

Tax Map/Block/Parcel  
No. 73-5 & 6-760

Building Permit/Zoning  
Certificate No. 93-0659

Case 3836

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

- APPLICANTS:** Jay Liner and Joseph Twilley  
Top Gun Indoor Range, Incorporated  
100 Church Lane  
Baltimore, Maryland 21208
- ATTORNEY:** Clark R. Shaffer, Esquire  
6 North Court Street  
Westminster, Maryland 21157
- REQUEST:** A conditional use for an indoor shooting range, first allowed in the "A" Agricultural District, and a variance to the minimum distance requirements of 1,000 feet pertaining thereto
- LOCATION:** 1430 Progress Way, Suites 113 and 114 in Election District 5; Eldersburg Business Center subdivision, Section 1, lot 2A recorded in Carroll County Plat Records in book 33, pages 89 and 90
- BASES:** Article 12, Section 12.2(b); Article 10, Section 10.2(a); Article 6, Sections 6.3(p) and 6.7; Article 4, Sections 4.12 and 4.26; Article 15, Section 15.5; Ordinance 1E (The Carroll County Zoning Ordinance)
- HEARING HELD:** April 27, 1993

On April 27, 1993, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use and variance requests.

The Board visited the site April 26, 1993, 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 authorized the conditional use and variance as requested.

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

**FINDINGS OF FACT**

The proposed site of the indoor shooting range (range) incorporates Suites 113 and 114 in a multipurpose building known as 1430 Progress Way, which is located within a 31.667 acre parcel located south of Bennett Road and east of Sykesville Road (Md. Rt. 32). Vehicular access to and from the premises is provided by Progress Way which connects to Sykesville Road. The parcel is zoned

"I-R" Restricted Industrial District.

To the north, on the north side of Bennett Road, the adjacent zoning is "R-40,000" Residence District. A large tract, which is undeveloped adjacent to the easterly property line, and the properties to the south are zoned "I-R" Restricted Industrial District. Liberty High School is located on property on the west side of Sykesville Road and is zoned "C" Conservation District.

From testimony presented regarding the proposed location of the range, the distance to the "R-40,000" Residence District north of Bennett Road is about 650 feet. The distance to the high school property is in excess of 1,000 feet. Visibility of the building, 1430 Progress Way, from dwellings in the "R-40,000" Residence District is obstructed by a landscaping berm constructed along the southerly side of Bennett Road and by the exceptionally large warehouse located between the building and Bennett Road.

The applicants plan to lease Suites 113 and 114 from the owner, install the equipment necessary to establish the range, and operate the range. From testimony and evidence presented on behalf of the request, it is evident that the applicants intend to establish and operate the range in compliance with all applicable federal, state and county laws, and to promote safe handling and use of firearms. The range is designed to contain the sound of firing and bullets within the facility without adversely affecting adjoining suites or the environment. Individuals aged 19 or 20 years who wish to use the range will have to be accompanied by an adult. Customers and visitors will be monitored regarding responsible conduct as they proceed to and from the parking area, which is located immediately in front of the building.

Present occupants of the building include several industrial businesses and an indoor athletic facility known as Super Sports, Inc., (Super Sports) which is located 60 feet east of the proposed range. Mr. Mark Hughes, owner of Super Sports, testified in opposition to the applicants' request, expressing concerns for the safety of Super Sports patrons, particularly when customers or visitors to the range would be preceding to and from the range and the parking area, or apparently loitering in the parking area. Others opposed to the proposed location of the range expressed similar concerns, evidently prompted by the proximity of the range to Super Sports and the opinion that customers carrying firearms to and from the range would endanger patrons of Super Sports.

However, no probative testimony or evidence was presented to the Board to substantiate establishment and operation of the range, including customers carrying firearms to and from the range, would be particularly dangerous or detrimental to businesses in adjacent suites or public interests at this location.

In contrast, other witnesses presented testimony on behalf of establishing the range, the need for a range within the county, and that operation of the range would be compatible with other uses in the industrial center, including Super Sports.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The property is zoned "I-R" Restricted Industrial District as depicted on zoning map 73B. The land use provisions for the district are expressed in Article 12. The preamble for the article reads:

The purpose of this district is to provide locations for some of the lighter manufacturing processes and which may not be as extensive as those provided in the "I-G" District. For the most part, the manufacturing is composed of processing or assembly of previously processed materials. It is not the purpose of this district to promote or encourage the use of land within the district for retail services or planned business centers normally expected to be located within the established business district; however, it is anticipated that there may be areas or locations where retail services or planned business centers can be reasonably and logically considered due to their relationship with other uses existing within the district, as well as their relationship with the district boundary line or the configuration of the property and the relative scale of the project.  
(Amended 9/22/77)

Section 12.2, Conditional Uses (requiring Board authorization), paragraph (b) specifies in relevant part:

Any use permitted and as regulated as a principal permitted use and conditional use in the "B-L" and "B-G" District,....

Article 11, "B-G" General Business District; Section 11.2, Conditional Uses, paragraph (e) states:

Any conditional use permitted and as regulated in the "B-L" District, except as modified in Section 11.1.

Article 10, "B-L" Local Business District; Section 10.2, Conditional Uses, paragraph (a) reads in relevant part:

Any conditional use permitted and as regulated in the "A" District except mobile homes, mobile home parks and race tracks or courses for the conduct of races, meets, contests, shows or similar activities of automobiles, motorcycles and the like; or as modified in Section 10.1 herein.

Neither the provisions of Article 10 nor the provisions of Article 11 modify the provisions for ranges first allowed in the "A" Agricultural District.

