

Tax Map/Block/Parcel  
No. 59-20-112

Building Permit/Zoning  
Certificate No. 90-3889

Case 3534

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

**APPLICANT:** Earl L. Childs  
422 Milford Mill Road  
Baltimore, Maryland 21208

**ATTORNEY:** Beth L. Evans, Esq.  
196 Pennsylvania Avenue  
Westminster, Maryland 21157

**REQUEST:** A request to amend condition 3 imposed in the authorization in Case 875 regarding a building erected contrary to the condition of authorization

**LOCATION:** 1973 Deer Park Road in Election District 4

**BASIS:** Article 17, Section 17.2; Ordinance 1E. (The Carroll County Zoning Ordinance)

**HEARING HELD:** April 25, 1991

On April 25, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning the request to amend condition 3 imposed in the authorization of Case 875 regarding the building erected contrary to the condition of authorization on the premises of 1973 Deer Park Road.

The Board visited the site on April 23, 1991, 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 approve the request, subject to the condition of authorization imposed below.

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

**FINDINGS OF FACT**

The 2.894 acre property is located on the southwesterly side of Deer Park Road about 1,700 feet south of Niner Road intersection. The property is zoned "R-40,000" Residence District as depicted on zoning map 59A. The land use of the property is a mobile home park, or court, classified as a nonconforming use.

Following a public hearing held July 2, 1974, for Case 875, the Board of Zoning Appeals conditionally approved a request to enlarge the mobile home

park by increasing the number of mobile homes from six to eight. The request for a variance to allow the increase to exceed percent of the nonconforming use to allow the addition of four new mobile homes was denied.

Condition 3 of the Board's decision reads:

No mobile homes or structures other than a small visitors' parking area or recreation and play facilities shall be located south of the east-west driveway running from Deer Park Road to the property located to the west of the mobile home.

The condition was imposed, at least in part, to prohibit establishment of one or more mobile homes in that area to protect the adjoining property from being adversely affected by the mobile home court.

Thereafter, the applicant in this case, Mr. Childs, purchased the property from Mr. Brancato, the applicant in Case 875. At the time of purchase, Mr. Childs was not informed of the Board's conditional authorization in Case 875 allowing two mobile homes to be added to the mobile home court.

Since acquiring the property Mr. Childs has improved and maintained the property in a reasonable manner.

On December 13, 1990, Mr. Childs applied for a building permit and zoning certificate to erect a detached garage, 24 feet by 40 feet, on the property. As the application complied with the applicable regulations, the building permit and zoning certificate were routinely issued on December 21, 1990. Approval of the application and issuance of the building permit and zoning certificate was error because of condition 3.

On January 27, 1991, the Division of Zoning Enforcement received a complaint pertaining to construction of the garage contrary to condition 3 of Case 875. The complaint was investigated January 29, and a stop work order was posted on the property. On February 7, 1991, a Notice of Violation was issued to Mr. Childs advising him to file for a Board of Zoning Appeals hearing.

As portrayed on the location plat of the property, identified as Applicant's Exhibit 1, the building complies with the minimum setback and yard requirements for the district. In accordance with Mr. Childs' testimony, the garage will be used to park a truck used in plowing snow, storage of equipment used in maintaining the property, and for tenants' personal property such as lawnmowers.

In requesting permission to amend condition 3, Mr. Childs testified that it would be impossible to relocate the building on the property due to conflicts with the on-site sewerage disposal system, as well as other improvements. Mr. Childs also indicated that the building represented a substantial investment, and that it would be costly to remove it from the property.

Although testimony was presented in opposition to the request, the Board finds no probative evidence that adjacent properties would be adversely affected by establishment and use of the detached garage as requested.

APPLICABLE LAW

Article and Sections cited below are of Ordinance 1E.

Nonconforming uses are defined in Article 20, Section 20.27 as:

A use of a building or of land lawfully existing at the time this ordinance becomes effective and which does not conform with the use regulations of the zone in which it is located.

Article 4, General Provisions; Section 4.3, Nonconforming Uses (Amended 3/17/81), Paragraph (a)(1) reads:

Any building, structure or premises lawfully existing at the time of the adoption of this ordinance, or lawfully existing at the time this ordinance is amended, may continue to be used even though such building, structure or premises does not conform to use or dimensional regulations of the zoning district in which it is located; subject, however, to the following provisions:

(a) Structural alterations or enlargement of any building, structure, or premises which does not comply with the use or dimensional requirements of this ordinance shall be allowed only as follows:

(1) Upon application, the Board may approve structural alterations or enlargement of a nonconforming use, subject to the provision of Article 17, Section 17.6;

With amendment of Article 17, the provisions are now expressed in Section 17.7.

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

The Board shall have the following powers:

(b) To hear and decide conditional uses to the ordinance upon which such Board is required to pass.

In exercising the above-mentioned powers, the Board may, in conformity with the provisions of law and this ordinance and amendments thereto, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made.

REASONING

For the applicant, there was no reason to believe that construction of the detached garage would be a particular problem, other than to comply with the applicable regulations. Approval and issuance of the building permit and zoning certificate without checking the zoning records pertaining to the nonconforming use of the property was an oversight. However, the application complied with all applicable requirements, and there was no reason to check the zoning records other than the fact that the use of the property is nonconforming.

As a matter of fact, if the use of the property was conforming, the question of the detached garage would not be before this Board.

Now, after considering the record of this case, the Board is convinced that establishment and use of the garage, as conditioned below, will not adversely affect the adjacent properties, and is in keeping with the purpose and intent of the zoning ordinance.

CONCLUSION

Therefore, the Board of Zoning Appeals hereby authorizes amendment of condition 3 imposed in Case 875 to allow establishment and use of the detached garage, subject to the following condition of authorization:

1. No exterior parking or storage of vehicles, equipment or materials shall be conducted adjacent to the detached garage.

May 16, 1991  
Date

JDN/bdc/C3534DEC  
May 14, 1991

John Totura  
John Totura, Chairman