

Case 3237

**OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND**

APPLICANT: William F. Walls, Sr.
6035 Taneytown Pike
Taneytown, Maryland 21787

ATTORNEY: John T. Maquire, II, Esquire
189 East Main Street
Westminster, Maryland 21157

REQUESTS: To confirm the boundaries of an existing
automotive recycling business classified as a
nonconforming use, and enlarge the existing area
of 10 acres to 15 acres

LOCATION: 6035 Taneytown Pike (Md. Rt. 140) in Election
District 1

BASES: Article 4, Section 4.3(a)(1); Article 17, Section
17.7; Ordinance 1E (The Carroll County Zoning
Ordinance)

HEARING HELD: November 30, 1989

On November 30, 1989, the Board of Zoning Appeals heard testimony and received evidence concerning requests to confirm the boundaries of an existing automotive recycling business classified as a nonconforming use, and enlarge the existing area of 10 acres to about 15 acres at 6035 Taneytown Pike (Md. Rt. 140).

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

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board will confirm the boundaries of the automotive recycling business--a junkyard as defined in Article 20, Section 20.23(a) of Ordinance 1E--and authorize enlargement of the area from 10 acres to 15 acres, subject to the conditions noted below. The pertinent findings of the Board include the following facts.

FINDINGS OF FACT

The 84.52 acre property is located on the north side of Taneytown Pike (Md. Rt. 140) about one-half mile west of Baptist Road intersection. As noted on the "Certificate to Zoning

Administrator of Nonconforming Use" (Applicant's Exhibit 10) received by the Office of the Zoning Administrator December 23, 1965, the business was established in 1939; was in operation August 17, 1965 when Ordinance 1E was adopted; and, the area of the business was 10 acres. Since the adoption of Ordinance 1E, the business has not ceased operation for six months or more.

The request for confirmation of the boundaries of the nonconforming use arises from an inconsistency between the area of 10 acres noted on the 1965 certification form and a boundary survey reflecting an area of 7 acres. No evidence pertaining to a boundary survey was introduced during the hearing. Apparently, the discrepancy is only before the Board because of the proposed enlargement. Applicant's Exhibit 1, a plat prepared by a registered Professional Land Surveyor depicts the boundaries of the use with an area of 10 acres.

The existing storage and proposed area of enlargement are located to the rear of the buildings as shown on Applicant's Exhibits 1 and 2. The proposed enlargement, as depicted by Applicant's Exhibit 3, involves relatively small increases to the sides of the storage area, with the major increase extending to the rear. No new buildings, nor substantial changes in operation of the business are proposed. The enlargement is well within the boundaries of the applicant's property, except where it abutts parcels 74 and 224. (See corrected site location map used to post Hearing Notice.) The abutting property of the applicant--to the sides and rear--will continue to be used for agricultural purposes. The owners of parcels 74 and 224 support the proposed enlargement. (Applicant's Exhibit 4 and 5.)

The business involves dismantling of vehicles, recycling of automotive parts, and eventual crushing of vehicles prior to being sold as scrap metal. Presently, one compactor is used on the premises to crush vehicles. The business operates from 8:00 A.M. until 5:00 P.M., Monday through Saturday. Vehicles are not crushed on Sundays, but incidental maintenance and yard work are performed.

No significant increase in vehicular traffic to and from the site is anticipated as a result of enlarging the storage area.

In conjunction with enlargement of the junkyard, the applicant proposes to establish the corners and boundaries of the 15 acres, and to provide landscape screening consisting of double rows of Norway Spruce along the side property lines.

An expert in real estate appraisal presented testimony and evidence (Applicant's Exhibit 15) regarding the proposed enlargement of the nonconforming use. The expert described the neighborhood as rural, including four other nonconforming uses, and that the major land use in the area is agricultural. The topography of the land is relatively level with a densely wooded

area towards the rear of the site. The expert concluded that the proposed enlargement will not depreciate property values, adversely affect the orderly growth of the neighborhood, or disturb residents within their homes.

As indicated in the memorandum of November 21, 1989, the land use is subject to the regulations of the Carroll County Health Department.

As stated in their letter of November 22, 1989, the Engineering Access Permits Division of the State Highway Administration will approve two entrances to Taneytown Pike (Md. Rt. 140) to be established by installing planters and landscape screening in accordance with the recommendation of the Bureau of Development Review. The entrances are to control vehicular access between the property and Taneytown Pike. The landscape screening is intended to improve the appearance of the front of the property, in accordance with the purpose of the Landscape Manual (Ordinance 77).

