

Tax Map/Block/Parcel
No. 64-20-76

Building Permit/Zoning
Certificate No. 93-2007

Case 3853

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

APPLICANT: Charles S. Poole, Sr.
2060 Bollinger Mill Road
Finksburg, Maryland 21048

**ATTORNEY FOR
APPLICANT:** Michael M. Galloway, Esquire
24 North Court Street
Westminster, Maryland 21157

**ATTORNEY FOR
OPPONENTS:** Jeff Griffith, Esquire
147 East Main Street
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REQUEST: A conditional use for a meat processing shop solely for venison in an existing building and variances to the minimum distance requirements of 600 feet pertaining thereto and driveway width of 20 feet

LOCATION: 2040 B Bollinger Mill Road in Election District 4

BASES: Article 6, Sections 6.3(i) and 6.7; Article 15, Section 15.5.4; Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: August 26, 1993

On August 26, 1993, the Board of Zoning Appeals heard testimony and received evidence pertaining to the conditional use for a meat processing shop solely for venison in an existing building and variances to the minimum distance requirements of 600 feet pertaining thereto and the driveway width of 20 feet at 2040 B Bollinger Mill Road.

In accordance with the provisions of Article 17, Section 17.6.6 and 17.7 of the zoning ordinance, and the Board's longstanding policy of visiting sites prior to public hearings, the Board visited the site August 23, 1993. The purpose of the visit was for the Board to view the site and adjacent properties so that the Board would be reasonably familiar with the premises and adjacent properties and to assist in the Board's appraisal of testimony and 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 authorized the conditional use and variances, subject to the conditions expressed under the conclusion of this decision.

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

FINDINGS OF FACT

Almost three and a half years ago in Case 3333 by Mr. Poole, the Board heard and denied his request for a conditional use for a butchering and meat processing shop, and variances reducing the minimum distance requirements of 600 feet pertaining thereto. Although the application in Case 3333 was filed on February 8, 1990 after the issuance of the Notice of Violation to Mr. Poole on January 26, 1990, Mr. Poole testified even though the request was denied, he understood that he could continue to process deer for family and friends. In an effort to confirm his understanding, Mr. Poole requested that the county attorney's office advise him of the number of deer that he could process for family and friends. He was instructed that the number of deer would be provided to him in writing. However, Mr. Poole's question was evidently never answered and he continued to process deer.

In Case 3333 the request was for a custom butchering service to allow slaughtering and butchering of domestic farm animals including cattle, lambs or sheep, and pigs, as well as processing venison. The shop would have been operated on an appointment basis throughout the year. As noted on page 2 of the Board's decision in that case, the custom butchering services would have resulted in approximately 300 vehicular trips to the shop annually in addition to the trips by customers bringing deer to the shop and returning for their venison. Live animals would have been brought to the premises and probably confined at least for a period of time before being slaughtered. Any bellowing, bleating, and snorting of confined animals would have disrupted the peace and quiet of the area, which appears to be in transition from agriculture to a mixture of homes and farms.

With the shop restricted to processing venison, live animals will not be brought to the premises. Consequently, the majority of vehicular traffic will occur during the hunting season. Deer killed in vehicular traffic accidents and because of damaging agricultural crops could be brought to the shop for butchering at other times. It is important that the proliferation of deer and their damage to agricultural crops be acknowledged. Special permits are issued to farmers to kill deer in order to protect agricultural crops. In harvesting the deer, processing of venison becomes a problem because of regulations governing custom slaughterhouses that process beef, swine and sheep. Therefore, a shop that processes venison is an important service to the agricultural community. However, the provisions of Article 17, Section 17.7 of the zoning ordinance do not include whether or not a conditional use is needed at a particular location. The standard governing authorization of conditional uses is cited below.

Another significant factor of this request involves amendment of provisions of the zoning ordinance governing variances. At the time of hearing Case 3333 the standard for the Board to authorize a variance consisted of both practical difficulty and unnecessary hardship in the use of the property. Both the state enabling act for zoning and planning, Article 66B of the Annotated Code of

Maryland and the zoning ordinance have been amended establishing a new standard of either practical difficulty or unnecessary hardship--unreasonable hardship as expressed in the zoning ordinance--in the use of property. The hardship standard is extremely restrictive. As noted below, the practical difficulty standard is much less restrictive, and is the only standard that must be met.