Article 6, "A" Agricultural District; Section 6.3, Conditional Uses, paragraph (p) reads:

Trap, skeet, rifle or archery ranges, including gun clubs; provided such use shall be five (5) times the distance requirements specified in Section 4.12 and all safety standards of county, state, and federal agencies are observed.

Section 6.7, Lot area, Lot Width and Yard Requirements specifies the minimum requirements for conditional uses in the "A" Agricultural District as:

Lot Area	-	3 acres
Lot Width	-	200 feet
Front Yard Depth	-	40 feet
Side Yard Width	-	30 feet
Rear Yard Depth	-	50 feet

The proposed range complies with the minimum requirements as noted above.

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.

As the minimum distance requirement specified in Section 6.3(b) is five times the distance requirement of 200 feet specified in Section 4.12, the minimum distance requirement for ranges is 1,000 feet.

Article 20, Definitions, contains the following:

#### Conditional Uses

Uses which are specified for Board approval prior to authorization and which uses, after public hearing, may be approved conditionally or disapproved in accordance with Sections 17.2 and 17.7. 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.

#### Variance

A variance is a relaxation of the terms of the Zoning Ordinance in accordance with Sections 15.0, 15.2<sup>1</sup>, and 17.2 where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the Ordinance would result in practical difficulty or unreasonable hardship.

Article 15, Exceptions and Modifications; Sections 15.0, Generally, and 15.5.4, Board of Zoning Appeals, read respectively and in relevant part:

The regulations specified in this ordinance shall be subject to the following exceptions, modifications, and interpretations:

- (b) An applicant seeking a variance may apply directly to the Board pursuant to Section 17.4 without first applying to the Zoning Administrator.
- (d) The Board may grant or deny the requested variance based on the evidence before it after a de novo hearing. The Board may grant a variance only in cases where the strict compliance with the terms of the ordinance would result in practical difficulty or unreasonable hardship which have not been caused by the applicant or the applicant's predecessor in title. The Board shall not grant a variance if to do so would violate the spirit and intent of the regulation, or cause or be likely to cause substantial injury to the public health, safety and general welfare. The Board shall be guided in its decision by those considerations set forth in Section 17.7.

Article 17, Board of Zoning Appeals; Section 17.7, Limitations,

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<sup>1</sup>Reference to Section 15.2 is an error. Section 15.2 deals with modification of setbacks, not variances. The correct reference is Section 15.5.1 through 15.5.4.

Guides and Standards, 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.

In addition, the Board is governed by decisions of the courts. In the case Schultz v. Pritts, 291 Md. 1, 22-23(1981) the decision reads:

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 Anderson v. Board of Appeals, 22 Md. App. 28, 39, (1974) the decision pertaining to the authorization of variances reads:

Where the standard of "practical difficulty" applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the "undue hardship" standard. In order to justify the grant of an area variance the applicant need show only that:

- "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- "2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- "3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured." (Citations omitted.)

#### REASONING

Of the land use districts described in the county's zoning ordinance, only the "I-G" General Industrial District is more permissive than the "I-R" Restricted Industrial District. Due to the characteristics of industrial uses, dwellings are not permitted unless they are an accessory use to an industrial use. Until the addition of Section 12.2(b) to the zoning ordinance September 22, 1977, ranges, as well as other conditional uses allowed in the business districts, were allowed in the district as principal permitted uses without the requirement of Board authorization. The amendment was added to the zoning ordinance in an effort to regulate establishment of retail businesses within the industrial districts. Arguably, the standard for denying conditional uses expressed in Schultz v. Pritts has at least diminished the purpose of the addition. The accepted premise in establishing land use districts and

determining the allowable uses in such districts, is, barring exceptional circumstances to the contrary, that uses permitted in a more restrictive district are appropriate and compatible with uses permitted in a less restrictive district.

In this case, the multipurpose buildings were constructed as principal permitted uses, and except for Super Sports, which was authorized by the Board as a conditional use allowed in the business districts, the occupants of the buildings are principal permitted industrial uses. In the long term, use of the buildings will likely be dictated by economics instead of zoning. Industrial uses will eventually replace uses that are allowed in business districts and can be relocated to such districts.

Regardless of the forces influencing land use other than zoning, the issues in this case are whether the applicants have met their burden of proof relative to the provisions of the zoning ordinance and the decisions of the courts. By proposing an indoor range, the concerns pertaining to noise of weapons being discharged and insuring safety of people and property have been satisfied, eliminating the need to comply with the minimum distance requirements. As the proposed location of the range complies with all other setback and area requirements and the variance to the minimum distance requirements is merely a technicality not really appropriate in this instance, the Board is convinced that the applicants have satisfied the standard of practical difficulty pertaining to variances as expressed in Anderson v. Board of Appeals.

Opponents' arguments, appealing to the notion that establishment of the range in this location would promote irresponsible and unlawful acts by customers of the range as they proceed to and from the parking area, jeopardizing public safety, are unfounded.

In considering the record of this case, the Board finds no probative evidence that would indicate that establishment of the range in this location would have any greater adverse affects than if the range would be located elsewhere in the district. In examining the factors specified in Section 17.7 relative to the conditional use and variance, the Board finds that establishment of the range in this location is consistent with the provisions and will not unduly affect the public health, safety, security, morals or general welfare. Accordingly, the applicants have met their burden of proof as expressed in Schultz v. Pritts and in Section 17.7 of the zoning ordinance.

#### CONCLUSION

Based on the findings of fact, applicable law, and reasoning expressed herein, the conditional use and variance are authorized in accordance with the Board's determination following the public hearing.

5/23/95  
Date

JDN/bmh/c3836dec.bmh

William Law  
William Law, Chairman