 3183. Therefore, there are now nineteen dwelling units sharing a single driveway connection to Littlestown Pike.

After reviewing the request, Mr. Charles Rose, Acting Chief Engineering Access Permits Division of the State Highway Administration recommends that the request not be approved because of the increase in volume of traffic on the road and from this property. In addition, Mr. Rose points out that the site distance looking north from the driveway connection is not adequate. Testimony presented in opposition to the request substantiated the lack of site distance, and the danger of vehicular accidents resulting from turning maneuvers to and from the driveway.

Additional testimony presented in opposition to the request cited the incompatibility of the nonconforming use apartment house with the surrounding residential properties, the existing thirteen dwelling units on the property, and the likelihood that the proposed additional apartments and vehicular traffic would depreciate the values of nearby residential properties.

APPLICABLE LAW

Unless otherwise noted, Articles and Sections cited below are of Ordinance 1E.

The property is zoned "R-10,000" Residence District as shown on Zoning Map 39A. The land use provisions for the district are specified in Article 8. The preamble of Article 8 states:

The purpose of this district is to provide for smaller lot sizes (10,000 square feet minimum) for single and two-family dwellings, based on the use of public water and sewerage facilities. This would essentially mean more dwelling per acre (approximately three to four families) and less open area than the "R-20,000" Residence District).

Apartment houses are not allowed as either a principal permitted use or a conditional use. However, Section 8.1, Principal permitted uses, paragraph b provides:

Conversion or alteration of a building existing at the time of the enactment of this ordinance to accommodate two (2) or more families; provided the requirements of Section 14.1 and the requirements of the Health Department are complied with.

The minimum lot area, lot width and yard requirements for conversion dwelling units are the same as specified for the "R-20,000" Residence District in Section 8.5. (See: Other Principal Permitted or Conditional Uses.) It is presumed that the apartment units within the existing building were either established prior to the adoption of Ordinance 1E on August 17, 1965, or in accordance with the provisions of Section 8.1(b).

Article 4, General Provisions; Section 4.3, Nonconforming Uses (amended 3/17/81) reads in relevant part:

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 provisions:

- (a) Structural alterations or enlargement of any building, structure or premises which does not comply with the use or dimensional requirements of this ordinance shall be allowed only as follows:
 - (1) Upon application, the Board may approve structural alterations or enlargement of a nonconforming use, subject to the provision of Article 17, Section 17.6 [now 17.7]....

Article 17, Board of Appeals; Section 17.7 Limitations, guides and standards states:

Where in these regulations certain powers are conferred upon the Board or the approval of the Board is required before a conditional use may be issued, the Board shall study the specific property involved, as well as the neighborhood, and consider all testimony and data submitted. The application for a conditional use shall not be approved where the Board finds the

proposed use would adversely affect the public health, safety, security, morals or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood. In deciding such matters, the Board shall give consideration, among other things, to the following:

- (a) The number of people residing or working in the immediate area concerned.
- (b) The orderly growth of the community.
- (c) Traffic conditions and facilities.
- (d) The effect of the proposed use upon the peaceful enjoyment of people in their homes.
- (e) The conservation of property values.
- (f) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.
- (g) The most appropriate use of land and structures.
- (h) The purpose of this Ordinance as set forth herein.
- (i) Type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches, and the like.

The Official Comment pertaining to the amendment of the provisions formally expressed in Sections 17.7 and 17.6 reads in relevant part:

(....Former Section 17.6 required the Board to consider the decision of the courts. Because this provision is considered surplusage it was eliminated from this text. As the law requires the Board to consider the decisions of the courts it is not the legislative intent by deleting this phrase to indicate that the Board should not consider court decisions.)

For purposes of brevity, the Board will not cite any court decisions, but will note that a nonconforming use is by definition inherently incompatible with principal permitted uses allowed in the respective zoning district.

REASONING

The number of dwelling units within the existing building already far exceed the planned density or the "R-10,000" Residence District. The additional four apartments requested would tend to perpetuate the nonconforming use, allow further overdevelopment of the property, and promote vehicular traffic congestion on Littlestown Pike at the driveway connection. Such congestion, combined with the inadequate site distance from the driveway connection to the north on Littlestown Pike, would further intensify the existing dangerous traffic condition. In accordance with the provisions of Article 17, Section 17.7, the Board is precluded from authorizing requests that would result in dangerous traffic conditions.

In considering other factors listed in Section 17.7, the Board is convinced that the additional apartments would adversely affect the orderly growth of the community, tend to depreciate the property values of the nearby residences, and would be contrary to the purpose and intent of the zoning ordinance.

CONCLUSION

Accordingly, the Board hereby denies the request.

April 17, 1990
Date


John Totura, Chairman

JDN/bmb/C3334dec
April 16, 1990