

Tax Map/Block/Parcel
No. 22-4-62

Building Permit/Zoning
Certificate No. 91-2005

Case 3587

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

APPLICANTS: E. Maxine Bixler and Mark Bixler
47 Carroll Street
Westminster, Maryland 21157

and

North Eastern Trail Blazer ATV Club, Inc.
c/o Johnny L. Hoover, President
3260 North Main Street
Manchester, Maryland 21102

ATTORNEY: Clark R. Shaffer, Esquire
6 North Court Street
Westminster, Maryland 21157

REQUESTS: Appeals of Notices of Violation pertaining to a junkyard, two mobile homes, and a race track for all-terrain vehicles, or as an alternative, a conditional use for a race track for periodic meets of all-terrain vehicles

LOCATION: 3560 Bixler Church Road in Election District 3

BASES: Article 17, Section 17.4; Article 6, Sections 6.3(g), 6.4(a), and 6.7; Article 14, Division III, Section 14.31; Article 20, Section 20.23; Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: August 22, 1991; Continued August 26, 1991

On August 22, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning the appeals of Notices of Violation pertaining to a junkyard, two mobile homes, and a race track for all-terrain vehicles, or as an alternative, a conditional use for a race track for periodic meets of all-terrain vehicles on the premises of 3560 Bixler Church Road. The public hearing was continued to August 26, 1991.

As co-applicant, the interests of the North Eastern Trail Blazer ATV Club, Inc. (Club) are limited to the conditional use pertaining to riding all-terrain vehicles (ATV's) on that part of the Bixler farm indicated on Applicants' Exhibit 1, a photocopy of an aerial photograph which also portrays the area surrounding the farm.

The Board visited the premises, viewing the shed and barn from driveways, and the oval trail from Bixler Church Road on August 21, 1991, prior to the public hearing.

The testimony and evidence comprising the record of the appeals and alternative request for the conditional use in this case are hereby included by reference in this decision. Based on the record, the Board will:

1. Authorize the conditional use to operate all-terrain vehicles on the premises, subject to the conditions of authorization imposed below, as an alternative to the appeal of the Notice of Violation pertaining to the race track for all-terrain vehicles. Accordingly, the appeal of the respective Notice of Violation is moot.
2. Affirm the Notice of Violation pertaining to the junkyard.
3. Dismiss the Notice of Violation pertaining to one mobile home. The Notice of Violation pertaining to a second mobile home was abated by removing the mobile home from the premises.

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

FINDINGS OF FACT

The 161.97 acre farm is located on both sides of Bixler Church Road between Deep Run Road to the north and Bachman Valley Road to the south. As portrayed by Applicants' Exhibit 1 and Protestants' Exhibit 1, residential subdivision of farmland has occurred in the area to the north, and, to a lesser amount, to the south. However, agriculture appears to be the primary land use adjacent to the property.

The Bixler family has owned the farm since 1920. In 1981, the dwelling located on the property was destroyed by fire. An existing barn, shed and a mobile home, 7 feet by 27 feet, now used as shelter and a farm office are located on the southwest side of Bixler Church Road, south of the remaining remnants of the dwelling and northwest of the stream traversing the farm from north to south. The mobile home has electrical and telephone service, but is not now used as a dwelling.

On February 3, 1981, Permit and Zoning Certificate 81-0086 was issued for a temporary mobile home for the farm manager as a result of the dwelling being destroyed. Use and occupancy of the mobile home was approved in May.

On July 19, 1982, Zoning Certificate 82-2587 was approved and issued to Mark Bixler by the Zoning Administrator for the same mobile home as an accessory use as provided in Section 6.4(a) of the zoning ordinance. (Appellants' Exhibit 5.)

Regardless of losing the dwelling, traditional farming has continued to be practiced on the property over the years. Mr. J. Mark Bixler, co-applicant and part owner of the property, farms about 25 to 30 acres on a part-time basis. Additional acreage is also rented for farming. Crops are cultivated and harvested, and cattle are prepared for slaughter or market. Equipment, implements, and parts that have broken or failed have been stored on the property in anticipation of some productive use in the future, a common practice in farming. In addition, other items including a hot water tank and freezer have been stored adjacent to the shed for the same purpose. Many of the items and parts have been piled together, or placed on the roof of the shed. Occasionally, Mr. Bixler uses materials and parts to fabricate implements for use in operation of the farm. (Appellants' Exhibit 6A-6G.) Such equipment, implements, and parts are neither routinely bought nor sold.

