

Case 3212

OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND

APPLICANT: Tomorrow's Treasure's by Carla  
David A. Gray  
1918 Hanover Pike  
Hampstead, Maryland 21074

ATTORNEY: Bruce Austensen, Esq.  
4888 Butler Road  
Glyndon, Maryland 21071

REQUEST: A conditional use to allow a business use in the  
"I-R" Restricted Industrial District, to wit: an  
art studio and gift shop; and, variances  
pertaining to two proposed business identification  
signs

LOCATION: 1918 Hanover Pike (Md. Rt. 30) in Election  
District 8

BASES: Article 12, Section 12.2(b); Article 11, Section  
11.1(a); Article 14, Division II, Section  
14.23(f); Article 15, Section 15.5; Ordinance 1E  
(The Carroll County Zoning Ordinance)

HEARING HELD: July 28, 1989 and September 27, 1989

The public hearing of this case was originally scheduled for July 28, 1989. However, Mr. Gray did not appear. Carla Gray, his wife, appeared but was not prepared to present the case to the Board. After receiving limited testimony from Mrs. Gray the Board ordered the public hearing to be continued to 9:30 a.m. September 27, 1989.

Mr. Gray appeared at the continuation represented by counsel Bruce Austensen. Mrs. Gray did not appear. The Board proceeded with the public hearing and heard testimony and received evidence concerning the conditional use request and variance requests.

The Board visited the site on July 24, 1989, prior to the public hearing.

The testimony and evidence comprising the record of this case are hereby incorporated in this decision by reference. Based on the record, the Board will deny the conditional use request and variance requests. The pertinent findings include the following facts.

FINDINGS OF FACT

The property is located on the west side of Hanover Pike (Md. Rt. 30) about 1,200 feet south of Greenmount Church Road. As shown by the Location Survey, Applicant's Exhibit 1, the lot is a rectangle, 50 feet in width by 170 feet in depth. The area of the lot is 8,500 square feet. The lot was apparently recorded in the county land records and the building constructed about 1914--long before the adoption of Ordinance 1E in 1965. As noted on the Location Survey, it is improved with a two story building and detached garage located behind the building in the rear yard.

Vehicular access to the property is provided by an alley, 12 feet in width paralleling the northerly side property line and connecting to Hanover Pike (Md. Rt. 30). The alley is not constructed beyond the rear property line of the lot. A driveway extends from the alley to the garage. The width of the alley precludes two-way traffic and does not comply with the minimum requirements of either the Engineering Access Permits Division of the State Highway Administration (25 feet) or Article 14, Division I, Section 14.1(b) of Ordinance 1E (20 feet).

The parking facilities for the shop would be located in the rear yard. As Mr. Gray did not request variances to the minimum requirements for off-street (on-site) parking, the issue of relaxing the requirements is not before the Board and the Board can not authorize any such variances.

As depicted on the Location Survey, the front yard of the building appears to be between 7 and 8 feet (scaled), and each side yard is noted as 9 feet, plus or minus. The well supplying water for the premises is located in the northerly side yard near the alley, and the sewerage disposal system is located in the rear yard.

The adjoining property to the south, and the adjacent property to the north, which abuts the alley, are improved with buildings. The building to the north is a dwelling. A paved driveway serving the dwelling is located on that lot parallel to, and abutting the alley.

Mr. and Mrs. Gray's building, which was apparently constructed as a single family dwelling, has been used as a residence since prior to 1965. Sometime in the past, the second floor was converted into an apartment.

Mr. and Mrs. Gray testified that a crafts shop had been established on the first floor of the building before the adoption of Ordinance 1E on August 17, 1965 and had continued to operate until approximately one year before they purchased the property in September of 1985. From the time that the shop closed until Mr. and Mrs. Gray purchased the property in 1985,

the building was used only as a residence. Thereafter, Mr. Gray used the apartment for residential purposes while working on the building.

Their purpose of buying the property was to establish an art studio and crafts shop. Mr. Gray testified that prior to settlement, his realtor had assured him that the property could be used for the proposed shop. At that time the property was zoned "B-L" Local Business District, as designated with the enactment of Ordinance 1E and adoption of the original Official Zoning Maps on August 17, 1965.

On November 25, 1986, the County Commissioners of Carroll County duly adopted Comprehensive Rezoning Ordinance MA (Map Amendment) 164-86 pertaining to the Hampstead area and environs, which rezoned the property from "B-L" Local Business District to "I-R" Restricted Industrial District. The property and zoning districts are now depicted on zoning map 33A.

On October 3, 1988, Mr. Gray filed Permit Application and Zoning Certificate 88-3427 for two double-faced signs for "Tomorrow's Treasures." A Trader's License, number 06911186, for a crafts and supplies business was also issued to Mr. Gray on October 3, 1988, for Tomorrow's Treasures. A subsequent Trader's License, number 06947609, for a retail gift shop was issued to Mr. Gray for Tomorrow's Treasures on May 25, 1989.

