

Tax Map/Block/Parcel
No. 72-5-37

Building Permit/Zoning
Certificate No. 93-1729

Case 3849

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Joseph P. Kaniecki
6044 Old Washington Road
Sykesville, Maryland 21784

REQUEST: A conditional use for a roadside stand for the sale of fresh fruits, vegetables and other farm produce in season; and, variances to the minimum required lot area of 3 acres, lot width of 200 feet, and driveway width of 20 feet

LOCATION: 6044 Old Washington Road (Md. Rt. 97) in Election District 14

BASES: Article 6, Sections 6.3(t) and 6.7; Article 14, Division I, Section 14.1(b)(3); Article 15, Section 15.5.4(d); Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: July 28, 1993

On July 28, 1993, the Board of Zoning Appeals heard testimony and received evidence concerning a conditional use for a roadside stand for the sale of fresh fruits, vegetables and other farm produce in season; and, variances to the minimum required lot area of 3 acres, lot width of 200 feet, and driveway width of 20 feet located at 6044 Old Washington Road (Md. Rt. 97).

In accordance with the provisions of Article 17, Section 17.6.6 of the zoning ordinance and the Board's longstanding policy of visiting sites prior to public hearing, the Board visited the site July 26, 1993. The purpose of the visit is for the Board to view the site and adjacent properties so that the Board may be reasonably familiar with the conditions and assist in the Board's appraisal of evidence, either pro or con, presented during 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 denied the conditional use and variances.

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

FINDINGS OF FACT

The 1.034 acre lot, or parcel, is the second lot north of Streaker Road on the west side of Old Washington Road and is identified as Parcel 37 on the site location map used in this case. The lot is improved with a dwelling and detached frame shed located in the rear yard. As depicted by the location survey of the lot submitted with the application, the parcel's configuration is slightly

irregular. The frontage of the lot is 148.50 feet and the rear property line is 139 feet. Accordingly, the width of the lot, as measured at the midpoints of the side property lines, is less than the minimum required 200 feet.

Vehicular access to the lot is provided by a gravel driveway, nine feet in width, located on the adjoining lot to the south, Brandenburg United Methodist Church (Parcel 144). At the entrance to Old Washington Road, the driveway is wholly on the church's property and crosses over the church's small parking lot adjoining Mr. Kaniecki's lot. The driveway extends westward at a slightly oblique angle from Old Washington Road until it passes the front of the dwelling where it gradually enters onto Mr. Kaniecki's lot, ending in front of the frame shed. Three parking spaces are proposed in the rear yard. As observed by the Board during the visit to the site before the hearing, the driveway to the small parking lot of the church is essentially an extension of the original driveway serving Mr. Kaniecki's lot. The combined width of both driveways approaches 20 feet. Neither deed description nor covenants pertaining to the right-of-way for the driveway were established for the record.

Mr. Kaniecki stated that he started selling produce on a small scale from the property four or five years ago. Display and sales include flowers, plants, shrubs, trees, fruits and vegetables. Some are grown on the premises; some are grown elsewhere and brought there to display and sell.

The display and sales area observed by the Board while visiting the site is immediately next to the northerly side of the driveway. In comparing the location survey with the display and sales area the Board observed, the area is on the church's property.

Vehicles of Mr. Kaniecki's customers have interfered with those of people attending church and created dangerous traffic conditions. Although Mr. Kaniecki proposed to erect a sign to direct his customers to the proposed parking spaces to the rear of his residence, the Board is convinced that the effort would be futile, and that the hazardous traffic conditions would persist to the detriment of the congregation of the church and the public driving to or past the premises.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The zoning ordinance includes provisions for roadside stands in the Agricultural District. One, as in this case, is a conditional use described in paragraph (t) of Section 6.3; the second is an accessory use described in paragraph (c) of Section 6.4. The roadside stand permitted as an accessory use is for the sale of agricultural products grown primarily on the premises and is not subject to Board approval. Roadside stands permitted as conditional uses are allowed to sell "...fresh fruit, vegetables and other farm produce in season." grown elsewhere. It is important to note the distinction because this decision has no affect on accessory uses of the property.

Mr. Kaniecki's parcel, and the adjacent properties are zoned "A" Agricultural District as depicted on zoning map 72B. The land use provisions for the district are expressed in Article 6. Section 6.3, Conditional Uses, (requiring Board authorization), subsection (t) states, "Roadside stands for the sale of fresh fruits, vegetables and other farm produce in season."

Section 6.7, Lot area, Lot Width and Yard Requirements reads in relevant part:

The following minimum requirements shall apply,....

