

OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY MARYLAND

APPLICANT: James and Sons, Partnership  
3316 Baltimore Boulevard  
Finksburg, Maryland 21048

REQUEST: For substitution of a contractor's equipment storage facility,  
classified as a nonconforming use, for the fuel transfer terminal,  
also classified as a nonconforming use.

LOCATION: 3424 Old Gamber Road (Md. Rt. 829) in Election District 4.

BASIS: Article 4, Section 4.3(b); Zoning Ordinance 1E.

HEARING HELD: June 29, 1988; Continued: July 18, 1988

On June 29 and July 18, 1988 the Board of Zoning Appeals heard testimony and received evidence concerning the Application for Hearing requesting substitution of a contractor's equipment storage facility for the fuel transfer terminal classified as a nonconforming use. Based on the record of this case, the Board denies the request.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. The pertinent findings are as follows:

FINDINGS OF FACTS

The property is located on the westerly side of Old Gamber Road about 700 feet north of the intersection with Gamber Road (Md. Rt. 91). Old Gamber Road also intersects Gamber Road about 2,000 feet north of the site as depicted on the Board's site location map. As noted in the legal description of the property attached with the applicant's Offer to Purchase dated April 6, 1988, the total area of the property is 9.668 acres, more or less. Of that area, about 2.86 acres, a rectangle of 275 feet in width by 453 feet in length, is involved in this case (Applicant's Exhibits 2 and 6). The entire property is zoned "C" Conservation District as shown on zoning map 59A. The record confirms that a fuel storage and transfer terminal was lawfully established on the site prior to the adoption of the Carroll County Zoning Ordinance on August 17, 1965. A photocopy of a portion of the plot plan for BP Oil, Inc., revised to 7/10/78, shows the terminal, fuel lines extending to the storage tanks, and apparently one line (Sohio) crossing the property (Applicant's Exhibit 1).

Use of the site as a fuel storage and transfer terminal continued until December of 1987 when the last lease for the premises expired. Thereafter, efforts to sell or lease the premises were unsuccessful, although a number of parties expressed interest. In order to facilitate sale or lease of the premises, the storage tanks and one pipe line containing fuel were cleaned in April of 1988. Mr. Kibler, a partner of James and Sons, presented an Offer to Purchase the property on April 28, 1988.

Within the fenced area of approximately 2.86 acres, James and Sons now requests authorization to:

establish a construction equipment storage yard on the north side of the proposed maintenance building as shown on Applicant's Exhibits 2 and 6

construct a maintenance building, 60 feet in width by 150 feet in length for maintenance and repairs of equipment used in construction of roads and bridges as shown on Applicant's Exhibits 2, 4, and 6

enlarge the existing single story office building from 22 feet by 46 feet to 46 feet by 51 feet to serve as the corporate office

store small equipment such as pumps, jackhammers, and grinders, etc., in the existing 40 feet by 60 feet warehouse

In developing the contractor's equipment storage facility, the four above ground 10,000 barrel storage tanks, fuel loading truck rack, and various pipes would be removed. The existing fencing and landscape screening of the site would be retained. The construction equipment would normally be kept at job sites, and only returned to the facility for maintenance, or storage. Dump trucks would be parked in the yard overnight and when not in use. About fifteen employees would report to the premises. Other employees would go directly to the job sites. Hours of operation would be from 6:00 a.m. until 4:30 p.m. or 5:00 p.m. Maintenance or repair work could extend after 10:00 p.m. The company's inventory presently includes a total of about seventy-five vehicles and pieces of contractor's equipment.

Testimony presented in opposition to the request cited the detrimental affects of noise, increased vehicular traffic on Old Gamber Road, depreciation of the values of adjacent residential properties, and potential storm water runoff problems. In addition, a veterinarian accepted as an expert in the care of horses by the Board testified regarding adverse affects to horses boarded on an adjacent property, and of dangers to riders and horses in the area resulting from noise and activities on the premises.

