

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY MARYLAND

APPLICANT: Michael E. Bledsoe, Sr.
t/a Mike & Sons
2441 Braddock Road
Mount Airy, Maryland 21771

ATTORNEY: Clark R. Shaffer, Esq.
6 North Court Street
Westminster, Maryland 21157

REQUESTS: Conditional use for a contractor's equipment storage building and yard, and variances reducing the minimum distance requirements pertaining thereto.

LOCATION: 2441 Braddock Road in Election District 9; Gosnell Estates subdivision, Section One, lot 4 recorded in Carroll County Plat Records in Book 17, page 18.

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

HEARING HELD: September 2, 1988

On September 2, 1988 the Board of Zoning Appeals heard testimony and received evidence concerning the Application for Hearing requesting a conditional use for a contractor's equipment storage building and yard, and variances reducing the minimum distance requirements pertaining thereto. Based on the record of this case, the Board denies both the conditional use and variance requests.

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 3.691 acre lot is part of a seven lot residential subdivision located on the north side of Braddock Road about 5,000 feet east of Ridge Road (Md. Rt. 27) intersection. It is improved with a single-family dwelling and attached garage located near the front of the lot, as shown on the site plan identified as Applicant's

Exhibit 1. The applicant purchased the property about nine years ago. He and his family now reside there. A small barn, partially visible in the photograph identified as Applicant's Exhibit 6G showing the rear of the applicant's home is located near the middle of the lot. As evidenced by the photographs identified as Applicant's Exhibits 6A through 6G, the lot slopes gently from the front to rear. Neither the topography of the lot or its configuration, which resembles the number "7", significantly restricts use of the lot.

The applicant proposes to construct a forty feet by sixty feet single story storage building in the northeast corner of the lot, thirty feet from the easterly side property line and fifty feet from the northerly, or rear property line. A new driveway, initially constructed of stone, is proposed to provide vehicular access to the building. Within a year the driveway would be constructed of concrete. As shown on the proposed floor plan, Applicant's Exhibit 3, the plan includes two offices, a lounge, restrooms, and storage space. The applicant testified that an exterior storage area, about ten feet by twelve feet attached to the rear of the building and enclosed with a chainlink fence, would be used to store rolls of drain tile. The fenced area would constitute the storage yard, which as shown on Applicant's Exhibit 3 is substantially larger, scaling twelve feet in width by twenty-nine feet in length. Applicant's Exhibit 1, the site plan does not show the proposed storage yard. With the exception of the applicant's own truck and one pick-up truck not kept on the premises, all other vehicles, equipment and supplies would be kept in the proposed building. Maintenance work would be performed in the building, but mechanical work would be done elsewhere. Presently, the applicant has five employees and a total of ten vehicles including his truck. The men would report to the building about 7:00 a.m., proceed to the job sites in company vehicles, and return about 4 to 6 p.m. and unload the vehicles. The hours would vary with the season. Usually, two or three employees' vehicles would be parked on the premises in front of the building during the day. Since starting the business about two years ago, the highest number of employees has been nine at the busiest time. However, plans are to purchase only replacement vehicles as necessary in order to continue to be able to park all vehicles--except his own truck--inside of the building. Essentially, the applicant wishes to relocate his business from the present site to his own

property, which is zoned "A" Agricultural District and located within a residential subdivision. The proposed building can not be located on the lot in compliance with the minimum distance requirements of four hundred feet specified by Article 6, Section 6.3(e)1 and Article 4, Section 4.12 of Ordinance 1E.

The adjacent dwelling to the west, located on parcels 72 and 269 as shown on the location map for the site, evidently predates the subdivision, parcel 277, Section 1 of Gosnell Estates. The adjacent properties on the north side of Braddock Road are also zoned "A" Agricultural District as shown on zoning maps 66B and 61B. The land located on the south side of Braddock Road opposite the applicant's home is zoned "R-40,000" Residence District. That land has also been subdivided for residential development and is known as Braddock Estates. Wagner's Ridge subdivision, which adjoins Braddock Estates slightly more than eight hundred feet to the east is zoned "C" Conservation District as shown on zoning map 66B. The subdivision lots have been, or are intended to be, improved with single family homes. Only the adjoining property to the north, parcel 425, has not been subdivided for residential development.

