

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Ray Leroy Owings
45 John Owings Road
Westmisnter, Maryland 21157

REQUEST: A request to allow an additional two bedroom
apartment within the existing apartment building,
classified as a nonconforming use

LOCATION: 609 Littlestown Pike (Md. Rt. 97) in Election
District 7

BASIS: Article 4, Section 4.3(a)1; Ordinance 1E

HEARING HELD: March 2, 1989

On March 2, 1989, the Board of Zoning Appeals heard testimony and received evidence concerning the request to allow an additional two bedroom apartment within the existing apartment building classified as a nonconforming use at 609 Littlestown Pike (Md. Rt. 97). The application, testimony and evidence comprising the record of this case is hereby included by reference in this decision. The pertinent findings include the following facts.

FINDINGS OF FACT

The building was constructed prior to 1965 and apparently converted into residential apartments prior to the adoption of the Carroll County Zoning Ordinance (Ordinance 1E) in 1965. The property is zoned "R-10,000" Residence District as shown on zoning map 39A. Although the site location map shows that the east, south, and west sides of the property front on the interchange connecting Maryland Routes 97 and 140, vehicular access is restricted to the west side where the property fronts on Littlestown Pike (Md. Rt. 97). As shown by the plot plan identified as Applicant's Exhibit 1, the building is located between 7 and 8 feet from the front property line (scaled distances) and does not comply with the minimum required front setback and northerly side yard for any uses allowed in the zoning district. Unfortunately, the plot plan fails to show the actual area now paved, or the location or dimensions of the parking spaces. In discussing the parking problems, Mr. Owings testified that additional parking spaces could probably be established in the rear yard. There are presently nine one bedroom and three two bedroom apartments within the building. Therefore, the building is classified as nonconforming because it does not comply with either the land use provisions or the minimum dimensional regulations of the "R-10,000" Residence

District as specified in Article 8, Sections 8.1 and 8.5 of the Zoning Ordinance.

In 1988 Mr. Owings constructed, as an accessory building, a detached garage in the rear yard of the property and paved a substantial portion of the lot for on-site parking for use by occupants of the apartments. The building is 24 feet in width by 120 feet in length and is divided into eleven enclosed garages. As indicated by the letter of May 12, 1988, from the Bureau of Engineering Access Permits to Mr. Owings, the parking spaces located adjacent to Littlestown Pike (Md. Rt. 97) are hazardous to vehicular traffic safety for reason that the drivers must use the state road to either back into or out of the parking spaces. Such maneuvers are especially hazardous to vehicular traffic safety due to the speed and volume of traffic on Littlestown Pike. In its letter of February 14, 1989 to this Board, the Bureau of Engineering Access Permits again cited the danger of vehicular accidents resulting from use of the particular parking spaces. In visiting the property prior to the public hearing, the Board observed the existing paving and marked parking spaces adjacent to Littlestown Pike, as well as the building and other improvements on the property. The recently paved driveway connection to Littlestown Pike (Md. Rt. 97) providing ingress and egress to the parking spaces and garages located in the rear yard is also questionable regarding compliance with entrance permit requirements of the Bureau of Engineering Access Permits.

APPLICABLE LAW

Article 20, Definitions; Sections 20.27 defines 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), in relevant part, reads

"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 premises does not conform to use or dimensional regulations of the zoning district in which it is located; subject, however, to the following provisions:

"(a) Structural alterations or enlargement of any building, structure or premises which does not comply

with the use or dimensional requirements of this ordinance shall be allowed only as follows:"

"(1) Upon application, the Board may approve structural alterations or enlargement of a nonconforming use, subject to the provisions of Article 17, Section 17.6 (now Section 17.7)...."

Article 17, Board of Appeals; Section 17.7, Limitations, guides and standards (amended 7/12/88) of Ordinance 1E reads in part:

"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."

REASONING

The location and use of the building are nonconforming within the "R-10,000" Residence District, and the provisions that normally apply to nonconforming land uses are not applicable in this case. Even though the building is a nonconforming use, it does not appear that the adjacent properties have been unduly affected in the past, or by recent improvements. Accordingly, it is unlikely that establishment of the additional two bedroom apartment would substantially alter the existing circumstances or adversely affect the public interest, except for the problem of traffic safety.

As a matter of fact, there is insufficient space between the front property line and the building for parking spaces to be established on the property without jeopardizing public safety. Parking spaces that are perpendicular to the building project at least several feet onto the state right of way, and parking spaces parallel to the road would require use of the state right of way for maneuvering to park. Such spaces would also likely require use of the state right of way for sufficient space to allow ingress and egress by occupants of the vehicles. This is contrary to the objective of the zoning ordinance requiring safe off-street parking facilities. Furthermore, Section 17.7 prohibits authorization of a proposed use that, "...would result

in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood."

To correct the problem, use of the parking spaces located partially within the state right of way, or that require maneuvering space within the right of way, or space for ingress and egress to and from vehicles must be terminated. Parking spaces to replace those abolished can be located within the rear yard of the property, and in compliance with the standards of the zoning ordinance. Using the minimum standard of 2.3 parking spaces for conforming multi-family dwelling units of one bedroom or more, which became effective March 1, 1988, the thirteen apartments would require a minimum of thirty parking spaces [Section 14.1(a)24(B); Ordinance 1E]. With the establishment of the parking facilities within the rear yard there is no evidence that authorization of the request would adversely affect the adjoining properties or public interest.

CONCLUSION

Based on the record of this case, the Board hereby authorizes the request, subject to the following conditions:

1. Parking spaces which are located partially within the state right of way, or that are located so that the right of way must be used for either maneuvering space to park or by individuals entering or leaving vehicles shall be terminated.
2. Authorization of this request is subject to the review and approval of the Bureau of Engineering Access Permits of the State Highway Administration.
3. The applicant is directed to submit a revised site plan to the Bureau of Zoning Administration for review and approval and to the Board of Zoning Appeals for incorporation in the records of this case. The site plans shall be drawn to scale and shall show the on-premises parking facilities. The revised site plans shall be submitted prior to June 30, 1989. If the plans cannot be submitted timely, the Zoning Administrator may authorize one extension of time not to exceed 90 days upon request by the applicant.

March 27, 1988
Date

John Totura
John Totura, Chairman