As outlined on the photocopy of the aerial photograph, Applicants' Exhibit 1, approximately 30 to 35 acres located to the easterly side of Bixler Church Road, which are not suitable for cultivation by farm tractors because of the hilly terrain and rocky characteristics of the soil, are used for pasture. This is the area that is proposed for riding ATV's. An oval trail is located adjacent to Bixler Church Road, west of the stream traversing the farm from north to south. Due to the topography of the area, the oval trail is not visible from homes on adjoining properties. It is partially visible from the property of Ms. Bradford identified as P. 141 on Protestants' Exhibit 1. As noted above, the oval trail is visible from Bixler Church Road. Riding trails are located on both sides of the stream, and riders apparently cross the stream at various places. The trails, as presently existing, have developed as a result of riding the ATV's on the property since 1980. Apparently, these trails are, at least for the most part, not visible from the homes on adjoining properties. No improvements of the trails are proposed, other than maintaining grass cover.

In 1980, Mr. Johnny Hoover, a friend of Mr. Mark Bixler, began riding on the farm with Mr. Bixler's permission. Mr. Hoover and other friends continued riding on the property until a complaint was filed with the Division of Zoning Enforcement and a Notice of Violation issued in May of 1991. Until then, neither Mr. Bixler and Mr. Hoover were aware of any complaints regarding use of the property for riding ATV's. The Club was formed in early 1990. The Articles of Incorporation of the Club were prepared and dated December 31, 1990 with Mr. Hoover as Director. Mr. Bixler has conditionally agreed orally to allow the Club to ride ATV's on the premises gratis.

For purposes of considering the area proposed for riding of the ATV's, including the oval trail, and distances to the nearest dwellings, the Board is convinced that the aerial photograph, Applicant's Exhibit 1, is more reliable than the sketch submitted with the July 15, 1991, letter amending the application to include the Club as a co-applicant. As depicted on the aerial photograph, which has a scale of approximately one inch equals 400 feet, the boundary of the area proposed for riding is less than the minimum required distance of 600 feet from the homes of Mr. Herbert C. Bates, Jr. and Mr. David C. Smith, which are identified as P. 200 and P. 137 respectively on Protestants' Exhibit 1. As depicted on the aerial photograph, these are the only dwellings located closer than 600 feet to the area proposed for riding the ATV's. Mr. Bates and Mr. Smith indicated that the areas of their respective properties are about one and one-quarter acres and more than thirty-three acres. Mr. Bates and Mr. Smith support the conditional use request to allow ATV's to be ridden on the property as proposed. The proposed riding area may also be closer than the minimum distance requirement of 600 feet to the curtilage area of Mr. and Mrs. Whinton's dwelling. The oval trail and on-premises parking area located within the boundary of the riding area and adjacent to the northeasterly side of Bixler Church Road are more than 600 feet from the nearest dwelling or curtilage area of a lot of three or more acres improved with a dwelling.

As no variance was requested to the minimum distance requirements pertaining to the trails to be used by the ATV's, the proposed riding area will have to be reduced to comply with the minimum requirements of the zoning ordinance.

Mr. Smith, a communications consultant specializing in audio engineering, also testified that the topography of the area would restrict the transmission of the sound of the ATV's motors; the sound of an average lawn mower is about 80 decibels; and the difference between the sound of one lawn mower and thirty lawn mowers, as measured in decibels, would not be relatively great because the decibel scale is logarithmic--not linear.

As a matter of practice, the applicants do not propose to conduct seasonal or periodic meets or races, or to erect lighting. The interests of the Club with respect to the conditional use request are to secure a suitable site for riding ATV's and promote safe trail riding. The Club is family oriented and nonprofit. It is the intention of the applicants that the ATV's be transported to the site, not driven there. The proposed limits as expressed by Applicants' Exhibit 4 and amended by testimony are:

A maximum of 30 ATV's from 11 a.m. until dark
on Saturdays, Sundays and state holidays.

A maximum of 5 ATV's from 3 p.m. until dark on weekdays.

A maximum of 30 ATV's from 11 a.m. until dark only on Sundays from September 15 to February 1

On-premises parking for a maximum of 40 vehicles at one time, excluding ATV's, within the area encompassed by the oval trail

At least one of three officers of the Club will be required to be present for Club members to ride on the premises. All riders will be required to wear safety equipment, and in the event of an emergency, a telephone located in the mobile home used as the farm office will be available to call for assistance. The ATV motors must not exceed a noise level of 99 decibels, and the mufflers must be equipped with spark arrestors. The driveway connection to the premises will be stoned to define the connection, facilitate entrance to the parking area and exit on Bixler Church Road, and limit tracking of soil onto Bixler Church Road. Mr. Bixler plans to fabricate a water tank for use in watering the trails and oval track to control dust. Trash will be collected and disposed of properly, and plans are for a portable toilet to be placed on the property.