Conditional Uses

Lot Area	-	3 acres
Lot Width	-	200 feet
Front Yard Depth	-	40 feet
Side Yard	-	30 feet
(width each Side Yard)		
Rear Yard Depth	-	50 feet

Section 14.1, Off-Street(on-site) Parking Spaces; Subsection b, Design Standards reads in relevant part:

- (3) Access drives which connect roads and/or parking areas shall be a minimum of twenty (20) feet wide, except for one-way access drives which shall be a minimum of fifteen (15) feet wide.

From inspection of the location survey, the lot area, lot width, and driveway width do not meet the minimum requirements. In addition, the display and sales area is at least partially, if not wholly, on the church's property.

Section 17.7, Limitations, Guides and Standards, governs the Board in deciding conditional use requests. It reads:

Where in these regulations certain powers are conferred upon the Board or the approval of the Board is required before a conditional use may be issued, the Board shall study the specific property involved, as well as the neighborhood, and consider all testimony and data submitted. The application for a conditional use shall not be approved where the Board finds the proposed use would adversely affect the public health, safety, security, morals or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood. In deciding such matters, the Board shall give consideration, among other things, to the following:

- (a) The number of people residing or working in the

immediate area concerned.

- (b) The orderly growth of a community.
- (c) Traffic conditions and facilities.
- (d) The effect of the proposed use upon the peaceful enjoyment of people in their homes.
- (e) The conservation of property values.
- (f) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.
- (g) The most appropriate use of land and structures.
- (h) The purpose of this ordinance as set forth herein.
- (i) Type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches, and the like.

Section 15.5.4, Board of Zoning Appeals, paragraph (d) governs the Board in considering variance requests. It states:

The Board may grant or deny the requested variance based on the evidence before it after a de novo hearing. The Board may grant a variance only in cases where the strict compliance with the terms of the ordinance would result in practical difficulty or unreasonable hardship which have not been caused by the applicant or the applicant's predecessor in title. The Board shall not grant a variance if to do so would violate the spirit and intent of the regulation, or cause or be likely to cause substantial injury to the public health, safety and general welfare. The Board shall be guided in its decision by those considerations set forth in Section 17.7.

The definitions of conditional use and variances expressed in Article 20 read respectively:

Uses which are specified for Board approval prior to authorization and which uses, after public hearing, may be approved conditionally or disapproved in accordance with Sections 17.2 and 17.7. 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.

A variance is a relaxation of the terms of the zoning ordinance in accordance with Sections 15.0, 15.2, and 17.2 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 practical difficulty or unreasonable hardship.

In addition, the Board is governed by decisions of the courts. In the case of Schultz v. Pritts, 291 Md. 1, 22 (1981) the decision states:

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.)

The decision in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 38-39 (1974) reads:

Where the standard of undue hardship applies, the applicant, in order to justify the grant of the variance, must meet three criteria:

1. If he complied with the ordinance he would be unable to secure a reasonable return from or to make any reasonable use of his property. Mere financial hardship or an opportunity to get an increased return from the property is not a sufficient reason for granting a variance. (Citations omitted.)
2. The difficulties or hardships were peculiar to the property in question and contrast with those of other property owners in the same district. (Citations omitted.)
3. The hardship was not the result of the applicant's own actions. (Citations omitted.)

Where the standard of "practical difficulty" applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the "undue hardship" standard. In order to justify the grant of an area variance the applicant need show only that:

- "1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- "2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- "3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. (Citations omitted.)

REASONING

The dwelling is, and will continued to be, the principal use of the parcel.

From the testimony presented regarding Mr. Kaniecki's driveway, the church's driveway and small parking lot, there is no doubt that operation of a roadside stand at this location under these circumstances would result in vehicular congestion and hazardous traffic conditions. Ignoring for the moment that the display and sales area is on the church's property, the provisions of Section 17.7 specify that a conditional use shall not be approved if the use would adversely affect the public safety or result in dangerous traffic conditions. Consequently, authorization of the conditional use would be contrary to the provisions of both the zoning ordinance and the definitive standard of Schultz v. Pritts.

In focusing solely on the variances, no evidence substantiated either practical difficulty or unreasonable hardship in the use of the parcel that would justify the authorizations. Accordingly, the variances must be denied.

Although further examination of the conditional use and variance requests is unnecessary, it is important to note that the Board's jurisdiction is limited to property which the applicant has a legal interest. The Board's jurisdiction does not extend to adjacent properties of others. The Board cannot authorize land uses or impose conditions on property in which applicants do not have a legal interest. Thus, even if the respective standards had been met, the Board would have had to deny the request for reason that the conditional use is contingent on the adjoining parcel owned by the church.

CONCLUSION

Based on the findings of fact, applicable law and reasoning expressed herein, the conditional use and variances must be, and are hereby, denied.

8/19/93
Date


William Law, Chairman