

Case 3292

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

APPLICANTS: Jack O. Shifflett and Shirley L. Shifflett  
R-724 Gorsuch Road  
Westminister, Maryland 21157

ATTORNEY: Charles D. Hollman, Esquire  
189 East Main Street  
Westminster, Maryland 21157

REQUEST: A conditional use for a junkyard, auto parts recycling facility and accessory uses, including a mobile home, garage, and shop; and a variance reducing the minimum distance requirements of 800 feet pertaining thereto on property in North Carroll Industrial Park

LOCATION: 400 feet to the east of Littlestown Pike (Md. Rt. 97) with access there from about 250 feet north of Mayberry Road intersection in Election District 3

BASES: Article 13, Section 13.2(a), 13.3, 13.5 and 13.6; Article 15, Section 15.5; Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: November 30, 1989; Continued December 11, 1989

On November 30, 1989, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use and variance requests. The public hearing was continued to December 11, 1989.

The Board visited the site 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 deny the conditional use and variance requests. The pertinent findings include the following facts.

**FINDINGS OF FACT**

The 6.70 acre track is located in the northeast corner of what was a canning Company in the past, and is now known as the North Carroll Industrial Center. The center now has a mixture of business and industrial uses. The location of the property, identified as Parcel 513, as well as surrounding parcels are

depicted on Applicant's Exhibit 2, a photocopy of part of the Tax Assessment Map of the area.

The business involves securing selected vehicles for recycling of motors and parts. The vehicles are eventually crushed and sold as scrap.

Testimony presented on behalf of the applicant, and the plot plan, Applicant's Exhibit 1 established that:

- vehicular access is provided to the property and other parcels in the industrial center by an existing driveway connecting to Littlestown Pike (Md. Rt. 97)
- the property is rectangular, and would be enclosed with security and screening fencing
- the vehicular storage area would be limited to 5 acres inside of the minimum required setback for yards
- the proposed mobile home (an accessory use to the conditional use), 5 parking spaces adjacent to the mobile home, and a possible future garage and shop would be located near the southwesterly, or front property line
- a crusher run service driveway would be constructed around the storage area to provide access to wrecked or disabled vehicles in the storage area

The normal hours of business for the junkyard would be from 8:00 A.M. to 6:00 P.M., Monday through Friday, and from 8:00 A.M. to 2:00 P.M. on Saturday. The facility would be closed on Sunday. Tentatively, plans are for one or two employees initially, with a maximum of four employees in the future.

Testimony indicated that the junkyard would not generate a large volume of vehicular traffic.

The property is near the crest of a hill, which slopes downward in varying degrees to the north, south, east and west. The most severe slopes are to the rear, or easterly portion of the property. The grades to the west and south are not as severe. A stream traverses part of the property near the northeast corner, and serves in the drainage of at least part of the surface runoff from the property.

Although the majority of the use of the 5 acre site would involve storage of wrecked or disabled vehicles, no plans for fencing, landscape screening, grading, storm water management, or sediment control were included in the applicant's presentation. In addition, no documentation was introduced regarding the

collection and storage of petroleum products and antifreeze solutions.

An expert in real estate appraisal testified on behalf of the applicant. However, no documentation was presented to substantiate his opinion that the facility would be an appropriate use of the property and would not adversely affect the adjacent properties.

Owners and residents of adjacent properties testified in opposition to the requests. Their concerns included:

- Visibility of the site from nearby properties
- Depreciation of residential property values resulting from the proximity of the site to nearby residences
- Pollution of surface and ground water

Testimony confirmed that at least several dwellings are located within the minimum distance requirements of 800 feet from the proposed site.

#### APPLICABLE LAW

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

The property and adjacent properties to the south and west are zoned "I-G" General Industrial District as indicated on zoning map 12A. The zoning district to the north and east is "A" Agricultural District. The land use provisions for the "I-G" General Industrial District are specified in Article 13. Section 13.2, Conditional Uses, (requiring Board authorization) subsection (a) states in relevant part:

The following uses, when the location of such use shall have been authorized by the Board, provided such use shall not be less than one thousand (1,000) feet from any "R" District, except an "I-R" District, and four (4) times the distance requirements as specified in Section 4.12:

Junk yards, provided the area used shall not exceed five acres, shall be totally enclosed with adequate fencing, and no operations, including storage or sale of parts, shall be closer than three hundred (300) feet of any public highway.

Section 13.3, Accessory uses states:

Uses customarily accessory and incidental to any principal permitted use or authorized conditional use, including a mobile home or dwelling associated with an industrial use.

Article 20, Definitions; Section 20.23, Junk yard, [sic] reads in relevant part:

Any area where waste, discarded or salvaged materials are bought, sold, exchanged, baled, packed, stored, disassembled, handled, abandoned, including the salvaging, storing, wrecking of automobiles and other vehicles, machinery or parts thereof, house wrecking yards, used lumber yards and places for storage of salvaged building or structural steel materials and equipment.

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 a "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 by a dwelling

In this case, subsections (b) and (d) are applicable, and the minimum required distance of 200 feet is multiplied by 4, which equals 800 feet.

Article 20, Definitions; Section 20.39 defines a variance as:

...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, reads:

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 relevant 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 welfare.

Article 17, Board of Appeals; Section 17.2, General powers, reads in relevant part:

The Board shall have the following powers:

(c) To authorize, upon appeal in special cases, such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions, the enforcement of the provisions of this ordinance will result in unwarranted hardship and injustice and which will most nearly accomplish the purpose and intent of the regulations of the Zoning Ordinance.

Section 17.7, Limitations, guides and standards 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 or 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 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.

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

#### REASONING

Even though the property is zoned "I-G" General Industrial District, the junkyard of wrecked or disabled vehicles would be adjacent to residential properties zoned "A" Agricultural District. Due to the topography of the area, fencing and landscape screening would not conceal the junkyard from the owners and residents of those properties. Because of its proximity to residential properties, undesirable characteristics, and visibility in this location, the junkyard scene would be particularly harmful to the adjacent residents' enjoyment of their homes and properties. And contrary to the testimony presented on behalf of the applicant, the Board is convinced that the junkyard, as proposed, would depreciate the property values of those nearby homes and properties.

The possibility that establishment of any of the principal permitted uses specified in Article 13 may require authorization of a variance to the minimum distance requirement of 400 feet

required for such uses can not warrant authorization of a variance of 450 feet in this case (800' - 350' = 450').

The proposal to establish the junkyard on this particular property, contrary to the minimum distance requirements, simply expresses the applicant's wishes and does not substantiate the allegation of practical difficulty and unreasonable hardship in the use of the property.

In considering all of these factors, the variance request for reduction of the minimum distance requirement of 800 feet to approximately 350 feet to allow establishment of the junkyard is not justified, and would be contrary to the purpose of the zoning ordinance.

CONCLUSION

Establishment of the junkyard in this location would have particularly harmful effects upon the owners and residents of the nearby adjacent properties in the adjoining "A" Agricultural District and the values of those properties due to junkyard's undesirable aesthetic characteristics, visibility from adjacent residential properties, and excessive reduction of the minimum distance requirements.

Therefore, the conditional use request and variance request are hereby denied.

Feb. 9 1990  
Date

  
John Totura, Chairman