

Tax Map/Block/Parcel
No. 67-5-515

Building Permit/Zoning
Certificate No. Not filed

Case 3295

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

APPLICANT: Woodbine Contractors and Builders, Inc.
5205 Braddock Road, P.O. Box 39
Woodbine, Maryland 21797

ATTORNEY: James Willard Davis, Esq.
237 East Main Street, P.O. Box 808
Westminster, Maryland 21157

REQUEST: A conditional use for a contractor's equipment storage facility, and a variance reducing the minimum distance requirements of 400 feet

LOCATION: 4709 Arthur Shipley Road in Election District 14

BASES: Article 6, Sections 6.3(e)1 and 6.7; Article 15, Section 15.5; Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: January 23, 1990

On January 23, 1990, the Board of Zoning Appeals heard the conditional use request for a contractor's equipment storage facility, and a variance reducing the minimum distance requirements of 400 feet pertaining thereto on the premises of 4709 Arthur Shipley Road.

The Board visited the site January 19, 1990.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision.

FINDINGS OF FACT

Mr. Michael Hall, President of Woodbine Contractors and Builders, Inc., appeared with his attorney, Mr. Davis, to testify on behalf of the requests.

The 29.98 acre property is located to the east of Arthur Shipley Road with vehicular access provided by a fee simple connection to the road. The area of the property was reduced from about 75 acres as noted on the application to about 29.98 acres by sale of five lots. A driveway serves the property and at least seven other lots depicted on the surveyor's plat identified as Applicant's Exhibit 1. All residential lots eligible to be

divided from the property have been recorded in the land records. The principle uses of the property include a dwelling and growing sod, which is classified as an agricultural product.

Construction of the building proposed was started in 1987 as a barn for agricultural storage as stated on Permit Application and Zoning Certificate 87-1522. The siding was completed in 1989. Final grading, seeding, landscape screening, and paving the remainder of the driveway (to eliminate dust from vehicular traffic on the driveway) are planned. White pine trees, 4 to 5 feet tall, will be planted 8 to 10 feet apart on top of the southeasterly and southwesterly portions of the berm adjacent to the building as depicted on Applicant's Exhibit 1. The building is 66 feet by 235 feet. Photographs of the building are included in Applicant's Exhibit 2. Mr. Hall's home is located on lot 4, adjoining the building.

Two unimproved lots to the southeast of the building are owned by Mr. Hall. Mr. Hall also owns lots 1, 2, and 3 depicted on Applicant's Exhibit 1. These lots are unimproved. Parcel 508 owned by Mr. and Mrs. Robert McKeldin and two lots owned by Mr. Hall are within 400 feet of the building. The variances to the minimum distance requirements are to the curtilage of Mr. Hall's home on lot 4, a distance of 220 feet, and to Mr. and Mrs. McKeldin's lot, a distance of 320 feet.

This application was prompted following issuance of a Notice of Violations dated October 4, 1989, for the following zoning violations:

1. Maintaining a Contractor's equipment storage yard as defined in Section 6.3(e).
2. Maintaining a junkyard.

The applicant does not contest the violations - rather he seeks authorization for continuing the use.

DECISION

The property and surrounding properties are zoned "A" Agricultural as shown on zoning map 67B. Section 6.3 of the Zoning Ordinance, Conditional Uses, (requiring Board authorization) paragraph (e)1 specifies that Contractor's Equipment Storage facility "shall comply with at least twice the distance requirements of Section 4.12.1".

Section 4.12 reads in part: "Any uses or buildings subject to compliance with this section shall be located at least 200 feet from: (d) the curtilage area within a lot of 3 or more acres improved by a dwelling." Twice the minimum distance requirements equals 400 feet.

Article 15, Exceptions and Modifications; Section 15.5 of the Ordinance reads in part:

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.

Further, the term "variance" is defined in Section 20.39 as follows:

A variance is a relaxation of the terms of the Zoning Ordinance where such a 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.

Accord Md. Ann. Code Art. 66B, Section 1.00.

It is clear that the applicant must show undue hardship to obtain the requested variance. However, the record presented does not support such a finding. The Board fails to see how the denial of the variance will in any way cause a hardship since the structure is quite suitable and lawfully situated for the purpose for which it was constructed.

Mr. Hall testified that he subdivided the farm into the present lots. It is conceivable that the lots could have had different boundaries so as to negate the requirements for a variance. He constructed the building. Accordingly, it is his actions which result in the need for the variance.

Mr. Hall also testified that the location of the building was determined by the topography of the property which precluded its location elsewhere. Assuming this to be true, there remains no hardship since the structure can still be utilized for farm storage without a variance. In addition, the Board is not convinced, based upon the evidence, that the building could not have been located elsewhere in the remaining 29.98 acres so as to satisfy the distance requirements. Accordingly, the request for a variance is hereby denied. Having denied the variance, the Board is compelled to deny the conditional use.

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(Ad + Soil, Inc. v. County Commissioners, 307 Md. 307, 340
(1986)).

May 10, 1990
Date

John Totura
John Totura, Chairman

JDN/bmb/C3295dec
May 8, 1990