

Case 3272

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: William H. Redmer
4926 Wentz Road
Manchester, Maryland 21102

REQUEST: Amend the conditions of authorization in Case 642 to allow the existing dwelling, a mobile home classified as a nonconforming use, to continue to be used for residential purposes through the year 1995 and then be removed

LOCATION: 5142 Wentz Road in Election District 6

BASIS: Article 17, Section 17.2; Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: October 25, 1989

On October 25, 1989, the Board of Zoning Appeals heard testimony and received evidence concerning the request to amend the conditions of authorization in Case 642 to allow the existing dwelling, a mobile home classified as a nonconforming use, to continue to be used for residential purposes through the year 1995 and then be removed from 5142 Wentz Road.

The Board visited the site on October 18, 1989 prior to the public hearing.

The application, testimony and evidence comprising the record of this case, including the file of Case 642, are hereby included by reference in this decision. Based on the record, the Board must deny the request. The pertinent findings include the following facts.

FINDINGS OF FACT

The property is a 1.1665 acre lot improved with a mobile home. The original authorization for establishment of the mobile home was issued to Mr. Horatio J. Stermer by the Board of Zoning Appeals July 2, 1962 following the public hearing of Case 73. The authorization was limited to thirty months, and the Board's decision indicated that at the expiration of the thirty months the Board would review the conditions of the surrounding neighborhood to determine if there had been "...substantial change in the character of residential growth in the area."

Following a second application by Mr. Stermer in Case 305 to renew the authorization, the Board approved the request for a

period of five years in its written decision, dated January 28, 1965.

On May 27, 1970 Ordinance 1E was amended to allow the Board to consider hardship in cases involving time limits imposed by the Board as conditions of approval under Interim Zoning Ordinances. Thereafter, Reverend Earl Ziegler, attorney in fact for Mrs. Stermer, filed an application requesting an extension of the previous approval. (Case 642.) The Board conditionally authorized the second extension of time based on the following:

"No testimony or evidence was presented during the hearing that would indicate that the continued use of the property as a mobile home site would have any adverse effect upon the adjacent properties or surrounding area. In addition, the Board finds that the circumstances involved in this case constitute an extreme hardship which may be averted by the approval of the continuation of the mobile home site as conditioned below. In this case, the Board is of the opinion that this approval is in keeping with the purpose and intent of the Zoning Ordinance."

The conditions imposed by the Board read:

- "1. The continuation of the subject property as a mobile home site shall be for the life time of the present owner and occupant, Mrs. Horatio J. Stermer.
- "2. It shall be the responsibility of the personal representative of Mrs. Stermer to remove the mobile home within a period of one (1) year from the date of appointment. The method of disposal of the mobile home shall be subject to the review of the Zoning Administrator of Carroll County."

However, Mrs. Stermer's plans evidently changed in 1982, and she moved elsewhere, conveying the lot and mobile home to the applicant, Mr. Redmer.

The Zoning Administrator, in a letter dated November 10, 1982, advised Mr. Redmer of the Board's decisions in Cases 73, 305 and 642. The letter indicates that copies of the decisions were enclosed.

From sometime after the transfer of the property to Mr. Redmer, the mobile home has been rented as a residence.

The grounds of Mr. Redmer's request are that the mobile home is still a valuable structure for residential purposes; its life expectancy is estimated to be through 1995; the mobile home has not adversely affected the surrounding properties; and, it will be an economic hardship to have to remove the mobile home from the property.

APPLICABLE LAW

Article 20, Definitions; Section 20.26, Mobile home (Amended 9-5-78) of Ordinance 1E, in relevant part, reads:

"Any vehicle or preassembled structure, so constructed and located, regardless of its foundations, as to permit occupancy thereof for living or sleeping, or the conduct of any business, and so designed that it may be moved or transported on roads by means of attached wheels, or hauled on a separate conveyance, or propelled or drawn by its own motor power; and arriving at the site where it is to be occupied complete and ready for occupancy, except for minor and incidental unpacking or assembly operations, connection to utilities and the like; including automobile trailers, truck trailers, trailer coaches, trailer homes, mobile homes, busses, streetcars, and all similar devices; but not including modular homes which are constructed to the specifications for single family dwellings as set forth in the local building code and which are transported to the site in several pieces, requiring completion of construction on the site."

