

Tax Map/Block/Parcel
No. 64/20/76

Building Permit/Zoning
Certificate No. 89-3475

Case 3333

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

APPLICANT: Charles Samuel Poole, Sr.
2040 B. Bollinger Mill Road
Finksburg, Maryland 21048

REQUESTS: A conditional use for a butchering and meat processing shop, and variances to the minimum distance requirements of 600 feet pertaining thereto

LOCATION: 2040 Bollinger Mill Road in Election District 4

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

HEARING HELD: March 30, 1990

On March 30, 1990, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use request for a butchering and meat processing shop and variances to the minimum distance requirements pertaining thereto at 2040 Bollinger Mill Road.

The Board visited the site on March 26, 1990, 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 determining the Board's decision include the following facts.

FINDINGS OF FACT

The 4.2 acre lot is located on the northerly side of Bollinger Mill Road, and is the second lot east of Louisville Road intersection. Mrs. Alma E. Nickoles owns both the corner lot and the property in this case. Although the lot also fronts on Louisville Road, vehicular access is only from Bollinger Mill Road. The applicant, Mr. Poole, Sr., and his wife, who is Mrs. Nickoles' daughter, reside on the premises presently and propose to build a new home there.

In 1989, Mr. Poole established a butchering shop on the premises, using several accessory buildings, without obtaining the required county permits. Evidently, the first Permit Application & Zoning Certificate that Mr. Poole applied for was on November 11, 1989, for work on the respective accessory buildings. (Permit #89-3475.) From Mr. Poole's testimony, 226 deer were processed there from November 10, 1989 through January 5, 1990. These included deer from adjacent states. The shop is open on an appointment basis, and is operated by Mr. Poole and his wife. In addition to processing deer, Mr. Poole proposes to custom butcher about 100 lambs, 40 cattle, and 20 pigs yearly, approximately the numbers processed in 1989.

The business hours of the shop would be from about 7:30 a.m. to 9:00 p.m., by appointment. However, as Mr. Poole is employed full time, the butchering would be conducted on his day off (Tuesday), and at other times randomly.

During deer hunting season, a small sign reading, "Sam's Deer" was placed adjacent to the new driveway entrance leading to the shop buildings. The original driveway serves only the residence. Usually two vehicular trips are involved with each deer. When more than one deer are brought to the shop on a vehicle, the average number of trips may be less. Thus, deer season could generate in excess of 400 vehicular trips to the shop. The custom butchering of lambs, cattle, and pigs would result in over 300 additional trips a year.

Mr. Poole emphasized the need for a shop in the area to process deer, and the limited service of custom butchering of lambs, cattle, and pigs. In support of the requests, a number of photographs of the shop buildings, views of the property, and one view in the direction of the church--to the east--were presented to the Board. No other evidence, except the opinions of Mr. and Mrs. Poole, was introduced on behalf of the conditional use request, or to substantiate practical difficulty and unreasonable hardship in the use of the property which would justify authorization of the variance to the minimum distance requirements for the shop. From the record, it is evident that any practical difficulty and unreasonable hardship that may be experienced by Mr. and Mrs. Poole in the use of the property will result from their own actions, and is not inherent with use of the property.

Adjacent residents and owners of properties on Louisville Road and Bollinger Mill Road testified in opposition to establishment of the shop. In presenting testimony, relevant to land use and zoning issues, they cited the substantial vehicular traffic that the shop would generate in the otherwise agricultural and residential neighborhood, the adverse affects of the additional vehicular traffic to the nearby residents including depreciation of residential property values, and the absence of justification

to authorize the requisite variance to the minimum distance requirements. Their testimony was persuasive, and the Board is convinced that the vehicular traffic would cause depreciation of residential property values adjacent to the shop. In addition, the Board is convinced that the request for the variance to the minimum distance requirements governing the location of the shop is solely a matter of convenience in this case.

APPLICABLE LAW

The property and adjoining properties are zoned "A" Agricultural District as depicted on zoning map 64A.

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

The land use provisions for the "A" Agricultural District are specified in Article 6. Although agriculture is the preferred use in the district, single and two-family dwellings, and churches are included in the list of principal permitted uses. [Sections 6.1 and 6.2(b) and (d).] Section 6.3, Conditional Uses (requiring Board authorization), paragraph (i) specifies:

Food processing and packing plants, wineries, slaughter houses, and plants for the processing of animal by-products; provided such use shall be located three (3) times the distance requirements specified in Section 4.12.

As indicated by the application and plot plan submitted by Mr. Poole, the proposed butchering shop complies with the minimum requirements for the lot area, lot width and yards. (Section 6.7.)

However, the proposed shop does not comply with the minimum distance requirements governing its location. Article 4, General Provisions; Section 4.12, Distance requirements (Amended 7-5-77) states:

Any uses or buildings subject to compliance with this section shall be located at least 200 feet from:

- (a) any lot in an "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.

Therefore the minimum distance requirement is 200 feet multiplied by 3 equals 600 feet. (200' x 3 = 600'.)

As there are no properties zoned "R" Residence District, or improved with a school or institution for human care within 600 feet of the proposed shop, the shop complies with the requirements of (a) and (c) above.

As depicted on the site location map used to post the property with the public hearing notice and the composite map of portions of Carroll County tax assessments maps 64 and 69, there appears to be four properties to the west less than three acres occupied or intended to be occupied by a dwelling, that are within 600 feet of the proposed shop. (Parcels 72, 112, 207, and 350.) To the north and northeast, six similar properties appear to be within 600 feet of the proposed shop. (Parcels 73, 81, 84, 85, 92, and 133.) To the east, there are three similar properties and a church. (Parcels 77, 78, 121, and 193.) To the south, Parcel 48 has been divided into two lots of less than three acres. Therefore, the provisions of Section 4.12, (b) and (c) are applicable. Although the record is incomplete regarding the distance of the proposed shop to any curtilage area of a lot in excess of three acres, the question is not critical to this case. However, the burden of proof rests with the applicant, and Mr. Poole has not met his burden.

Article 20, 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; Sections 15.0 Generally, and 15.5, Variance, read respectively in relevant part:

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...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 general welfare.

Article 17, Board of Appeals; Section 17.7, Limitations, guides and standards, which governs the Board in considering conditional use cases, 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 of people living in the neighborhood. In deciding such matter, the Board shall give considerations, 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 provisions of Article 17, Section 17.4.10 (Effective December 1, 1989), the Board extended the time for issuing this decision.

REASONING

As a conditional use, establishment and operation of the butchering and meat processing shop as requested will generate vehicular traffic to and from the premises to such an extent as to adversely affect the residents of adjacent properties and depreciate the residential values of adjacent properties. In this particular location, the shop would not be compatible with the existing residential development, would not promote the orderly growth of the neighborhood, and thus, would be contrary to the purpose of the zoning ordinance.

The request for a variance reducing the minimum distance requirements is void of evidence to justify authorization, and is without merit.

CONCLUSION

Therefore, the Board of Zoning Appeals hereby denies the conditional use for the butchering and meat processing shop, and variances to the minimum distance requirements of 600 feet pertaining thereto.

May 7, 1990
Date

JDN/bmb/C3333DEC
May 4, 1990

John Totura
John Totura, Chairman