#### APPLICABLE LAW

At the time of the adoption of the zoning ordinance in 1965 the property was zoned "A" Agricultural District as shown on Official Zoning Map 30. In 1987 the property was rezoned to "T" Transitional District as shown on zoning map 59A which superceded map 30. With the adoption of comprehensive Rezoning Ordinance Number MA (Map Amendment)-102 on January 6, 1981 the property was rezoned to "C" Conservation District. As noted on the site plan, Applicant's Exhibit 6, the property to the north was also rezoned "C" Conservation District. With the exception of a portion of one of the confronting properties which was rezoned "B-L" Local Business District, the properties to the east, south and west were rezoned "R-40,000" Residence District. None of the land use provisions of the districts which the property has been zoned including "C" Conservation District, provide for fuel storage and transfer terminals as either a principal permitted use or conditional use.

For purposes of clarification, Article 20, Section 20.27 of the zoning ordinance defines a nonconforming use as:

"A use of a building or of land lawfully existing at the time this ordinance becomes effective and which does not conform with the use regulations of the zone in which it is located."

Article 4, General Provisions; Section 4.3 Nonconforming Uses (Amended 3/17/81), provides:

"Any building, structure or premises lawfully existing at the time of the adoption of this ordinance, or lawfully existing at the time this ordinance is amended, may continue to be used even though such building, structure or

In addition, Section 4.1, Ordinance Deemed Minimum Regulations; Uniformity, and Section 4.2, Compliance with Ordinance provide guidance in regulating nonconforming uses. These sections read respectively:

"The regulations set by this ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land except as hereinafter provided."

"Except as hereinafter specified, no land, building, structure, or premises shall hereafter be used, and no building or part thereof or other structure shall be located, erected, reconstructed, extended, enlarged, converted or altered except in conformity with the regulations herein specified for the district in which it is located."

#### REASONING

Nonconforming uses, by definition do not conform with the land use provisions of the zoning district in which such uses are located. In establishing the land use provisions for the particular districts, such uses have been judged to be inappropriate and incompatible with the uses allowed as principal permitted uses and conditional uses, which require Board of Zoning Appeals authorization. The provisions of Sections 4.1 and 4.2 of Article 4 are fundamental to the purpose of the zoning ordinance as expressed in Article 1. The zoning ordinance specifies that the regulations of the particular zoning districts are minimum, applicable uniformly, and that new uses or changes of existing uses must comply with the regulations except as otherwise provided in Article 4.

Sections 4.3(c) and (d) prohibit reestablishment of nonconforming uses that have either been changed to "...a more appropriate use..." or, "...ceased for six (6) months or more..." The objective of these provisions is to prevent perpetuation of nonconforming uses, and promote establishment of land uses which are compatible with the uses allowed in the particular zoning district.

Section 4.3(b) empowers the Board of Zoning Appeals to approve the change of one nonconforming use to another nonconforming use only if no structural alterations are involved. In addition, if the proposed change is to be authorized, the Board must find that the proposed nonconforming use would be "...of the same or more

appropriate use or classification." The proposed construction of the building, and enlargement of the existing office building is absolutely contrary to the prohibition of structural alterations or enlargement. The assertion that the contractor's equipment storage facility is an appropriate use for the site is contrary to the evidence before the Board.

Assuming for purposes of argument that structural alterations or enlargement are not prohibited in changes of nonconforming uses, Sections 4.3(a)(1) and 17.7 would then apply in this case. Continuing the assumption, consideration of the provisions of Section 17.7 would be that it is evident that the contractor's equipment storage facility would be:

incompatible with the residential and agricultural characteristics of the adjacent properties

detrimental to the orderly growth of the community, and the predominantly residential traffic on Old Gamber Road

harmful to the property values of adjacent residential properties

an inappropriate use of land, and contrary to the purpose of the zoning ordinance.

#### CONCLUSION

Although the issue of whether the nonconforming use status of the fuel storage and transfer terminal was raised in this case, it is not the question before the Board. However, if asked to consider that question, the Board would rule that from the evidence in this case use of the fuel storage and transfer terminal had ceased in January 1988, and use of the site must now conform with the land use provisions for the "C" Conservation District specified in Article 5 of the zoning ordinance.

Directing attention to the applicant's request, the proposed substitution of the contractor's equipment storage facility for the fuel storage and transfer terminal is contrary to the provisions of Section 4.3(b), and the intent and purpose of the zoning ordinance.

Accordingly, the request is hereby denied.

August 18, 1988  
Date

John Totura  
John Totura, Chairman