

Tax Map/Block/Parcel
No. 67-17-604
Case 5750

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: William and Brenda Rash
5514 Old Washington Road
Sykesville, MD 21784

ATTORNEY: Mackenzie A. Kantruss, Esq.
P.O. Box 619
Mount Airy, MD 21771

REQUEST: Request for a Conditional use for a contractor's equipment and storage area as permitted by Section 223-71 A(5) in an area zoned Agricultural and a variance for the set-back requirement required by Section 223-16, which in this case would be 400 feet.

LOCATION: The site is located at 5514 Old Washington Road, Sykesville, on property zoned "A" Agricultural District in Election District 14.

BASIS: Basis: Code of Public Local Laws and Ordinances, Section 223-16 and 223-71 A(5).

HEARING HELD: April 29, 2014

FINDINGS AND CONCLUSION

On April 29, 2014, the Board of Zoning Appeals (the Board) convened to hear the request for a Conditional use for a contractor's equipment and storage area as permitted by Section 223-71 A(5) in an area zoned Agricultural and a variance for the set-back requirement required by Section 223-16, which in this case would be 400 feet. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

William Lee Rash testified as the applicant. He is the sole owner and operator of Oakhill Wood Services and Excavating, Inc., a Maryland Corporation. The company is in the business of tree removal, tree clean-up, landscaping and excavating as necessary. The primary location of the business is in Eldersburg, Maryland. He has been in this business in this area for more than thirty years and grew up in the area of the above property. Mr. Rash is a licensed Maryland Home Improvement Contractor #65043 and Licensed Maryland Tree Expert #978. His business has a total of twelve trucks.

In May 2013 Mr. Rash began to have a new building constructed on his property. The new building was in the area where prior buildings were located. The new building was to store equipment from his farming operations. Mr. Rash received a permit from the county Permits and Inspection Office prior to having the building constructed. Permit BP-0316 was approved as a farm building for a commercial nursery. At the time the building was built, Mr. Rash already had twenty-five pieces of equipment to place in the new building. He wanted the equipment to be placed inside rather than outside so that he could keep it longer. Equipment kept outside and exposed to the elements did not last as long and needed more maintenance. The construction lasted from May 2013 to December 2013. The building has been virtually empty since it was completed in December 2013. Mr. Rash testified that if Board approval was obtained, the building would then reach ninety percent of capacity. Sixty to seventy percent of the equipment presently stored at the Eldersburg site would be moved to the new building. He intended to purchase the stock for the nursery thereafter.

Once all preliminary work was completed, Mr. Rash stated that the worst case scenario would be that there would be twenty trips a day in the use of the equipment at the new building. The typical use would be from Monday through Saturday. He further stated that typically there would be fewer pieces of equipment used a day. He added that during rush hour periods there would be from three to five pieces of equipment in use per day.

Robert H. Lennon testified as a witness. His clients, the Heinz family, had a twenty foot right of way on the property in question. His clients did not want the Board to take any action that would inhibit that right of way. He wanted the right of way to be preserved for his clients. He testified that the property had been in use for commercial purposes for about sixty or seventy years. The barns on the property were previously used as part of a cattle operation to bring them to the market. His clients did not want any planting or fencing in that right of way. His clients further wanted the right of way to maintain its twenty foot limit for farm equipment traveling on the road. Mr. Rash was in agreement with Mr. Lennon. Although the Heinz family would have private property actions to take against Mr. Rash with regard to the right of way, the family did not want the county to impose any requirements or place any restrictions that would impede that right of way.

John E. Lemmerman testified on behalf of the applicant. He is a registered professional land surveyor. He has worked for RTF Associates, Inc. for twenty-four years. The Board accepted him as an expert in land use. He was retained by the applicant in February, 2014, approximately two months after the building had been completed. RTF Associates provided three sketches enclosed in the case file and Exhibit 2 to the Board. The access road to the property was off of Maryland Route 97. He stated that the land that included the building was unique. He stated that the property was triangle shaped. Therefore, there were narrow corners on three sides of the property. The property included a twenty foot right of way that needed to be maintained without any structures, trees or fencing. The property includes a wooded area and steep slopes. He testified that the possibility of the applicant obtaining a right of way for an access road other than off Route 97 would be unlikely. He also mentioned that the new building was near the access road.

Carol Amass testified as a neighbor of the applicant. She stated that she lived across the street from the subject address. She believed that the new building itself looked nice. She was troubled by the process that allowed the building to be built without Board approval. The order of the permit being issued, the construction of the building and then Board approval is where she had a problem.

Donna Parlette testified as a neighbor of the applicant. She also liked the appearance of the building. She had questions and concerns about the process of the building being built before the Board gave approval. She was also concerned about traffic as a result of the new building.

Based on an April 9, 2014 letter from Philip R. Hager, Secretary, Planning & Zoning Commission and an April 8, 2014 memorandum from Lynda Eisenberg, Chief, Bureau of Comprehensive Planning, the property was consistent with the policies and recommendations contained in the Carroll County Master Plan, the Carroll County Master Plan for Water & Sewerage, and other functional plans. The Planning staff did not believe that a contractor's equipment storage yard would have an adverse impact on the immediate neighborhood. The staff further found that the request was compatible with the vision and goals for the area. The Board accepted and agreed with these findings.

The Board recognized that a principal permitted use in the Agricultural district could be a commercial and noncommercial nursery. Such a use would be permitted without Board approval. The building in this matter was built with the understanding that the equipment would be stored for a nursery. Thereafter, the applicant requested to also use the building for a contractor's equipment storage yard as well as the other use. In order for the applicant to obtain approval for a contractor's equipment storage yard he would need approval of the Board. The Board accepted Mr. Lemmerman's testimony that the property was unique and that variances were needed. The Board acknowledged that the property had been used for commercial purposes for about seventy-five years before the present time. The additional traffic as a result of the approval of this request would be minimal.

The Board was convinced that authorization of the request with regard to a conditional use was consistent with the purpose of the zoning ordinance, appropriate in light of the factors to be considered regarding conditional uses of the zoning ordinance, and would not unduly affect the residents of adjacent properties, the values of those properties, or public interests. Based on the findings of fact made by the Board above, the Board found that the proposed project would not generate adverse effects (i.e. noise, traffic, dust, water issues, lighting issues, property depreciation, etc.) greater here than elsewhere in the zone. The Board approved the conditional use and the variances requested by the applicant.

Date

Brian DiMaggio, Chairman

Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court for Carroll County within 30 days of the date of the decision pursuant to Article 66B, Section 4.08 of the Annotated Code of Maryland Rules of Procedure.

Pursuant to Section 223-192C of the County Code, this approval will become void unless all applicable requirements of this section are met. Contact the Office of Zoning Administration at 410-386-2980 for specific compliance instructions.

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