Although the permit and zoning certificate for the two double-faced signs was not issued, the signs were erected. One of the signs is a mobile sign, contrary to provisions of Article 14, Division II, Section 14.23(g) of Ordinance 1E which prohibit such signs.

The locations of the signs are noted on the plot plan submitted with the application, as 25 feet from the center line of Hanover Pike. However, the actual distances of the signs from the front property line were not established and are questionable. With less than 8 feet between the front property line and the front porch of the building, the signs, which are noted as 3' by 6' and 4' by 8' on the plot plan, may be partially or wholly within the state highway right of way.

The distances of the signs from the adjacent property to the north are noted as 16 feet and 35 feet. Thus, the distances to the northerly side property line, subtracting the 12 feet width of the alley, are 4 feet and 23 feet. The minimum required distance for the signs from properties that are improved is 100 feet, unless the signs comply with the front yard for the "I-R" Restricted Industrial District.

In the opinion of Mr. and Mrs. Gray, the building can not be used other than as proposed; the business is an appropriate use of the

property; the business signs are necessary because the adjacent buildings limit visibility of the shop from the road; and, the signs will not be harmful to adjacent properties. No evidence was introduced to substantiate their opinions.

In addition, the applicants presented no evidence to prove that the signs would not interfere with or obstruct the vision, or line of sight, of drivers preparing to turn left from either the alley or abutting driveway into the north bound lane of Hanover Pike; and, that use of the alley to provide vehicular access to the required on-site parking would not result in a dangerous traffic situation.

#### APPLICABLE LAW

The property is zoned "I-R" Restricted Industrial District as shown on zoning map 33A. The land use provisions for the "I-R" Restricted Industrial District are specified in Article 12 of Ordinance 1E. Section 12.2, Conditional uses (requiring Board authorization), subsection (b) reads in relevant part:

"Any use permitted and as regulated as a principal permitted use and conditional use in the 'B-L' and 'B-G' District...."

Article 11, "B-G" General Business District; Section 11.1, Principal permitted uses, subsection (c) provides for any use or structure permitted and as regulated in the "B-L" Local Business District.

The land use provisions for the "B-L" Local Business District are specified in Article 10 of Ordinance 1E. Both the art studio and gift shop would be allowed as principal permitted uses in accordance with the provisions of Section 10.1, Principal permitted uses. Section 10.6, Lot area, lot width and yard requirements specifies that the minimum front yard depth is 40 feet and side yards are 10 feet. There are no minimum requirements for lot area and lot width.

Article 14, Special Provisions; Division II, Signs; Section 14.22, Signs requiring zoning certificate. General provisions. Subsections (a) and (b) read in relevant part:

- "(a) The following signs are permitted in accordance with zoning district regulations and require a zoning certificate:
  - (1) Signs, businesses."
- "(b) All signs shall be subject to the following general provisions:

"(1) No sign shall be permitted which...interferes with ...traffic sight lines."

Section 14.23, "Use on the premises" signs specifies in relevant part:

"Business signs pertaining to 'use on the premises', as enumerated in Section 14.22(a), are permitted as an accessory use in all districts, provided the following provisions are adhered to:"

"(b) Any sign which is attached to the ground shall be located in such a manner that traffic visibility is not impaired."

"(e) No business sign shall be so located to obstruct the vision of traffic using entrance ways, drive-ways, or any public road intersection."

"(f) No sign shall be closer to any public highway where permitted than the required front yard requirement of the district in which it is authorized if the distance between such sign and the nearest lot line on which a building is located is one hundred (100) feet or less."

"(g) No sign shall be permitted in any district which does not have a fixed, but not necessarily permanent, location on the ground or on a building, including mobile-type signs so constructed as to be mounted on a pre-assembled vehicle or other device and designed to be movable by means of attached wheels or similar devices."

Article 14, Special Provisions; Division I, Parking Space Requirements; Section 14.1 Off-street (on-site) parking spaces, subsection (a) in relevant part reads:

"The minimum number of parking spaces required for uses not specifically listed below shall be the same as that required for the most similar specified use as determined by the Zoning Administrator...."

Paragraph 25 specifies that one parking space is required for every 150 square feet of floor area of a retail store, excluding preparation and/or storage areas.

Section 14.1, subsection (b) specifies the minimum design standards for the required parking facilities.

Article 15, Exceptions and Modifications; Section 15.0, Generally, and Section 15.5, Variance (Amended through 2-25-76) 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."

Article 4, General Provisions; Section 4.3, Nonconforming Uses (amended 3/17/81) specifies in relevant part:

"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:

"(d) No building, structure or premises where a nonconforming use has ceased for six (6) months or more shall thereafter be used except in conformance with this Zoning Ordinance."

