

Tax Map/Block/Parcel
No. 39-19-508

Building Permit/Zoning
Certificate No. 91-2846

Case 3634

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

APPLICANT: Maerk Limited
Nelson Zahler, President
178 Thomas Johnson Drive, Suite 204
Frederick, Maryland 21702

REQUEST: A variance pertaining to the minimum required parking spaces for a new building in Carroll Plaza Shopping Center

LOCATION: 250 Englar Road in Election District 7

BASES: Article 14, Division I, Section 14.1(a)23;
Article 15, Section 15.5; Ordinance 1E. (The Carroll County Zoning Ordinance)

HEARING HELD: November 26, 1991

On November 26, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning the variance request pertaining to the minimum required parking spaces for a new building in Carroll Plaza Shopping Center at 250 Englar Road.

The Board visited the site November 19, 1991.

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

FINDINGS OF FACT

Carroll Plaza Shopping Center was developed following approval of the site development plan by the Carroll County Planning and Zoning Commission in 1967. Since then the shopping center has been before the Board of Zoning Appeals several times. Two cases, 2970 and 3437, involve variances to the minimum parking requirements.

In Case 2970, the Board conditionally authorized reduction of the minimum required parking spaces from 435 spaces to 399 spaces for the entire shopping center, as depicted by a site plan identified as Scheme "B."

The shopping center is completely developed and there is no available space to construct additional parking spaces. Although

new tenants may replace those leaving the shopping center, additional building construction cannot comply with the present requirements of the zoning ordinance for on-premise parking facilities.

In Case 3437, the Board authorized a second variance to allow establishment of a photo service kiosk without providing three required parking spaces.

As now proposed, the existing kiosk would be removed, and a restaurant 20 feet in width by 70 feet in length, would be constructed using the drive through lane and part of an existing landscaping area. The restaurant would be designed and constructed to prepare pizzas strictly for carryout service. No drive through pick up facility or delivery service would be provided. The number of employees on a single shift could be from 20 to 25. The hours of operation would be from 11:00 a.m. until 10:00 p.m. Sunday through Thursday, 11:00 a.m. until 12:00 midnight Friday and Saturday, and would be subject to adjustment depending upon the demand for services. Peak hours of operation would usually be from 4:00 p.m. to 8:00 p.m.

The application in this case did not indicate the number of parking spaces that would be required for the proposed building, or the provisions of the zoning ordinance governing the request. As a result, some confusion occurred during the public hearing regarding the provisions that are applicable in this case. As the proposed restaurant would be within the shopping center, the applicable provisions are expressed in Article 14, Division I, Section 14.1(a)23 of the zoning ordinance. The provision reads:

Planned Business Center - 5.5 parking spaces for every 1,000 square feet of floor area. If up to 20 percent of the gross floor area is in office space, the parking requirement may be based solely on gross floor area devoted to retailing. One parking space shall be required for each additional 350 square feet of office use, or major fraction thereof, in excess of the first 20 percent of floor area.

The site data noted on the plat identified as Scheme "B" in Case 2970 indicates a total retail area of 79,309 square feet, and an office space of 16,120 square feet. Only the retail space was used in calculating the minimum required parking spaces. With the addition of 1,400 square feet for the new restaurant (20 feet multiplied by 70 feet equals 1,400 square feet) the maximum number of additional spaces would be 8 (1,400 square feet divided by 1,000 square feet multiplied by 5.5 parking spaces equals 7.7 or 8 parking spaces).

As depicted by the plot plan submitted with the application and the Scheme "B" site plan filed in Case 2970, the proposed location of the restaurant is adjacent to the southerly entrance to Englar Road, and two drive through lanes serving the existing bank in the shopping center.

No information was introduced regarding generation of vehicular traffic to and from the proposed restaurant, or the affect of such traffic on existing traffic within the shopping center and on Englar Road.

APPLICABLE LAW

Articles and Sections noted below are of Ordinance 1E.

The property is zoned "B-G" General Business District as depicted on zoning map 39A. The land use provisions for the district are expressed in Article 11. Section 11.1, Principal Permitted Uses, paragraph (b) specifies planned business centers, subject to provisions of Section 14.6, which provides for approval of the site development plan by the Carroll County Planning and Zoning Commission.

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, (Amended 2/25/76) read respectively and in relevant parts:

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...parking space requirements,.... 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 sub-

stantial injury to public health, safety
and general welfare.

REASONING

In authorizing the variance in Case 2970 reducing the minimum requirement of 435 to 399 parking spaces, the Board found that development of the site precluded compliance with the amended requirements of the zoning ordinance; the parking plan identified as Scheme "B" complied with the design standards of the zoning ordinance; and, considerable changes of tenants and floor plans had occurred in the shopping center since being developed. The Board concluded that the design and aesthetic improvements portrayed by Scheme "B"'s parking plan was in the best interests of patrons and vehicular traffic safety of the shopping center.

In Case 3437, the variance allowing establishment of the larger photo service kiosk without providing three parking spaces did not affect the parking facilities authorized and constructed in accordance with Scheme "B"'s site plan or vehicular traffic in the shopping center.

It is now evident that replacement of the existing photo service kiosk with the proposed pizza carryout restaurant, with as many as 25 employees on one shift, would substantially increase vehicular traffic to the shopping center as well as the demand for parking spaces for patrons and employees.

In addition, pedestrian traffic to and from the restaurant would conflict with the orderly movement of vehicular traffic using adjacent access driveways and isles, to the detriment of patrons of other businesses in the shopping center. Consequently, establishment of the restaurant in this location would severely and adversely affect the operation and interests of other businesses in the shopping center.

However, it is the building construction and additional parking spaces that would be required, unless waived by this Board, that are in question, not the business. The provisions of the zoning ordinance do not prevent the pizza carryout restaurant from occupying existing retail space within the shopping center.

From the record of this case, there is no evidence to substantiate practical difficulty and unreasonable hardship that would justify authorization of the variance. In fact, it is evident that the request is essentially a matter of convenience, and authorization of the variance would be contrary to the provisions of the zoning ordinance.

CONCLUSION

In accordance with the findings of fact, applicable law, and reasoning, the Board hereby denies the variance pertaining to the minimum required parking spaces for the proposed pizza carryout restaurant.

Dec. 17, 1991
Date

John Totura
John Totura, Chairman

JDN/bdc/C3634DEC
December 16, 1991