Mr. Poole suggests, and the Board agrees that this request differs significantly from the request in Case 3333.

As shown on the site location map for this case the property fronts on both Bollinger Mill Road and Louisville Road, and is the second parcel east of the intersection. Sykesville Road (Md. Rt. 32) is slightly further to the west, probably within 1,000 feet of the site. As noted in the application, the area of the property is 4.2 acres. This is the same area as in Case 3333. However, as depicted on Applicant's Exhibit 12, the property has been divided into three lots, apparently by deed descriptions recorded in the land records of the county. Mr. Poole and his wife own the three lots. Lot 1 is improved with a dwelling and the existing shop. From inspection of Applicant's Exhibit 12, the shop is set back about 190 feet from Bollinger Mill Road. The dwelling is rented. Lot 2 is improved with Mr. and Mrs. Poole's recently constructed home. Lot 3 is unimproved. With the shop located to the rear of the dwelling on lot 1, to the side of the dwelling on lot 2, and well above the elevation of Bollinger Mill Road and the dwelling on the opposition side of the road, the site is at least partially screened and is certainly not as visible as it would be without the homes and at the same level as Bollinger Mill Road. Due to its location and topography of the site, the shop will have little, if any, impact on the residents and values of adjacent properties on the north side of Louisville Road or the south side of Bollinger Mill Road.

For purposes of this case, the Board's authorization is contingent on the total area of the premises equalling to or exceeding 3 acres and a width of 200 feet at the midpoint of the parcel.

Vehicular access to Mr. and Mrs. Poole's home and the shop is by way of a use-in-common right of way, 20 feet in width, connecting to Bollinger Mill Road. Of the 20 feet, approximately 10 feet is paved driveway. Parking and maneuvering space are located on lots 1 and 2 in front of the shop. Except for the probable effects of headlights of vehicles in the parking and maneuvering area glaring on the dwelling on the southerly side of Bollinger Mill Road--which will be mitigated by the erection of a fence, as required below--there have been no particularly adverse effects resulting from traffic to and from the site. Furthermore, it is unlikely that traffic will become a serious problem in the future.

Mr. Poole plans to widen the driveway adjacent to the connection to Bollinger Mill Road to permit simultaneous entry and exit of vehicles to and from the driveway. However, the entire driveway will--and need not--be widened. By widening of the driveway to allow two-way traffic, vehicular traffic safety will be promoted and the intent and purpose of the zoning ordinance met while relaxing what would otherwise be a burdensome requirement.

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The shop cannot be relocated to comply with the minimum distance requirements of Section 4.12 set forth below and operation of the shop solely for venison, primarily during the hunting season, certainly diminishes any adverse affects that a slaughterhouse would have had on residents and values of adjacent properties.

As portrayed by a photograph, Applicant's Exhibit 1, the shop appears to be a well appointed accessory building. Mr. Poole and members of his family operate the shop without personal advertising. The hours of operation are usually by appointment when Mr. Poole is there--from 3:00 p.m. to 9:00 or 9:30 p.m., and when he is not working at his regular job. Members of the family assist customers when Mr. Poole is not present. Following delivery, the deer are routinely placed in the refrigerated area within the shop. Thereafter, processing of the deer is within the shop. Operation of the shop does not involve chemicals or cause noise, odors, flies, or attract rodents. No business identification sign is proposed in conjunction with operation of the shop.

The shop is subject to the regulations of the Carroll County Health Department and the Department of Natural Resources.

Currently, the hunting season extends from about the middle of September to the end of January. The average number of deer processed in the shop during the last three years has been 250 to 280 deer. Mr. Poole estimated that, due to the design of the shop, he could process 350 to 400 deer during a season. The week after Thanksgiving is the peak period for harvesting deer and vehicular traffic to the shop. During that period, approximately 150 deer may be expected to be processed. Thus, about half of the volume of business occurs during one week of the year. From one to ten deer are brought to the shop by one vehicle. After processing the venison, including freezing, customers are contacted by telephone to arrange for them to pickup their venison.