Article 16, Administration; Section 16.2, Zoning certificates; subsection (a) states in relevant part:

"(a) It shall be unlawful for an owner to use or to permit the use of any building, structure or land or part thereof, hereafter created, erected, changed, converted, or enlarged, wholly or partly, until a zoning certificate shall have been issued by the Zoning Administrator."

Article 17, Board of Appeals; Section 17.7, Limitations, guides and standards governs the Board in considering conditional use requests.

In addition, the Board is governed by decisions of the courts. In the case of *Shultz v. Pritts*, 291 Md. 1, (1981) at 22-23, the court wrote:

"We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." Citations omitted.

For purposes of clarification, a conditional use is also known as a special exception under state law.

In accordance with the provisions of Section 17.4.9 of Ordinance 1E, the Board extended the time to issue this decision.

#### REASONING

In reality, the building is a dwelling, constructed on a lot created for that purpose in 1914. The premises were not used commercially until a crafts shop was established sometime before adoption of Ordinance 1E on August 17, 1965. The crafts shop, as a commercial use, did not conform with the minimum dimensional regulations specified in Ordinance 1E for the front and side yard requirements, nor comply with the minimum on-site parking requirements. Accordingly, it qualified as a nonconforming use. Operation of the business continued until about 1984--one year before Mr. and Mrs. Gray bought the property.

After the crafts shop had ceased operation in 1984 in excess of six months, the premises no longer qualified as nonconforming for business uses first permitted in either the "B-L" Local Business District or the "B-G" General Business District. Therefore, establishment of the art studio and gift shop is subject to authorization of this Board as a conditional use. [Article 12, Section 12.2(b) of Ordinance 1E.] The shop is also subject to compliance with the minimum required on-site parking requirements. [Article 14, Division I, Section 14.1(a)25 and 14.1(b) of Ordinance 1E.]

Any remodeling work, such as electrical, plumbing, or structural alterations, that Mr. Gray performed after purchasing the property was evidently done without obtaining permits. And by 1988, when Mr. Gray applied for his first Trader's License, the property had been rezoned "I-R" Restricted Industrial District.

Approval of the Trader's License by the Zoning Administrator was error. Establishment of the crafts and supplies business, Tomorrow's Treasures, by Mr. and Mrs. Gray without first obtaining a zoning certificate was in violation of the provisions of Section 16.2 of Ordinance 1E. And erection of the two double-faced business signs for Tomorrow's Treasures was in violation of Sections 14.22(a), 14.23(f), and 16.2 of Ordinance 1E.

The width of the lot and location of the building prevent construction of a driveway, or widening of the alley to permit two-way traffic between Hanover Pike (Md. Rt. 30) and the parking area located in the rear yard. Although the parking area in the rear yard does not conform with the minimum requirements of Section 14.1(b) of Ordinance 1E, it could probably be made to conform. Regardless of that possibility, the width of the alley can not be increased to comply with the minimum requirements of the State Highway Administration and Ordinance 1E to permit safe simultaneous entrance and exit of vehicles at the connection to the highway.

In considering the provisions of Article 17, Board of Appeals; Section 17.7, Limitations, guides and standards of Ordinance 1E, which govern the Board in considering conditional uses, it is evident that the art studio and crafts shop can not be established without causing dangerous traffic congestion at the intersection of the alley with Hanover Pike. With two-way traffic precluded, congestion would occur involving vehicles proceeding in both directions on Hanover Pike. The congestion would involve one or more drivers attempting to leave the alley and one or more drivers waiting to enter the alley. Such congestion would disrupt the orderly flow of vehicular traffic on Hanover Pike, and result in a dangerous traffic condition contrary to the purpose of Ordinance 1E regarding public safety.

In addition, the two business identification signs located near the alley, and possibly encroaching into the right of way of Hanover Pike are likely to interfere with, or obstruct the southerly view of a driver waiting in either the alley or adjoining driveway to enter Hanover Pike. This would compound the already dangerous traffic situation, contrary to the purpose of Ordinance 1E, and lead drivers to attempt left turns into the north bound lane of the highway in the path of oncoming vehicles.

In any event, the mobile sign is illegal and can not be authorized, regardless of its location on the premises.

Contrary to the applicants' opinion, since the building has continued to be used for residential purposes from prior to the adoption of Ordinance 1E and the rezoning to "I-R" Restricted Industrial District in 1986, it qualifies as, and may continue to be used as a nonconforming residence.



CONCLUSION

From the record of this case, it is evident that establishment of the art studio and gift shop, and the business identification signs would have particularly adverse affects upon vehicular traffic safety at this location.

In addition, there is no evidence of practical difficulty and unreasonable hardship to warrant authorization of the variances to the minimum requirements governing the business identification signs.

The burden of proof for both the conditional use and variances rests with the applicants. Mr. and Mrs. Gray failed their obligation.

Accordingly, the Board hereby denies the conditional use for the art studio and gift shop, and variances to the minimum front yard requirement for the two business identification signs.

Jan. 16, 1990  
Date

John Totura  
John Totura, Chairman