

Tax Map/Block/Parcel
No. 62/4/19

Building Permit/Zoning
Certificate No. 90-0620

Case 3348

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPELLANT: Hoff Brothers Lumber Company
4535 Salem Bottom Road
Westminster, Maryland 21157

ATTORNEY: David E. Kartalia, Esquire
2 North Court Street
P.O. Box 850
Westminster, Maryland 21157

APPEAL: An appeal of the Notice of Violation dated
February 6, 1990 regarding processing for sale or
distribution of firewood not grown on property

LOCATION: East side of the 3300 block of Salem Bottom Road
about 1,400 feet northeast of Muller Road inter-
section in Election District 9

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

HEARING HELD: April 24, 1990

On April 24, 1990, the Board of Zoning Appeals heard testimony and received evidence pertaining to the appeal of the Notice of Violation dated February 6, 1990, for processing, sale or distribution of firewood not grown on property located on the east side of the 3300 block of Salem Bottom Road about 1,400 feet northeast of Muller Road intersection.

The Board visited the property on April 18, 1990, prior to the public hearing.

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 affirm the appeal and dismiss the Notice of Violation. The pertinent findings determining the Board's decision include the following facts.

FINDINGS OF FACT

Mr. Charles Hoff, Jr.'s father established a saw mill on the 79 acre farm prior to the adoption of Ordinance 1E on August 17, 1965. Trees were cut and lumber was produced. The lop wood, consisting of tree branches and limbs not suitable for

sawing into lumber, was cut into firewood. The firewood, including slab wood which is produced from sawing the bark and part of the wood from logs prior to sawing the logs into lumber, was stored and aged (allowed to dry) on the property, awaiting sale. The firewood was then delivered to buyers. The saw mill was dismantled and moved elsewhere prior to 1965.

Mr. Hoff Jr., with his brother Ralph, also established a commercial saw mill at another location prior to 1965, and transported both lop and slab wood produced at the commercial saw mill to this property for storage until being sold and delivered.

In 1968, the brothers, Charles and Ralph, leased 40 acres of Hilda M. Purgh's property for the purposes of farming, with two of the acres to be used for storage of sawing machinery and lumber. (Appellants' Exhibit 3.)

Use of the property for the storage of lop and slab wood has continued without interruption since the adoption of Ordinance 1E in 1965. The commercial saw mill is now the major source of the wood. However, occasionally a tree falls onto tillable land and the wood is stored as was the practice in the past. Mr. Hoff also testified that there were more trees on the property that should be cut down. Such trees would be processed into lumber and firewood.

No business office has been maintained on the premises, and the hours of operation have continued to be on a random basis during evenings and weekends since prior to 1965. Wood continues to be brought to the premises from the commercial saw mill during normal business hours. Lop wood is split on the premises. Chain saws, which were used in operation of the business prior to 1965, continued to be used in sawing wood to wood stove or fireplace length.

APPLICABLE LAW

The property is zoned "A" Agricultural District as shown on zoning map 62B. The land use provisions for the district are specified in Article 6 of Ordinance 1E. The provisions do not include, as either a principal permitted or conditional use, processing for sale or distribution of firewood not grown on the premises.

Article 4, General Provisions; Section 4.3, Nonconforming Uses (Amended 3/17/81) of Ordinance 1E 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...regulations of the zoning district in which it is located; subject, however, to the following provisions:

- (d) No building, structure or premises where a nonconforming use has ceased for six (6) months or more shall thereafter be used except in conformance with this Zoning Ordinance.

REASONING

Use of the property for processing and storage of firewood was lawfully established prior to the adoption of Ordinance 1E on August 17, 1965, and has continued without interruption since its establishment.

It is evident from the record that the quantity of lop and slab wood stored on the premises by the Hofffs, now within the two acre area leased for that purpose has varied from time to time. In recent years, the quantity of firewood stored on the premises at a particular time has increased. To describe the practice in different words, the use of the property has intensified. Intensification of a nonconforming use, as in this instance, is lawful.

CONCLUSION

Therefore, the Board of Zoning Appeals hereby affirms the appeal, and dismisses the Notice of Violation, dated February 6, 1990.

May 2, 1990
Date

John Totura
John Totura, Chairman