Customers need only travel a short distance on Bollinger Mill Road to reach the shop from Louisville Road, or slightly further from Sykesville Road. As Bollinger Mill Road ends near Liberty Reservoir and provides only local access to properties east of the shop, there appears to be little likelihood that those who oppose authorization of the shop and are residents of such properties will be affected by vehicular traffic to and from the shop.

As described by an adjoining property owner in Applicant's Exhibit 5, land uses, presumedly in the neighborhood, include two tree services, two construction companies, a plumber, an electrician and a dog kennel. From testimony, a produce stand is evidently operated at or near the end of Bollinger Mill Road, generating vehicular traffic from spring through fall.

A summary of the opponents' objections to the shop includes:

- flies
- noise after 9:00 p.m. and on weekends
- vehicular traffic to and from the shop
- headlights of vehicular traffic coming to and leaving the shop
- stormwater surface runoff from the premises

prior operation of the shop

The opponents' testimony was speculative and no probative evidence was introduced substantiating any real detrimental effects to residents or values of adjacent properties or public interests.

An expert in real estate appraisal testifying on behalf of the opponents noted that residential development in the area was a mixture of older and more recent dwellings, and that in his opinion the shop would depreciate residential property values and adversely affect the marketability of dwellings. Although the expert visited the area, he introduced no evidence to verify his opinion. As he emphasized, his primary concern was the recently enacted disclosure law pertaining to the sale of real estate and that potential buyers of a dwelling in the area would decide not to purchase the property after being informed of the presence of the shop. However, he admitted that this reaction would not be universal, and that if the shop were located elsewhere in the "A" Agricultural District in similar circumstances the reaction of potential buyers would likely be the same.

As expressed in Applicant's Exhibits 5 and 10, the owners of two adjacent properties disagreed with the expert regarding the potentially adverse affects of the shop on homes in the area. Applicant's Exhibit 10 notes that several new homes have been constructed in the area within the last four years, indicating that the shop has not forestalled adjacent residential development.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The site and adjacent properties are zoned "A" Agricultural District as depicted on zoning map 64A. The land use provisions for the "A" Agricultural District are expressed in Article 6. The preamble reads:

The purpose of this District is to provide for continued farming activities, conserve Agricultural land, and reaffirm Agricultural use, activities and operations as the preferred and dominant use of the land within the District, except in an area designated "MR" within the "MRO" Mineral Resource Overlay where mineral resource recovery is also a preferred use. While relatively small existing hamlets, villages and residential communities appear within, as do occasional dwellings, and other uses, the District is primarily composed of lands which, by virtue of their highly productive soils, rolling topography and natural beauty, are the very essence of the County's farming heritage and character. A substantial portion of the residential development in the County has previously taken place in the Agricultural District. This has the effect of taking agricultural land out of production and creating a demand for public facilities and services - roads, water

and sewerage, schools, police and fire protection - in areas where provision for such additional services and facilities is not consistent with the purpose of the Agricultural District. The intent of this article is to recognize the need for and appropriateness of very limited residential development in the Agricultural District, but to prohibit residential development of a more extensive nature. 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.

The Board recognizes that the preamble is not part of the statute, and the statute speaks for itself; the title of the zone, "A" Agricultural District, does not dictate the land uses permitted in the zone; and the zoning ordinance allows subdivision of agriculturally zoned land for residential development. Clark v. County Commissioners for Carroll County, Md., 270 Md. 343, 349-350 (1973).

While agriculture and agricultural operations are the preferred land use within the district (Section 6.1), numerous other uses are listed in Section 6.2 as principal permitted uses, including single and two-family dwellings, protective care homes, group homes, and alternate living units. A variety of other land uses are also principal permitted uses such as churches; recreation areas and centers, including country clubs and swimming pools; riding academies and livery stables; public buildings and properties for recreational, cultural, administrative, or public services such as fire, ambulance or rescue services; and, veterinary clinics and animal hospitals.

Section 6.3, Conditional Uses (requiring Board authorization), paragraph (i) reads:

Food processing and packing plants, wineries, slaughter houses, and plants for the processing of animal by-products; provided such use shall be located three (3) times the distance requirements specified in Section 4.12. (Amended 6/26/80)

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.

Therefore, the minimum distance requirement is 200 feet multiplied by 3 equals 600 feet. (200' x 3 = 600')

The proposed shop evidently complies with the provisions of (a) and (c), but not (b) and (d).

