

Tax Map/Block/Parcel  
No. 70-6-66

Building Permit/Zoning  
Certificate No. 92-1498

Case 3736

OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND

**APPELLANT:** Gerald B. McKoon  
3815 Akers Drive  
Mount Airy, Maryland 21771

**ATTORNEY:** David K. Bowersox, Esquire  
24 North Court Street  
Westminster, Maryland 21157

**APPEAL:** An appeal of the Zoning Administrator's decision authorizing Building Permit 92-0728 for a pole building to house livestock

**LOCATION:** 3811 Akers Drive in Election District 13; Ridgely Estates subdivision, Plat B, lot 8 recorded in Carroll County Plat Records in book 17, page 42

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

**HEARING HELD:** June 24, 1992

On June 24, 1992, the Board of Zoning Appeals heard testimony and received evidence concerning an appeal of the Zoning Administrator's decision authorizing Building Permit 92-0728 for a pole building to house livestock on the premises of 3811 Akers Drive. For purposes of this decision, the term Building Permit includes Zoning Certificate.

The Board visited the site June 19, 1992.

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 will deny the appeal.

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

FINDINGS OF FACT

This appeal stems from the conditional approval and issuance of Building Permit and Zoning Certificate 92-0728 to Demetrios L. Chaconas for a pole building, 8 feet by 12 feet, to house calves on the premises of 3811 Akers Drive. Mr. and Mrs. Chaconas' residence is located on lot 8 of Ridgely Estates subdivision. The area of the lot is 3.1731 acres. A private stable,

established by previous owners, Mr. and Mrs. Paterni, is located in the rear yard approximately 22 feet from the westerly side property line.

The subdivision is zoned "C" Conservation District as depicted by zoning maps 70B and 65B.

Private stables, as defined within the zoning ordinance, are permitted in the district as accessory uses, subject to the provisions of Article 5, Section 5.3(b). A variance to the minimum distance requirements governing the private stable was authorized by the Board of Zoning Appeals June 9, 1982, in Case 1815 to allow the stable to be 22 feet from lot 7 instead of the minimum requirement of 100 feet. At that time lot 7 was vacant. However, Mr. and Mrs. McKoon, who owned the lot, noted in a statement filed in Case 1815 that they did not object to the construction of the barn for use as a two horse stable. Since purchasing lot 8 from Mr. and Mrs. Paterni, Mr. and Mrs. Chaconas have maintained 2 horses within the private stable as permitted by the zoning ordinance.

When Mr. and Mrs. Chaconas inquired about establishing a shelter to house calves on their property, the Zoning Administrator advised them that the provisions of the "C" Conservation District of the zoning ordinance (Section 5.5) required a minimum lot area of 5 acres for the agricultural use. To comply with the requirement, Mr. and Mrs. Chaconas proposed to lease the adjoining lot to the east, lot 11 containing 3.002 acres owned by Deborah Paul, and to apply for the Building Permit encumbering their own property and lot 11, which is unimproved. Mrs. Paul, whose residence is located on lot 12 and who pastures her own horses on lot 11, concurred and signed a lease agreement with Mr. and Mrs. Chaconas. An addendum, required by the Zoning Administrator, was added to the agreement stating:

In the event that lot 11 is no longer leased to us for use as pasture, we understand that the structure covered under Building Permit 92-0728 is no longer approved for housing livestock unless a variance is secured. (Appellant's Exhibit 1.)

The permit application was submitted to the Bureau of Permits and Inspections March 18, 1992. It was subsequently approved by the Chief of the Division of Zoning Enforcement and issued April 13, 1992, subject to the condition "...USE RESTRICTED BY VALID LEASE FOR ADD. PROPERTY."

As portrayed by the plot plan filed with this appeal and Permit Application and Zoning Certificate 92-0728, the pole building is located on lot 8, 201 feet from the property of Mr. and Mrs. McKoon. The building complies with the minimum front and rear yard requirements. The distance to the easterly side

property line of lot 11, leased from Deborah Paul, is noted as 468 feet. A maximum of 4 calves have been kept on the property at one time.

Mr. McKoon's residence is located on lot 7 of Ridgely Estates subdivision, abutting lot 8 to the west.

In presenting the appeal, testimony and evidence was directed to the paddock area of the private stable and to a greater extent, the manure pile located to the rear of the stable. (Appellant's Exhibits 2a-f.) Attention was also directed to the restrictions, covenants and conditions contained in a deed conveying lots within the subdivision. (Appellant's Exhibit 3.) Although these matters may be particularly significant to the appellant, this appeal pertains solely to the authorization of Building Permit 92-0728 by the Zoning Administrator.