The mobile home was authorized and established under the provisions of Interim Zoning Ordinances prior to the adoption of Ordinance 1E in 1965. Article 4, General Provisions; Section 4.7, Uses approved under Interim Zoning Ordinances reads:

"Where any approval has been granted by a Board of Appeals under terms of the Interim Zoning Ordinance adopted by the County Commissioners of Carroll County and which was effective as of August 18, 1961, or August 18, 1964, such approval with any conditions imposed thereon by the Board of Appeals shall apply to any use which has been established thereunder. In those cases where a time limit has been imposed as a condition of approval, the Board may approve, upon reapplication and after public hearing, one extension of time of equal duration but in no case to exceed five (5) years."

"(Added 5-27-70) Subject to the provisions of Section 14.31(g)."

A note of explanation: In the evolution of the Zoning Ordinance, the citation of Section 14.31(g) in Section 4.7 was evidently overlooked when the amendment was redesignated (h) in Section 14.31.

Article 14, Special Provisions; Division III, Mobile Homes and Mobile Home Parks; Section 14.31, Mobile homes, paragraph (h) of Ordinance 1E now reads:

"(Added 5-27-70) In event any existing mobile home is required to be moved in accordance with Section 4.7, the Board may, in cases of proven, extreme hardship, extend such use for specified temporary period of time."

Use of the property as a mobile home site does not otherwise comply with the land use provisions of Section 14.31.

Article 20, Definitions; Section 20.27, Nonconforming use, of Ordinance 1E states:

"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."

The property is zoned "A" Agricultural District as shown on zoning map 6B. The land use provisions for the "A" Agricultural District, as stated in Article 6 of Ordinance 1E do not permit mobile homes, other than in accordance with the provisions of Section 14.31. However, use of the 1.1665 acre lot for a single or two-family dwelling would be a principal permitted use. [Section 6.2(d) and 6.7.]

Article 17, Board of Appeals; Section 17.2, General Powers, of Ordinance 1E states in relevant part:

"...the Board may, in conformity with the provisions of law and this ordinance and amendments thereto, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made."

In accordance with the provisions of Article 17, Section 17.4.9 of Ordinance 1E, the Board extended the time to issue this decision.

REASONING

The conditional authorization in Case 642 for Mrs. Stermer extending the time limit for the mobile home was sought and intended solely for the benefit of Mrs. Stermer. At the time of the public hearing in Case 642, the circumstances and extreme hardship justifying the approval were inherently Mrs. Stermer's. Although the conditions of approval imposed by the Board do not restrict the extension of time for use of the mobile home solely to Mrs. Stermer, the conditions convey that intent.

As the mobile home is a nonconforming use, it can not be deemed to be an appropriate use of the property, or compatible with the land uses permitted in the "A" Agricultural District.

While there will be costs involved in removing the mobile home from the property, the record of this case does not substantiate that removal of the mobile home would be an extreme hardship.

The 1.1665 acre lot is valuable, and may be improved with a single or two-family dwelling in conformance with the land use provisions of the "A" Agricultural District.

CONCLUSION AND ORDER

The circumstances originally justifying the extension of time in Case 642 for Mrs. Stermer no longer exist, and the continued use of the mobile home is contrary to the intent and purpose of Ordinance 1E. Therefore, the Board hereby denies the request, and orders that the mobile home be removed from the property.

In order to provide a reasonable length of time for removal of the mobile home from the premises and eliminate possible misconception regarding timely compliance, the Board hereby orders that the mobile home be removed from the premises by February 28, 1990.

Dec. 4, 1989
Date

John Totura
John Totura, Chairman