Owners and residents of adjacent and nearby properties appeared before the Board to present testimony in opposition to the requests regarding:

- a. conservation of residential property values and detrimental affects upon the resale of homes
- b. disruption of the orderly growth of the neighborhood
- c. generation of non-residential traffic to and from the property
- d. noise that would not reasonably be expected within a residential community, and which would unduly affect the peaceful enjoyment of people in their homes.

APPLICABLE LAW

With the adoption of Ordinance number T-76 on April 18, 1988 Article 6, Section 6.3(e) 1 of Ordinance 1E reads:

"Contractors' equipment storage facility located in an area of the property comprising no more than 43,560 square feet and which shall comply with at least twice the distance requirements of Section 4.12."

With Ordinance T-76, Article 20, Section 20.10 of Ordinance 1E now defines contractor's equipment storage facility as:

"Property used for the parking or storage of equipment, vehicles or machinery used in construction; including equipment, vehicles or machinery used in excavating, earth moving, paving or in the hauling of earth and building materials."

Article 4, General Provisions; Section 4.12, Distance requirements (Amended 7-5-77) specifies:

"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 with a dwelling."

The provisions of (a), (b), and (d) are applicable in this case.

Article 20, Section 20.39 of Ordinance 1E defines variance as:

"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."

Article 15, Exceptions and Modifications; Section 15.0, Generally states:

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

Section 15.5, Variance, (Amended through 2-25-76) reads in part:

"The Board may authorize, upon appeal, in accordance with Section 17.2, variances from...distance requirements specified in Section 4.12....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."

With the adoption of Ordinance T-77 amending the Zoning Ordinance, Article 17, Board of Zoning Appeals; Section 17.7, Limitations, guides and standards, now

reads:

"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 the 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 the 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."

REASONING

The land use provisions for the "A" Agricultural District are stated within Article 6 of Ordinance 1E and allow, as principal permitted uses single family and two family dwellings. The contractor's equipment storage facility is designated as a conditional use, subject to minimum distance requirements of at least four hundred feet. In this case, the only adjoining property that is not a residential subdivision lot adjoins the rear property line. It is that property that is least affected by the proposed contractor's equipment storage facility. When the Carroll County Zoning Ordinance was adopted in 1965 and for at least several years afterwards, the major land use in the area was agriculture, and its character was distinctively rural. With the residential subdivision development that has occurred in recent years, the agricultural characteristics of the area have been replaced by those more closely associated with suburban communities. Consequently, in this particular location the contractor's equipment storage facility, which can not comply with the minimum distance requirements, can not be considered to be compatible with the existing residential development. The commercial characteristics of the business, accentuated by the vehicular traffic to and from the site by the employees as well as the contractor's vehicles, would have a particularly detrimental effect upon the orderly

growth of the residential community, the peaceful enjoyment of residents in their homes, and conservation of the value of the adjacent residential properties.

With regard to the variance requesting reduction of the minimum distance requirements governing location of the proposed contractor's equipment storage facility, it is evident that the request is prompted solely as a matter of convenience, and for reason that the proposed facility can not be located anywhere on the lot in compliance with the minimum required setback, yards, or minimum distance provisions regulating the facility's location. The allegation of practical difficulty and unreasonable hardship affecting the applicant in the use of the property is without foundation. In addition, any relaxation of the minimum distance requirement governing the location of the contractor's equipment storage facility would be contrary to the spirit and intent of the provisions of the Zoning Ordinance.

CONCLUSION

Therefore, the conditional use request for a contractor's equipment storage building and yard, and variances reducing the minimum distance requirements pertaining thereto are hereby denied.

Nov. 2, 1988

Date

John Totura

John Totura, Chairman