Residents of two adjacent properties to the west testified in opposition to the requests, citing the aesthetics and visibility of the junkyard, noisy activities and the use of high intensity lights at nighttime; and, surface drainage, or storm water runoff from the storage area, apparently following a small stream onto the adjoining property to the west.

Each of these concerns are reasonable, and the applicant would be well advised to initiate appropriate action to alleviate the concerns.

APPLICABLE LAW

Unless otherwise noted, Articles and Sections cited below are of Ordinance 1E.

The property and surrounding areas are zoned "A" Agricultural District as depicted on zoning maps 9B and 18B. The land use provisions for the district, as stated in Article 6, do not include junkyards.

Article 20, Section 20.27 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(a)(1), Nonconforming Uses (Amended 3/17/81) and Article 17, Section 17.7 govern the requested enlargement of the junkyard.

Article 4, Section 4.3(e) pertains to confirmation of the location and area of the nonconforming use.

Article 4, Section 4.23.1 (adopted May 25, 1989) requires compliance with the Carroll County Landscape Manual (Ordinance 77).

In accordance with the provisions of Article 17, Section 17.4.9, the Board extended the time for issuing this decision.

REASONING

The inconsistency regarding the actual area of the nonconforming use probably could have been resolved in 1965 or 1966 by properly identifying the boundaries and establishing appropriate permanent markers along the perimeter of the site. Unfortunately, that was not done. Applicant's Exhibit 10, the certification specifying the area as 10 acres is now the most credible evidence before the Board. Applicant's Exhibit 1, although prepared in 1987, is reasonably consistent with the testimony presented during the public hearing, depicting an area of 10 acres.

As the proposed enlargement from 10 acres to 15 acres will be wholly within the applicant's property with substantial distances to adjoining properties, the enlargement, as conditioned below, will not significantly affect the adjacent properties. In fact, the conditions of authorization for the enlargement will be beneficial to those properties and the neighborhood without being unduly burdensome to the applicant.

CONCLUSION

The request pertaining to defining the area of the nonconforming use, or junkyard, to be 10 acres as depicted on Applicant's Exhibit 1 is hereby confirmed.

The request for enlargement of the nonconforming junkyard is hereby authorized subject to the following conditions which are imposed to promote the intent and purpose of the Carroll County Zoning Ordinance:

1. The corners of the 15 acre nonconforming use, as depicted on Applicant's Exhibit 2, shall be identified with suitable permanent markers.
2. In accordance with the provisions expressed in the November 22, 1989, letter from the Engineering Access Permits Division of the State Highway Administration, two entrances to Taneytown Pike (Md. Rt. 140) shall be established by installation of planters for landscape screening purposes. The planters and landscape screening shall be located wholly on the applicant's property.

The applicant is directed to contact the Engineering Access Permits Division regarding the entrance specifications. The entrances shall be depicted on the required Landscaping Plan.

3. No parking of vehicles shall be allowed in the space between the front of the planters and the edge of Taneytown Pike.
4. The planters to established the landscape screening along the front property line shall be installed on applicant's property as generally described in the letter of October 27, 1989, from Mr. Neil Ridgely, Landscape Plans Reviewer of the Bureau of Development Review to applicant's attorney. However, the Japanese black pine shall be a minimum of 3 feet in height, planted not more than 10 feet on centers. As noted in the letter, this particular tree is specified because of its tolerance to road salt [used in snow and ice removal].
5. The space extending across the width of the property, between the rear of the planters and parallel with the front of the first building may be used for temporary parking of vehicles, but shall not be used for storage, or display of vehicles or parts.
6. For purposes of establishing the boundary lines and screening the junkyard, two staggered rows of Norway spruce, Douglas fir, or Japanese black pine, at least 18 inches in height shall be planted not more than 10 feet on centers inside and parallel with all boundary lines, except for the front property line where the landscape planters are to be installed. The rows of trees shall extend to intersect the planters paralleling the front property line, but shall not extend closer to the road than the planters. This is to assure that the screening be continuous but not interfere with driver's vision of traffic on the road and at the entrances of the junkyard.
7. Any trees that become diseased or die shall be replaced within one year.
8. A site development plan is not, and, in accordance with applicant's request, shall not be required. However, the applicant is directed to submit a Landscaping Plan to the Bureau of Development Review to comply with Article 4, Section 4.23. Information that would normally be submitted on the plot plan shall be indicated on the Landscaping Plan, and a separate plot plan shall not be required.

9. The applicant shall also file copies of the Landscaping Plan, with the plot plan information included on the plan, with the Division of Zoning Enforcement upon application for the required Zoning Certificate, and with the Board of Zoning Appeals for filing with this case.

Feb. 16, 1990
Date


John Totura, Chairman