The request to allow ATV's to be ridden on the property was supported and opposed by residents of the area. Those in opposition expressed concern regarding: noise that would be generated by the motors of the ATV's adversely affecting the peace and quiet of the area; vehicular traffic and congestion on Bixler Church Road, which is not constructed to current standards of the county; the number of people visiting the site; riding ATV's on Bixler Church Road; use of the premises for picnics or related activities by the Club; and, damage to the environment, including erosion adjacent to, and in, the stream.

In addition, an expert in real estate appraisal testified on behalf of Ms. Bradford, a protestant. In the opinion of the expert, the proposed use would adversely affect the value of Ms. Bradford's property, identified as Parcel 141 on Protestants' Exhibit 1, and the values of other properties in the area because of noise and vehicular traffic, and that the proposed use would not be appropriate for the Bixler farm.

Those in support of the request believed the site to be appropriate for riding ATV's; there is a need for such sites to provide for lawful riding of ATV's; the Club would be responsible and promote safety; and that the use, as proposed, would not harm residents and owners of nearby properties.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

Generally

As depicted on zoning map 22B, the farm and adjoining properties are zoned "A" Agricultural District.

The land use provisions for the district are expressed in Article 6. Section 6.1 specifies that agriculture is the preferred use of land in the district. Section 6.2 provides for agriculture as a principal permitted use. Buildings in which farm animals are kept are included as a principal permitted use, subject to compliance with the minimum required distance of 200 feet as specified in Section 4.12. From inspection of the photocopy of the aerial photograph, the existing barn and feeding pens comply with the provisions of Section 4.12 and other requirements such as side and rear yards. As the shed and pen were probably established prior to the adoption of Ordinance 1E on August 17, 1965, their front setback from Bixler Church Road may not conform with present regulations.

The Conditional Use Request

Section 6.3, Conditional Uses (Requiring Board Authorization), paragraph (g) states:

Fairgrounds and race tracks or courses for the conduct of seasonal or periodic meets of horses, dogs, aircraft, automobiles, motorcycles and the like; provided such use shall be subject to three (3) times the distance requirements specified in Section 4.12.

Article 4, General Provisions; Section 4.12, Distance Requirements (Amended 7/5/77) reads:

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.

From the evidence before the Board, the provisions of paragraphs (a) and (c) are not issues in this case. The

provisions of paragraphs (b) and (d) apply for reason that the property of Mr. Herbert C. Bates, Jr. (P. 200) is less than three acres, and the curtilage area of Mr. David C. Smith's dwelling on P. 137 is within 600 feet of the proposed riding area as depicted on Applicants' Exhibit 1.

The Board is governed by the provisions of Article 17, Section 17.7 and decisions of the courts including the standard expressed in the case of *Schultz v. Pritts*, 291 Md. 1 (1981) at 22 where the court wrote:

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. (Citations omitted.)

For purposes of clarification, special exception uses are known as conditional uses in the Carroll County Zoning Ordinance.

Appeal of the Notice of Violation Pertaining to the Mobile Home

Section 6.4, Accessory Uses, paragraph (a) specifies:

Accessory buildings and uses customarily incidental to any principal permitted use or authorized conditional use, including mobile homes subject to the applicable provisions of Section 14.31.
(Amended 11/24/80)

Article 14, Special Provisions; Division III, Mobile Homes and Mobile Home Parks; Section 14.31, Mobile Homes (Amended 2/25/76) reads in relevant part:

No person shall park, store or occupy a mobile home (nor allow or permit parking, storage or occupancy of a mobile home), for living or other purposes, except:

- (c) In order to provide assistance in the pursuit of agriculture by providing for the shelter of tenant labor necessary for successful operation of agricultural enterprises, or members of an immediate family of the owner of the farm who provide assistance in the operation of said farm, the Zoning Administrator may approve the use of no more than two (2) mobile

homes on such a farm, subject to the following conditions:

1. To provide a home for members of an immediate family of said farm who assist the owner in the operation of the subject farm.
3. The requirements of the Carroll County Health Department and the Carroll County Building Code shall be met.
4. The mobile home shall be located in the immediate vicinity of and as an integral part of other major farm buildings, and in no case more than three hundred (300) feet therefrom, and abide by the setback and side yard requirements of the district in which the property is located.

