

Tax Map/Block/Parcel
No. 13-2-455

Building Permit/Zoning
Certificate No. 91-0237

Case 3522

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: International Meditation Center, U.S.A.
446 Bankard Road
Westminster, Maryland 21157

ATTORNEY: James Willard Davis, Esquire
237 East Main Street
Westminster, Maryland 21157

REQUEST: A request to determine whether a studio and bath connected to the dwelling by a common deck constitutes with the dwelling a single principle residence; and, a conditional use for temporary approval of a retreat center for nine days only in connection with a special one-time only dedication of a church (May 26-June 5)

LOCATION: 446 Bankard Road in Election District 3; Eyler's Hill subdivision, lots 1 and 2 as recorded in Carroll County Plat Records in book 31, page 98

BASES: Article 17, Section 17.2(a); Article 6, Sections 6.2(b)(d), Section 6.3(cc), and 6.7; Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: March 27, 1991

On March 27, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning the request to determine whether a studio and bath connected to the dwelling by a common deck constitutes with the dwelling a single principle residence; and, a conditional use for temporary approval of a retreat center for nine days only in connection with a special one-time only dedication of a church (May 26-June 5) at 446 Bankard Road.

The Board visited the site March 20, 1991, prior to the public hearing.

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 studio and bath connected to the dwelling by a common deck to be a single principle residence; and, will approve the conditional use, subject to the conditions of authorization imposed below, for temporary approval of a retreat center for nine days only in connection with a special one-time only dedication of a church (May 26-June 5) at 446 Bankard Road as requested.

The pertinent findings pertaining to the request and the Board's determination will be addressed first; the conditional use request and the Board's decision will be addressed second.

FINDINGS OF FACT AND DETERMINATION PERTAINING TO THE REQUEST

The 4.8174 acre lot is improved with an old two-story dwelling and a number of accessory buildings. At some time in the past, a family room and sun room were added to the rear of the dwelling. Recently, the property that had been reduced to 11.52 acres was further divided into two lots now known as Eyler's Hill subdivision. The dwelling and accessory buildings are located on lot 2 of the subdivision.

The property is zoned "A" Agricultural District as depicted on zoning map 13A. The land use provisions for the district are expressed in Article 6 of the zoning ordinance. Single and two family dwellings are allowed as principle permitted uses. Section 6.2(d). The minimum requirements for lot area, lot width and yard requirements in the district are specified in Section 6.7.

In 1990, Permit Application and Zoning Certificate #90-0451 was filed for construction of an addition to the existing single family dwelling at 446 Bankard Road. (Application Plot Plan.) The application, absent the plot plan, was reviewed by Zoning Enforcement and approved as being in compliance with the zoning ordinance. The building permit and zoning certificate were subsequently approved and issued, and the addition constructed.

The location of the structure and deck were dictated by the construction of the dwelling and first addition, and the topography of the site.

Upon receipt of a complaint on January 2, 1991, regarding the addition, the site was inspected by the Chief of Zoning Enforcement and a Zoning Inspector. Following the inspection, it was determined that the addition had been constructed, "...as a separate accessory building for habitation as a permanent or temporary dwelling."

On January 22, 1991, a Notice of Violation was issued for:

Erection of addition in violation of building permit regulations in an "C" Conservation District; contrary to the provisions of Section 16.2 of the Carroll County Zoning Ordinance 1E.

As noted earlier, the property is actually zoned "A" Agricultural District, not "C" Conservation District.

The notice directed that the use of the structure cease and that the structure be connected to the principle dwelling.

Applicant's Exhibit 4 clearly depicts the structure, described as a studio and bath in the application and notice of public hearing. As portrayed by the exhibit, the structure consists of a sitting room, bedroom, and bath. The structure does not contain a kitchen. Access between the structure, dwelling and the first addition is provided by a connecting deck. Due to the descending grade of the site from the rear of the dwelling to the front, the structure and connecting deck are elevated to the level of the first story of the dwelling.

As depicted by Applicant's Exhibit 4, the structure is about six feet from the sun room and twelve feet from the original dwelling. Although the structure does not abut the original dwelling and the architecture differs, it is the use of the structure that is the determinate factor. The structure is intended and designed to be an addition to the dwelling, and its function is to be part of, and an addition to, the dwelling. The structure is not an accessory building, such as a storage shed or detached garage.

The dwelling and additions comply with the minimum yard requirements specified in Section 6.7.