Mr. and Mrs. McKoon contend that the Building Permit should not have been authorized because lot 8 does not comply with the minimum lot area requirements specified for other uses in Section 5.5 of the zoning ordinance; the lease agreement provides no interest in use of lot 11 to Mr. and Mrs. Chaconas; and, the provisions of Article 4, Section 4.9 are applicable in this case and preclude authorization of the Building Permit.

The appellant's arguments are not persuasive. First, the zoning ordinance is, with few exceptions, a permissive ordinance, and no provision restricts aggregation of lots or tracts of land to comply with the minimum distance, lot area, lot width or yard requirements governing a permitted use in the respective zoning district. In this case, agriculture is a principal permitted use in the "C" Conservation District. Second, the lease agreement in this case provides Mr. and Mrs. Chaconas sufficient interest in the use of lot 11 to enable the Zoning Administrator to conditionally authorize the Building Permit. And finally, as the pole building complies with the minimum lot width and yard requirements by utilizing only lot 8, and with the minimum lot area and distance requirements by encumbering lot 11, the contention that the building is in violation of the provisions of Section 4.9 is error.

#### APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

As noted above, Mr. and Mrs. Chaconas' property, as well as the adjacent lots within the residential subdivision are zoned "C" Conservation District. The land use provisions for the district are expressed in Article 5.

Section 5.1, Principal Permitted Uses, paragraph (a) reads in relevant part:

Agriculture, as defined in Section 20.02; provided...any building or feeding pens in which farm animals are kept shall comply with the distance requirements specified in Section 4.12. (Amended 6/28/84)

Section 4.12, Distance Requirements, (Amended 7/5/77) reads in relevant part:

Any uses or buildings subject to compliance with this section shall be located at least 200 feet from:

- (d) the curtilage area within a lot of 3 or more acres improved by a dwelling.

Section 5.5, Lot Area, Lot Width and Yard Requirements, provides the following minimums for uses permitted in the district that are not specifically listed:

Other Uses:	Lot Area	-	5 Acres
	Lot Width	-	300 Feet
	Front Yard	-	50 Feet
	Side Yard	-	100 Feet
	Rear Yard	-	50 Feet

Article 20, Definitions; Section 20.42, Singular and plural; use and used; shall and may; hereafter; person reads:

Words used in the present tense include the future tense; words used in the singular number shall include the plural number; words in the plural number shall include the singular number; the words "use" and "used" include the words "arranged, designed or intended for use"; the word "shall" is always mandatory; the word "may" is permissive; "now" shall mean at the time of the adoption of these regulations; "hereafter" shall mean after the adoption of these regulations. The word "person" shall include a firm, association, organization, partnership, trust, company, or corporation as well as an individual.

Solely for purposes of information, Section 4.9, Use of the same yard space for more than one building prohibited, as cited by the appellant in support of the appeal, states:

No part of a minimum required yard or other open space provided about any building or structure for the purpose of complying with the provisions of this ordinance shall be included as part of a minimum required yard

or other open space required under this ordinance for another building or structure.

Although cited by the appellant, Section 17.7, Limitations, Guides and Standards, governs the Board in considering conditional use cases and is not applicable in this case.

REASONING

The Board is convinced that the drafters of the zoning ordinance, as originally adopted, recognized that many of the lots or parcels of land in Carroll County, whether created by deed or recorded subdivision plat, did not have sufficient lot area and width to comply with the minimum requirements for particular uses within the respective zoning districts. In order to preclude practical difficulty and unreasonable hardship in the use of such lots or parcels, aggregation of lots was not only allowed, but required where the applicant owned adjoining land enabling compliance with the requirements. Although the particular provisions have been amended since then, the ordinance still does not prohibit aggregation of lots or parcels to satisfy the minimum requirements for a particular use permitted in the respective zoning district. As the zoning ordinance is permissive and does not prohibit aggregation to satisfy minimum requirements, the Zoning Administrator's authorization of Building Permit 92-0728 was appropriate and in accord with the purpose and intent of the zoning ordinance.

CONCLUSION

In accordance with the Findings of Fact, Applicable Law, and Reasoning noted above, the appeal of the Zoning Administrator's decision authorizing Building Permit 92-0728 for a pole building to house livestock on the premises of 3811 Akers Drive is hereby denied.

July 16, 1992  
Date

John Totura  
John Totura, Chairman

JDN/bdc/C3736DEC  
July 15, 1992