Section 20.01 defines an accessory use as:

A use of a building, lot, or portion thereof, which is incidental and subordinate to the principal use of the main building or lot.

Section 20.26 defines a mobile home and reads in relevant part:

Any vehicle or preassembled structure, so constructed and located, regardless of its foundations, as to permit occupancy thereof for living or sleeping, or the conduct of any business, and so designed that it may be moved or transported on roads by means of attached wheels, or hauled on a separate conveyance, or propelled or drawn by its own motor power; and arriving at the site where it is to be occupied complete and ready for occupancy, except for minor and incidental unpacking or assembly operations, connection to utilities and the like; including automobile trailers, truck trailers, trailer coaches, trailer homes, mobile homes....

Appeal of the Notice of Violation Pertaining to the Junkyard

Article 6 does not provide for junkyards as a land use in the "A" Agricultural District.

Section 20.23, defines a junkyard and reads in relevant part:

- (a) Any area where waste, discarded or salvaged materials are...stored, disassembled, handled, abandoned, including...storing,...

vehicles, machinery or parts thereof,
...and places for storage of salvaged
building or structural steel materials
and equipment.

REASONING

The Conditional Use Request

In considering the provisions of Section 17.7, the requested land use is substantially less intense than that described in Section 6.3(g), which provides for race tracks or courses for seasonal or periodic meets. Such uses would be expected to generate much vehicular traffic and large crowds of spectators. However, to the extent that the proposed riding will be in conjunction with an organized club and extend throughout the year, the potential affects of the use exceed those of casual riding of ATV's by individuals--whether the riders are owners or residents of the property or their friends. In fact, neither the zoning ordinance nor this decision prohibits casual riding of ATV's.

Noise generated by ATV motors, vehicular traffic, and environmental concerns appear to be the main factors in considering the request and potential adverse affects upon the adjacent residents and properties.

While it is likely that the nearby residents may be able to hear the sound of the ATV motors as they are driven on the various tracks, the distances that the sound must travel to be heard by the residents of adjacent dwellings is another matter. The Board finds that Mr. Smith's testimony is persuasive regarding his conclusion that the residents would not be unduly affected. The opinions of those in opposition to the request appear to be based on the ability to hear the sound, versus noise so loud that it would disrupt normal residential activities.

Arguments regarding detrimental affects to the orderly growth of the area were based on opinion. However, if and when residential subdivision of the Bixler farm occurs, it is most likely that use of the premises for riding ATV's will cease and the sound of motors in the future will be from lawn mowers. Or the area could be reserved for recreation, and riding ATV's might continue.

To the extent that Bixler Church Road is not constructed to county standards, and regardless of whether it is improved in the future, operators of vehicles must exercise care and courtesy in using all roads. While vehicular traffic safety is an important factor for the Board to consider, there is no probative evidence that authorization of the alternative request, as conditioned below, will result in a vehicular traffic safety problem.

The opinions expressed in opposition to the request concerning depreciation of residential property values and inappropriate use of the property were unsubstantiated. Without probative evidence to support the opinions, the Board finds that it cannot agree with the conclusions.

The site has been used for casual riding of ATV's for approximately ten years. During that same time it is evident that properties have been subdivided for residential development and homes constructed with no evidence of adverse effects resulting from the casual riding of ATV's on the Bixler farm. Therefore, in comparing the conditional use request to the standard of *Schultz v. Pritts*, the Board finds that authorization for riding ATV's, subject to the conditions of authorization imposed below, complies with the standard, and is in accord with the provisions of the zoning ordinance.

Appeal of the Notice of Violation Pertaining to the Mobile Home

The preamble of the "A" Agricultural District reads in part:

"The purpose of this district is to provide for continued farming activities, conserve agricultural land, and reaffirm agricultural uses, activities and operations as the preferred and dominant use of land within the District....It is the further purpose of this district to maintain and promote the open character of this land as well as to promote the continuance and viability of the farming and agri-business uses."

Since adoption, the zoning ordinance has recognized that mobile homes can assist farmers economically by providing housing for members of their families and employees that work on the farm.

Since the provisions were adopted in 1965, amendments have been enacted periodically, including changing the mobile homes used on farms from conditional uses to accessory uses, subject to the requirements of Section 14.31(c), that may be authorized by the Zoning Administrator. In 1980, the provisions were amended to allow two such mobile homes on a farm. In providing this assistance to farmers, the Carroll County Planning and Zoning Commission and Board of County Commissioners have continued recognition of the importance of agriculture to the county. However, the survival of each farm in the county rests on whether or not it can be justified economically, regardless of how valuable the practice of agriculture and its characteristic open spaces are to the people of Carroll County.

