

Tax Map/Block/Parcel
No. 56-10-82

Building Permit/Zoning
Certificate No. 90-2041

Case 3403

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

APPLICANT: Fred Schisler
2546 Marston Road
New Windsor, Maryland 21776

ATTORNEY: Margaret Meade, Esq.
Walker & Van Bavel, P.A.
306 Court Square Building
Baltimore, Maryland 21202

REQUEST: A conditional use for a commercial
slaughterhouse

LOCATION: 2546 Marston Road (Md. Rt. 407) in Election
District 11

BASIS: Article 6, Sections 6.3(i) and 6.7; Ordinance
1E. (The Carroll County Zoning Ordinance)

HEARING HELD: July 25, 1991

On July 25, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use request for the establishment of a commercial slaughterhouse on the premises of 2546 Marston Road (Md. Rt. 407).

The Board visited the site July 24, 1991.

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 authorize the request, subject to the condition of authorization imposed below.

The pertinent findings determining the Board's decision include the following facts:

FINDINGS OF FACT

As portrayed on the site location map used in this case, the 115 acre property is located to the south and west of Marston Road (Md. Rt. 407). The property is improved with a dwelling and several accessory buildings. The principal use of the acreage, in addition to the dwelling, has been agriculture since prior to the adoption of the zoning ordinance in 1965. The practice is limited to animal husbandry. No crops are grown, except for the family garden.

Goats, sheep, swine, horses and cattle are purchased at livestock auctions, prepared for marketing, and usually resold at livestock auctions. The animals may be kept on the premises from a few days to a number of months. It is estimated that about 500 animals are marketed in a year. Some animals are slaughtered on the premises for the applicant's own use. While some of the product may be given to family members, none of the meat is packaged for sale. The majority of the animals are resold at auctions.

In the past, the applicant has allowed animals purchased on the premises by others to be slaughtered there. The number of animals sold on the premises and allowed to be slaughtered there is a small percentage of the number of animals marketed in a year. The animals purchased there are not necessarily slaughtered there.

Customers are not permitted to bring animals to the premises to be slaughtered that are purchased elsewhere.

In past years the business has gradually increased because of customers describing the business to acquaintances, who may then visit the premises to purchase animals which may then be slaughtered there. Customers tend to return for additional purchases.

Presently, vehicular traffic generated by the business varies during the year and is negligible.

No advertising is done in conjunction with the operation, and no business identification sign is displayed, or proposed.

As now proposed, one of the accessory buildings would be used by the buyers of animals to slaughter them. If the building cannot be made to comply with the requirements of the various regulatory agencies, a new building would be constructed.

As generally indicated by the plot plan filed with the application and testimony, the locations of both the accessory building and the alternate site, if a new building is necessary, comply with the minimum distance requirements expressed in Article 4, Section 4.12 and the minimum lot area, lot width and yard requirements specified in Article 6, Section 6.7 of the zoning ordinance.

Due to the topography of the property, neither the accessory building nor the alternate site are visible from adjoining properties.

Operation of the business would not change substantially, nor would vehicular traffic increase significantly.

Establishment and operation of the proposed slaughterhouse is also subject to the regulations of the Carroll County Bureau of Permits and Inspections, Health Department, as well as other regulatory agencies.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The site and surrounding properties are zoned "A" Agricultural District as depicted on zoning maps 56A and B. The land use regulations for the district are expressed in Article 6. Section 6.1, Agriculture Preferred Use, states:

Agriculture is the preferred use in the Agricultural District. All agricultural operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the District.

Section 6.2, Principal Permitted Uses, subsection (a) reads:

Agriculture, as defined in Section 20.02, including the commercial or noncommercial nurseries and greenhouses; and provided that any greenhouse heating plant, or any building or feeding pens in which farm animals are kept, shall comply with the distance requirements specified in Section 4.12.

Section 6.3, Conditional Uses (requiring Board authorization), subsection (i), states in relevant part:

...slaughterhouses,...provided such use shall be located three (3) times the distance requirements specified in Section 4.12. (Amended 6/26/80)

The site, accessory building, and alternate location of the proposed slaughterhouse all comply with the minimum lot area, lot width and yard requirements for conditional uses as specified in Section 6.7.

Article 4, General Provisions; Section 4.12, Distance Requirements, (Amended 7/5/77), reads:

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

(a) any lot in an "R" District; or,

- (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,
- (c) any lot occupied by a school, church or institution for human care; or,
- (d) the curtilage area within a lot of 3 or more acres improved by a dwelling.

Article 20, Section 20.02 defines agriculture or agricultural purposes to be:

...the raising of farm animals for use or sale, including animal or poultry husbandry, and the growing of crops such as grain, vegetables, fruit, grass for pasture or sod, trees, shrubs, flowers, and similar products of the soil.

Article 20, Section 20.09 defines a conditional use as:

Uses which are specified for Board of Appeals approval prior to authorization and which uses, after public hearing, may be approved conditionally or disapproved in accordance with Section 17.2. The term "conditional use" shall constitute the same meaning as "special exception" specified as one of the general powers of the Board of Appeals in accordance with Article 66B of the Annotated Code of Maryland.

Article 17, Board of Appeals; Section 17.7, Limitations, Guides and Standards, governs the Board in deciding conditional use cases.

In addition, the Board must consider decisions of the courts. In the case of *Schultz v. Pritts*, 291 Md. 1, at 22,23 (1981) the court wrote:

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. (Citations omitted.)

In order to establish the slaughterhouse in the accessory building, it will be necessary for Mr. Schisler to apply for a change of use building permit from the county, and to comply with all regulatory agency requirements governing issuance of the permit for the change of use to the slaughterhouse. If for some reason the change of use permit cannot be issued because of inability to comply with all agency requirements, Mr. Schisler will have to apply for a building permit for a new building to be constructed at the alternate site. Issuance of such a permit would also be dependent upon complying with all regulatory agency requirements. In either case, use of the respective building prior to issuance of the required Use and Occupancy Permit would be a violation of the Carroll County Building Code (Ordinance 52B).

The accessory building to be used for the slaughterhouse and alternate location, if for some reason the existing building cannot be used, comply with the minimum requirements of Section 6.3(i), 6.7, and 4.12.

In considering the factors expressed in Section 17.7, as well as the standard of *Schultz v. Pritts*, it is evident that the slaughterhouse would be an appropriate use of the land, as requested, and subject to compliance with all applicable laws.

CONCLUSION

Therefore, the Board hereby authorizes the conditional use, subject to the condition of authorization below.

In order to promote the intent and purpose of the zoning ordinance, the Board hereby imposes the following condition of authorization:

1. The applicant must first apply for and secure the appropriate "Grant Inspection" from the United States Department of Agriculture, Food Service and Inspection Services (which is one of the regulatory agencies). Until this condition is fulfilled, this authorization should not be construed as authorizing the current practice of permitting others to slaughter livestock on the premises.

Aug 12, 1991
Date

John Totura
John Totura, Chairman