

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY MARYLAND

APPLICANT: Charles R. Stambaugh
101 Glenn Hill Court
Union Bridge, Maryland 21791

ATTORNEY: Wesley D. Blakeslee, Esquire
Union National Building
117 East Main Street
Westminster, Maryland 21157

APPEAL: An appeal of the Zoning Administrator's Notice of Violation dated May 28, 1987, regarding establishment of a contractor's equipment storage yard; a conditional use for a contractor's equipment storage yard and buildings, and variance reducing the minimum distance requirements pertaining thereto.

LOCATION: 445 Bark Hill Road in Election District 12.

BASES: Article 17, Section 17.4; Article 6, Sections 6.3(e) and 6.7; Article 4, Section 4.12; Article 15, Section 15.5; Zoning Ordinance 1E.

HEARING HELD: September 29, 1987

FINDINGS

The record of this case is hereby included by reference in this decision. The pertinent findings include the following facts:

The 4.67± acre site was zoned "A" Agricultural District with the adoption of Zoning Ordinance 1E on August 17, 1965, and as shown on Official Zoning Map 20. Although Zoning Map 36B superceded Official Zoning Map 20, the zoning district has remained "A" Agricultural District. Testimony and evidence introduced during the hearing confirmed that the contractor's equipment storage facility, including an office within the dwelling, was established prior to adoption of Zoning Ordinance 1E, and has continued without ceasing since that time. Accordingly, the office within the dwelling and three accessory buildings are classified as nonconforming uses. For purposes of clarification, the accessory buildings as identified on Applicant's Exhibit 14 are the garage, the storage building, and the shop building. The record also established that the blacktop pavement shown on Applicant's Exhibit 14 was used in conjunction with the nonconforming facility

prior to the adoption of Zoning Ordinance 1E in 1965. However, the two areas specified for equipment storage, and indicated as being surfaced with stones were not established until after adoption of Zoning Ordinance 1E, and do not qualify as part of the area of the nonconforming use. Testimony confirmed, over the years, the business has grown from about five pieces of equipment to over sixty pieces of equipment. In the process of conducting the business, the applicant has established a storage yard elsewhere. The equipment frequently moves from job site to job site, without necessarily returning to the storage facility. Maintenance and repair of equipment may be accomplished on the premises, but major overhauls are performed elsewhere. The applicant now requests authorization of a conditional use and variance from the setback, or minimum distance requirements pertaining thereto. As part of the proposed use, construction materials consisting of earth and stone would be stockpiled on the premises.

Until about 1978, the adjoining property to the east had been used for agricultural purposes, except for a dwelling located adjacent to Bark Hill Road. In 1978 or 1979, a residential subdivision consisting of nine lots was developed. At least two of the lots abut the easterly side property lines of this site. The proposed storage areas are visible from at least two of the adjacent residential lots, and protestants presented testimony and evidence regarding adverse affects that would result from enlargement of the contractor's equipment storage yard as proposed. It was noted that ten to fifteen pieces of equipment would be stored in the new area at one time, and that due to the elevation difference between the adjacent lots and the proposed area, landscape screening would provide no protection to the adjacent residents or to the values of their properties. In substantiation, a photograph of inoperable motor vehicles, parts thereof, and debris stored adjacent to the easterly side property line was introduced (Protestants' Exhibit 1). Another photograph showing an underground fuel tank, estimated to be ten feet in diameter by 25 feet in length, stored at least temporarily adjacent to the easterly side property line was introduced as Protestants' Exhibit 3.

Provisions of the zoning ordinance governing consideration of the conditional use request are specified in Article 17, Section 17.6. Provisions of the ordinance concerning the variance include the definition as specified in Article 20, Section 20.39; and, Article 15, Sections 15.0 and 15.5. Section 20.39 reads:

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"A variance is a relaxation of the terms of the Zoning Ordinance 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 unnecessary and undue hardship."

Sections 15.0 and 15.5 read respectively:

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

"The Board may authorize, upon appeal, in accordance with Section 17.2, variances from height, lot area, lot width, yard regulations, parking space requirements, sign regulations, and distance requirements specified in Section 4.12 and Section 14.31(c)4. The Board may grant such variance only in cases where the strict compliance with the terms of this ordinance would result in practical difficulty and unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to public health, safety and general welfare."

The provisions of Article 6, Section 6.3(e) and Article 4, Section 4.12(b) require that the contractor's equipment storage yard be at least 400 feet from, "Any lot of less than 3 acres occupied or intended to be occupied by a dwelling...."

CONCLUSION

The appeal of the Zoning Administrator's Notice of Violation dated May 28, 1987 is hereby affirmed for reason that the contractor's equipment storage facility, including the office within the dwelling, were established prior to the adoption of Zoning Ordinance 1E in 1965.

The requests for the conditional use and variance, effectively eliminating the distance requirements of 400 feet to the adjoining residential lots are hereby denied for reason that the equipment storage areas and stockpiles of earth and stone would uniquely and adversely affect the adjoining residential properties; and such reduction of the minimum distance requirements would be contrary to the

intent of the regulations regarding conservation of property values and without substantial proof of practical difficulty and unreasonable hardship in the use of the property.

March 21, 1988

Date

John Tetina