In this instance although the mobile home is not used precisely as specified by the provisions of Section 14.31(c), it does assist in the operation of the farm as an office and

shelter. It is, therefore, in accord with the purpose of "A" Agricultural District, and there is no evidence that it adversely affects the adjoining properties or public interests.

The provisions of Article 17, Section 17.2 specify the powers of the Board. The provisions read in relevant part:

"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."

In this case, the Board interprets the provisions to enable the Board to dismiss the Notice of Violation for reason that the mobile home is used in the pursuit of agriculture.

Appeal of the Notice of Violation Pertaining to the Junkyard

In spite of the fact that the farm has been owned by members of the Bixler family since 1920, and saving broken or worn out equipment, implements, and parts for possible future use is likely to have been practiced on the farm well before the adoption of the Carroll County Zoning Ordinance in 1965, the record is insufficient to substantiate the land use as being nonconforming. Moreover, it is likely that most farmers, including the Bixlers, would not have thought that they were operating as a junkyard. Yet, when the zoning ordinance was adopted in 1965, Section 4.3(e) required "[t]he owner or operator of any existing nonconforming use involving...junkyards..." to provide certification of the use to the Zoning Administrator by April 17, 1966. It is doubtful if any farmers filed certifications. It is also understandable why farmers would not have thought to do so.

The members of the Board differ in their respective views of the circumstances in this case. It is the opinion of the Vice Chairman, Mrs. Thomas, and Mr. Law, that the Notice of Violation should be affirmed.

In light of the decision of the Court of Special Appeals of Maryland in the case of the County Commissioners of Carroll County v. Maurice R. Zent, 86 Md. App. 745, the chairman is convinced that the land use does not constitute a junkyard, and the Notice of Violation is without merit and should be dismissed.

CONCLUSION

The Conditional Use Request

Although the request to allow riding of ATV's on the premises is substantially less intensive than the ordinance provides for, the Board is convinced that certain conditions limiting the proposed use are necessary to minimize adverse affects that might otherwise occur. Therefore, in order to promote the intent and purpose of the zoning ordinance, the Board hereby imposes the following conditions of authorization:

1. The applicants shall submit a revised plot plan and statement of procedures to be implemented to protect the environment to the Office of Environmental Services, Division of Zoning Enforcement, and this Board for inclusion in the record of this case. The revised plot plan shall confirm that the area designated for riding ATV's complies with the minimum distance requirements specified in Section 4.12 of the zoning ordinance.
2. The revised plot plan and procedures to be implemented to protect the environment shall be subject to the review and approval, with appropriate conditions, if necessary, of the Office of Environmental Services. The plan and procedures shall include sufficient information regarding the driveway connection to Bixler Church Road, the on-premises parking area for vehicles and ATV's, riding ATV's on the trails, and the existing conditions of the trails, including the location of any streams, other bodies of water and wetlands, whether within the area designated for riding ATV's or adjacent thereto, for the Office of Environmental Services to evaluate the plan and procedures properly.

It is not the intent of the Board for conditions 1 and 2 to be construed so as to require a site development plan as specified in Article 10, Section 10.4(d) of Ordinance 1E.

3. No more than 5 ATV's shall be permitted to be driven within the area designated for trail riding at one time.
4. No more than 10 ATV's shall be permitted on the premises at one time, regardless of their location.
5. Use of the area delineated on the revised plot plan for riding ATV's shall be limited to:

Monday through Friday 3:00 p.m. to 6:00 p.m.
Saturday 9:00 a.m. to 2:00 p.m.

6. No riding of ATV's shall be permitted on Sundays.

Appeal of the Notice of Violation Pertaining to the Mobile Home

In accordance with the findings of fact, applicable law, and reasoning expressed above, the Notice of Violation, dated May 8, 1991, pertaining to the remaining mobile home on the premises of 3560 Bixler Church Road is hereby dismissed.

Appeal of the Notice of Violation Pertaining to the Junkyard

In accordance with the findings of fact, applicable law, and reasoning expressed above, the Board on motion by Mr. Law with second by Mrs. Thomas, hereby affirms issuance of the Notice of Violation, dated May 8, 1991, pertaining to the junkyard on the premises of 3560 Bixler Church Road.

The Chairman strongly disagrees with the conclusion and the decision affirming the Notice of Violation.

Sept. 24, 1991
Date

John Totura
John Totura, Chairman

JDN/bmh/c3587dec
September 23, 1991