The Board finds no provisions of the zoning ordinance, including those of Section 16.2, that require all rooms or components of a dwelling to be attached, or abutting, or connected in some manner by some type of construction, whether the connecting construction be a roof or deck, or something frivolously constructed to merely satisfy the idea. It is not the purpose of the zoning ordinance to control or restrict architecture.

It is the opinion of the Board that the initial approval of the permit application and zoning certificate was correct, and that issuance of the Notice of Violation was error.

However, in order to preclude any any argument that the provisions of the zoning ordinance, including Section 20.42, somehow require that all rooms or components of a dwelling be connected to each other, the Board hereby determines that the studio and bath are connected to the dwelling and first addition, and are an addition to the dwelling.

FINDINGS OF FACT AND CONCLUSION
PERTAINING TO THE CONDITIONAL USE

A retreat or conference center is defined in Article 20, Section 20.30(C) of the zoning ordinance as:

A facility used for professional, educational or religious conclaves, meetings, conferences or seminars and which may provide meals, housing and recreation for participants during the period of the retreat or program only. Such centers may not be utilized by the general public for

meals or overnight accommodations. Housing for participants may be in lodges, dormitories, sleeping cabins (with or without baths) or in such other temporary quarters as may be approved by the Board, but kitchen and dining facilities shall be located in a single centrally located building or buildings.

The land use provisions for the "A" Agricultural District include Section 6.3, Conditional Uses (requiring Board authorization), paragraph (cc) which reads:

Retreat or Conference Centers as defined in Section 20.30C, provided that a site development plan shall be approved by the Commission, and subject to the following:

1. The use shall be located on a property of not less than five (5) acres.
2. All buildings and housing shall be located not less than one hundred (100) feet from adjoining property.
3. Such use shall be designed so as to preserve the maximum amount of land for agricultural purposes.
4. The use shall be shown by the owner not to adversely affect the quantity or quality of ground or surface waters, or be otherwise detrimental to neighboring properties.
5. The Board may limit the maximum occupancy of the site based on such factors as its proximity to a public water supply and adequacy of the access to the site.
6. The Board may require an Environmental Impact study based on the scale of the project and on the recommendation of technical staff.

The standards governing the Board in deciding conditional use requests include Article 17, Section 17.7 of Ordinance 1E and decisions of the courts. Section 17.7 specifies:

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 a 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 standard established by the Court of Appeals of the State of Maryland for special exceptions, which are known as conditional uses in the Carroll County Zoning Ordinance, is expressed in the case of *Schultz v. Pritts*, 291 Md. 1, at 22 and 23 (1981) to be:

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.)

As described by testimony presented on behalf, as well as in opposition to the proposed retreat, farming is a major land use in the neighborhood. While some residential development has occurred over the years, the area is best described as rural-agricultural. Bankard Road, which connects with Geeting Road to the west and Grand Valley Road to the east, provides vehicular access to the proposed retreat site. Although the road is not constructed to present standards, the Board believes that the road can accommodate the negligible vehicular traffic that may be generated by the retreat with no adverse affects.

As proposed, the retreat will be limited to nine days for a long established tradition for dedication of a church located on lot 2 of the subdivision. The retreat will be conducted, using temporary and permanent facilities, on lots 1 and 2 of Eyler's Hill subdivision. Approximately 50 people are expected to participate in the retreat. Meals, temporary lodging, and sanitary facilities will be provided on the premises. The visitors attending the retreat will be transported to the premises and customarily remain on the premises during the retreat. Although vehicular traffic will be necessary to support the retreat, the number of trips per day will not be significant. Thus, the retreat will not cause vehicular traffic congestion, or require parking facilities for many vehicles. The retreat will not otherwise involve activities that would cause attention to be directed to the premises, and there is no evidence that the retreat, as proposed, will unduly affect the residents of adjacent properties, or the public interests.

Therefore, the Board is convinced that the retreat, as proposed and subject to the conditions of authorization, complies with the provisions of the zoning ordinance, and that the conditional authorization is in accord with the standard of *Schultz v. Pritts*.

Following the retreat, the dedication ceremony will be conducted for the church. At least for the purpose of this decision, the retreat and dedication ceremony are considered to be separate events. No authorization is required for the dedication ceremony.

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

1. In accordance with the testimony presented on behalf of the conditional use, the retreat shall be limited to approximately 50 people for the nine days as proposed.
2. Establishment and operation of the support facilities for the retreat shall be subject to the requirements of the Carroll County Health Department.

Date

April 12, 1991

John Totura, Chairman

JDN/bmh/c3522dec
April 12, 1991