

Tax Map/Block/Parcel
No. 58-15/21-632

Building Permit/Zoning
Certificate No. 92-2291

Case 3772

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Robert L. Thomas for
Adele Building and Supply, Incorporated, and
Sugar and Spice Day Care Center
3046 Sykesville Road
Westminster, Maryland 21157

REQUEST: A conditional use for a commercial recreation
facility, and variances reducing the minimum
required lot area of 3 acres to about 1 acre and
the minimum distance requirements of 400 feet
pertaining thereto

LOCATION: 3153 Slippery Elm Court in Election District 4;
Deep Valley subdivision, Section 2, lot 5
recorded in Carroll County Plat Records in book
32, page 4

BASES: Article 6, Sections 6.3(o) and 6.7; Article 4,
Section 4.12; Article 15, Section 15.5;
Ordinance 1E (The Carroll County Zoning
Ordinance)

HEARING HELD: August 27, 1992

On August 27, 1992, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use for a commercial recreation facility, and variances reducing the minimum required lot area of 3 acres to about 1 acre and the minimum distance requirements of 400 feet pertaining thereto at 3153 Slippery Elm Court.

The Board visited the site August 21, 1992.

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 denied the conditional use and variances.

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

FINDINGS OF FACT

The 1.1605 acre lot is located at the northeast corner of Slippery Elm Court and East Nicodemus Road, several hundred feet west of the intersection of East Nicodemus Road and Sykesville Road (Md. Rt. 32). The property is also known as Deep Valley subdivision, Section 2, lot 5 as recorded in Carroll County Plat Records in book 32, page 4. Adjoining or adjacent lots of less than three acres, intended for residential development, are within 400 feet of the premises.

The lot is improved with a building designed and used solely as a day care center. As indicated on the plot plan submitted with the application, the building is 48 feet in width by 52 feet in length. Seven parking spaces with maneuvering area serve the day care center. Two additional parking spaces were proposed as indicated on the plot plan for the commercial recreation facility.

The proposed commercial recreation facility is a gymnastics school. Classes would be conducted solely within the building, evenings during the week, and possibly Saturday mornings. A maximum of twelve students, grouped by age, would be assigned to a class. Professional teachers would conduct the classes, representing and operating as a business separate and distinct from that of the day care center. The classes would be scheduled to prevent conflicts and congestion that might otherwise occur with another class or operation of the day care center.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The applicant's lot and surrounding properties are zoned "A" Agricultural District as depicted on zoning map 58A. The land use provisions for the district are expressed in Article 6. Day care centers are included in Section 6.2(i) as a principal permitted use, which does not require Board authorization.

Section 6.3, Conditional Uses (Requiring Board authorization), paragraph (o) includes commercial swimming pools, parks, and recreation areas, subject to twice the minimum distance requirements specified in Section 4.12.

Section 6.7, Lot Area, Lot Width and Yard Requirements specifies that the minimum lot area, for uses not listed, is 3 acres.

Article 4, General Provisions; 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:

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

Article 20, Section 20.09 defines conditional uses as:

Uses which are specified for Board of Appeals approval prior to authorization and which uses, after public hearing, may be approved conditionally or disapproved in accordance with Section 17.2. The term "conditional use" shall constitute the same meaning as "special exception" specified as one of the general powers of the Board of Appeals in accordance with Article 66B of the Annotated Code of Maryland.

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 read respectively and in relevant part:

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...lot area,...distance requirements specified in Section 4.12,.... 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, only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to public health, safety and general welfare.

REASONING

The day care center will continue to be the principal use of the property, and as such complies with the minimum lot area, lot width and yard requirements. However, the site does not comply with the minimum lot area and distance requirements for use as a commercial recreation facility. From the record, there is no evidence of practical difficulty and unreasonable hardship in the use of the property that would justify authorization of the variances. Accordingly, the Board has no option but to deny the variances. As the conditional use for the commercial recreation facility is subject to satisfying the minimum required lot area and minimum distance requirements pertaining thereto, the Board must also deny the conditional use.

CONCLUSION

In accordance with the Findings of Fact, Applicable Law, and Reasoning, the conditional use for the commercial recreation facility, and variances reducing the minimum required lot area of 3 acres to about 1 acre and the minimum distance requirements of 400 feet pertaining thereto at 3153 Slippery Elm Court are denied.

Sept. 18, 1992
Date

John Totura
John Totura, Chairman

JDN/bmh/c3772dec
September 18, 1992