

Tax Map/Block/Parcel
No. 59-16-427

Building Permit/Zoning
Certificate No. 91-0265

Case 3526

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

APPELLANT: Mary Anne Armacost-Buell
2641 Old Kays Mill Road
Finksburg, Maryland 21048

REQUEST: An appeal of the Notice of Violation, dated
January 22, 1991, pertaining to operating a
ballet school within the dwelling

LOCATION: 2641 Old Kays Mill Road in Election District 4

BASES: Article 5; Article 17, Section 17.4; Ordinance
1E. (The Carroll County Zoning Ordinance)

HEARING HELD: March 28, 1991

On March 28, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning the appeal of the Notice of Violation, dated January 22, 1991, pertaining to operating a ballet school within the dwelling at 2641 Old Kays Mill Road.

The Board visited the site on March 20, 1991, prior to the public hearing.

The Notice of 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 and affirm issuance of the Notice of Violation.

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

FINDINGS OF FACT

In April 1990, the appellant established a ballet school, teaching ballet and conducting dancing classes in her home.

A Notice of Violation was issued by the Division of Zoning Enforcement on January 22, 1991. The notice identified the violation as operation of an illegal business in the conservation district and directed that all dance classes and dance instruction cease.

Operation of the ballet school involves evening classes on Tuesdays, Wednesdays and Thursdays. Morning classes are held on Saturdays. Presently, two classes beginning at 7:00 p.m. and 8:00 p.m. are held on Tuesday and also on Thursday evenings. Depending on reservations, a makeup class is held Wednesday evenings. Three classes are offered Saturday mornings at 9:00, 10:00, and 11:00 a.m. New students are being accepted, and additional classes would be scheduled based on enrollment. Classes are limited to a maximum of ten students. Private classes or individual tutoring are also offered.

APPLICABLE LAW

The 1.517 acre lot is zoned "C" Conservation District as depicted on zoning map 59B. It is improved with a dwelling which is the residence of the appellant.

The land use provisions for the "C" Conservation District are expressed in Article 5 of Ordinance 1E. The preamble of Article 5 specifies:

(The purpose of this district is to prescribe a zoning category for those areas where, because of natural geographic factors and existing land uses, it is considered feasible and desirable to conserve open spaces, water supply sources, woodland areas, wildlife and other natural resources. This district may include extensive steeply sloped areas, stream valleys, water supply sources, and wooded areas adjacent thereto.)

Incidental home occupations are allowed as an accessory use in the "C" Conservation District. [Article 5, Section 5.3(d).]

Article 20, Section 20.19 defines a home occupation as:

Any use of a dwelling, conducted solely by a member or members of the family residing therein, or use of any accessory building which is incidental or subordinate to the main use of the principal building for dwelling purposes; which utilize[s] space equal to not more than twenty five (25) percent of the floor space of the dwelling; which does not generate vehicular parking or nonresidential traffic to a greater extent than would normally result from residential occupancy; in connection with which the sale of goods in the same form as purchased shall be prohibited; and with no other evidence other than a sign not exceeding 1 foot by 2 foot, from the outside of the dwelling to indicate it is being used for

anything other than residential purposes.
(Amended 4/17/79)

REASONING

The Board of Zoning Appeals is governed by the provisions of the Carroll County Zoning Ordinance. The Board may not apply or interpret the provisions arbitrarily.

The listed principal permitted uses, conditional uses, and accessory uses are limited to the uses deemed mutually compatible and appropriate with the purpose of the district, or that otherwise manifest inherent redeeming social values that outweigh their otherwise inappropriateness and incompatibility. Although some business or commercial uses are included within the listed uses, the district is not intended to promote commercial development.

The various zoning districts described in the zoning ordinance are arranged, for the most part, proceeding from the most restrictive district to the least restrictive district. The "C" Conservation District is the most restrictive district. Two business districts, the "B-L" Local Business District and the "B-G" General Business District, are specifically intended for commercial development. The provisions for the "B-L" and "B-G" districts are expressed in Article 10 and Article 11 respectively. Art, trade and business schools are listed as principal permitted uses in the "B-L" district, and business, dancing, music, trade or other schools of a commercial nature are listed in the "B-G" district. [Article 10, Section 10.1(g); and, Article 11, Section 11.1(a) respectively.] Although schools and colleges are listed, or included by reference, as principal permitted uses in the conservation, agricultural, transitional, residential, and business districts, the listings were evidently intended for elementary schools, high schools and colleges. Recently, it was determined that the Board of Education of the county is, as a state agency, exempt from the zoning ordinance. Privately operated elementary schools, high schools, and colleges are presumed to be subject to the zoning ordinance.

In reality this appeal does not dispute the Notice of Violation, but simply seeks authorization to continue the use. However, it is evident that the issuance of the Notice of Violation was proper.

The characteristics of the ballet school are of a commercial venture, and exceed the limitations established by the definition of a home occupation. Accordingly, the ballet school first qualifies as a principal permitted use in the "B-L" Local Business District.

CONCLUSION

Accordingly, the Board hereby denies the appeal, and affirms issuance of the Notice of Violation.

April 10, 1991
Date

John Totura
John Totura, Chairman

JDN/bdc/C3526DEC
April 8, 1991