

Tax Map/Block/Parcel
No. 74-13-313

Building Permit/Zoning
Certificate No. 90-2801

Case 3434

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

APPELLANT: Rosario D. Rizzo
6303 Candlewick Court
Eldersburg, Maryland 21784

REQUEST: An appeal of a Notice of Violation dated July 18, 1990, pertaining to parking of vehicles within county road right of way and contrary to an approved site plan

LOCATION: 1949 Liberty Road (Md. Rt. 26) in Election District 5

BASIS: Article 17, Section 17.4; Ordinance 1E. (The Carroll County Zoning Ordinance)

HEARING HELD: September 26, 1990

On September 26, 1990, the Board of Zoning Appeals heard testimony and received evidence concerning the appeal of the Notice of Violation dated July 18, 1990, pertaining to parking of vehicles within county road right of way and contrary to an approved site plan for the premises of 1949 Liberty Road (Md. Rt. 26).

The Board visited the site September 24, 1990, prior to the public hearing.

The appeal, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board must deny the appeal.

The pertinent findings determining the Board's decision include the following facts:

FINDINGS

The property is located on the southwest corner of Liberty Road (Md. Rt. 26) and Monroe Avenue intersection. The appellant, Mr. Rizzo, owns and operates Dick's Lawn and Garden Center from the premises.

The site development plan, #80-895, submitted in accordance with the requirements of Article 10, Section 10.4(d) of the zoning ordinance depicts all parking to be on the premises, with vehicular access to and from Monroe Avenue, a county street. (Zoning Enforcement's Exhibit 2b.) The right of way of Monroe Avenue is noted on the plan as 40 feet.

After receipt of a complaint alleging illegal parking, Zoning Enforcement initiated an investigation. During a subsequent inspection of the site on June 21, 1990, two trucks, one apparently with a low-boy trailer attached, were observed parked outside of a chain link fence and adjacent to the paved section of Monroe Avenue. Photographs taken by the Zoning Inspector portray the parked vehicles. (Zoning Enforcement's Exhibits 1a, b, and c.)

Mr. Rizzo testified that he operates three trucks in conjunction with the business, and that the trucks are normally parked between the chain link fence and Monroe Avenue.

As portrayed by a diagram prepared by the Zoning Inspector, the right of way of Monroe Avenue is 40 feet; the paved section of the road is 24 feet, including two traffic lanes, each 12 feet in width; and, an unimproved shoulder, 8 feet in width, on the west side of the street. The chain link fence, paralleling Monroe Avenue, is set back from the property line. The exact distance that the fence is set back is disputed. Mr. Rizzo claims the distance to be 7 feet 8 inches, and the Zoning Inspector's measurement is 6 feet 6 inches. Under the circumstances, the difference is not material in this case.

Mr. Rizzo admits to the practice of parking vehicles used in conducting the lawn and garden center business between the chain link fence and the paved section of Monroe Avenue. This is contrary to the approved site development plan, #80-895. For purposes of clarification, the first two digits identify the year (1980) and the following three digits identify the plan's numerical relationship relative to all plans filed in 1980. Parking in the area described is also in violation of provisions of the zoning ordinance.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The property is zoned "B-L" Local Business District as depicted on zoning map 74A. The land use provisions for the district are expressed in Article 10. Section 10.1, Principal Permitted Uses, specifies local retail business and service shops as allowed uses. Section 10.4, Required Conditions, paragraph (d), added to the zoning ordinance September 22, 1977, reads in relevant part:

All applications for permitted or conditional uses shall be subject to a site plan review by those agencies determined appropriate by the Zoning Administrator, who, following any referral to such agencies, shall cause the plan to be presented to the Commission which shall have the authority to approved the plan as presented, or approve the plan with modifications or conditions. No Zoning

Certificate shall be issued by the Zoning Administrator until the Commission or its duly authorized representative, should the Commission expressly delegate its authority, has approved the plan. In approving site development plans, the Commission or its duly authorized representative shall have the authority to:

1. Limit the number and approve the location and design of entrances in the interest of public safety and minimizing traffic congestion to the greatest extent possible.
2. Require, where appropriate, a landscaping and signing plan to promote an attractive and pleasing appearance.
3. Approve lighting arrangements where appropriate to insure no visual interference to the traveling public on adjacent roadways, or glare or reflections on adjacent buildings.
4. Require binding agreement, backed by bond or other surety, and provided to the County Commissioners where occupancy permit is requested prior to the completion of the site development plan and/or the fulfillment of any conditions attached thereto.
5. Insure conformance to all duly adopted elements of the County Master Plan.

Although paragraph 6, i and ii were added to Section 10.4(d) on May 25, 1989, the additions are applicable to site plans under review on that date, or filed thereafter. Attention is directed to the amendment for reason that the possibility for submission of a revised plan pertaining to parking on the premises was discussed during the public hearing. A revised site plan, submitted for approval, would be subject to all current ordinances.

In 1980 when site plan #80-895 was reviewed and approved, Article 14, Special Provisions; Division I, Parking Space Requirements; Section 14.1 Off-Street Parking Spaces read:

For the following uses of buildings hereafter erected, or increased in size by as much as twenty percent of the size existing at the time of the adoption of these regulations, or uses hereafter established, off-street parking facilities which are outside the public right of way shall be required as follows:

Subsection (b) read in relevant part:

All "B" District Uses shall provide off-street parking facilities, which are not more than three hundred (300) feet distance from an entrance to said establishment, of one (1) parking space for each one hundred fifty (150) square feet of area the first floor of said establishment which it serves.

Subsection (d) read in relevant part:

All "B" District and "I" District uses shall provide adequate off-street loading facilities for vehicles delivering to, unloading or removing goods, materials, supplies, or waste in connection with that business or use.

Subsection (i) read:

Any such facility, providing more than five (5) parking spaces, shall have a durable and dustless surface, and shall be so graded and drained as to dispose of all surface water within the area, and shall permit safe ingress and egress to an approved street.

Subsection (j) (Added 12-9-71) read:

In providing required parking facilities the minimum standard shall be:

1. Access lane width: 25 feet for 90 degrees (perpendicular) parking, 20 feet for angular parking.
2. Parking stall depth: 20 feet, except for parallel parking stalls which shall be 25 feet provided that the end stalls may be reduced to 20 feet.
3. Parking stall widths: A minimum of 9 feet measured perpendicular to stall depth, except for parallel parking stalls which may be reduced to 7 feet in width when the door on each side of the vehicle can be opened without being obstructed.

4. Maneuverability and set back: In all cases, with the exception of single and two-family residences, parking facilities shall be designed, constructed and delineated so as to facilitate a one-maneuver parking exclusive of road or street right of way, and a minimum set back requirement of 10 feet from any public street right of way shall be provided.
5. Continued maintenance: Parking stalls shall be periodically repainted in order to maintain continuous and clear identification.

Operation of the lawn and garden business is governed by the approved site plan, #80-895, and the provisions cited above.

Attention is directed to the fact that within the current regulations, Section 14.1(b)4 reads:

Parking Setback: Parking stalls, aisles and access drives which are generally parallel to abutting roads shall be set back a minimum of ten (10) feet from any public street right-of-way line.

Thus, the minimum required setback from road right of ways continues to be 10 feet.

REASONING

It is evident from the record of this case that, as a matter of practice, vehicles used in the operation of the business have been and continue to be parked contrary to the approved site development plan, #80-895, and in violation of the applicable parking provisions of the zoning ordinance.

CONCLUSION

The appeal of the Notice of Violation dated July 18, 1990 pertaining to parking of vehicles within county road right of way and contrary to the approved site plan for the premises of 1949 Liberty Road (Md. Rt. 26) is without merit, and is hereby denied.

Oct. 5, 1990
Date

John Totura
John Totura, Chairman