Conditional uses are defined in Section 20 as:

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.

The definition of a variance was amended sometime after the Board's decision in Case 3333. Prior to the amendment, the standard for authorizing variances was both practical difficulty and unreasonable hardship. The new standard is either practical difficulty or unreasonable hardship. The definition reads:

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.

Article 15, Exceptions and Modifications; Sections 15.0, Generally, and 15.5.4, Board of Zoning Appeals, paragraph (d) read respectively:

The regulations specified in this ordinance shall be subject to the following exceptions, modifications, and interpretations;

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.

Article 17, Board of Appeals; Section 17.7, Limitations, Guides and Standards, governs the Board in considering conditional use and variance requests. The provisions read:

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.

The Board is also governed by decisions of the courts. In Turner v. Hammond, 270 Md. 41, 55 (1973), the decision states:

While the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements he does not have the burden of showing affirmatively that his proposed use accords with the general welfare. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material but if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal. (Citation omitted.)

In the decision of Schultz v. Pritts, 291 Md. 1, 20-21, (1981) the court wrote:

Generally, when a use district is established, the zoning regulations prescribe that certain uses are permitted as of right (permitted use), while other uses are permitted only under certain conditions (conditional or special exception use). In determining which uses should be designated as permitted or conditional in a given use district, a legislative body considers the variety of possible uses available, examines the impact of the uses upon the various purposes of the zoning ordinance, determines which uses are compatible with each other and can share reciprocal benefits, and decides which uses will provide for coordinated, adjusted, and harmonious development of the district. (Footnote omitted.) (Citations omitted.)

Because the legislative body, in reaching its determination, is engaged in a balancing process, certain uses may be designated as permitted although they may not foster all of the purposes of the zoning regulations and, indeed, may have an adverse effect with respect to some of these purposes. Thus, when the legislative body determines that the beneficial purposes that certain uses serve outweigh their possible adverse effect, such uses are designated as permitted uses and may be developed even though a particular permitted use at the particular location proposed would have an adverse effect above and beyond that ordinarily associated with such uses. For example, churches and

schools generally are designed as permitted uses. Such uses may be developed, although at the particular location proposed they may have an adverse effect on a factor such as traffic, because the moral and educational purposes served are deemed to outweigh this particular adverse effect.

When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. (Citations omitted.)

Continuing on page 22, the decision reads:

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.)

In Anderson v. Board of Appeals, Town of Chesapeake Beach, Md., 22 Md. App. 28, 39, (1974) the decision pertaining to the authorization of variances reads in relevant part:

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.)

In Steuart Petroleum Company v. Board of County Commissioners of Saint Mary's County, Md., 276 Md. 435, 445 (1975) the court wrote:

In the context of zoning law, a "plebiscite of the neighbors" or "of the neighborhood" refers to instances where the action of an administrative body which effects a change in zoning and deprives an individual of a property right is predicated on the pleasure of the owners of nearby property rather than on a comprehensive plan, which imposes mutual restrictions and confers mutual benefits on all,....(Citations omitted.)

In Entzian v. Prince George's County, Md., 32 Md. App., 256, 262, 263 (1976) the decision quotes from the opinion of the Circuit Court for Prince George's County quoting Rockville Fuel and Feed Company v. Board of Zoning Appeals of City of Gaithersburg, Md., 257 Md. 183 and 193 (1970):

"'Zoning is not a plebiscite'" and therefore testimony in opposition restricted solely to lay witnesses, petitions of objection to the proposal by residents, and testimony amounting to unsupported dislike and fear of (a) project,"...amounted to no evidence at all." (Citation omitted.)

In accordance with the provisions of Section 17.4.10, the Board extended the time for issuing this decision.

REASONING

The land use provisions for the "A" Agricultural District provide for a relatively wide range of uses. Although dwellings including limited residential subdivisions are permitted in the district, agriculture is the preferred land use. Residents of the district can expect to share desirable as well as undesirable experiences that are customary and incidental to agriculture.

The fact that some residents dislike the shop, or fear that it would somehow be particularly detrimental to their interests, does not constitute grounds to deny the request.

In considering the record of this case in light of the standard for conditional uses specified in *Schultz v. Pritts*, the Board finds no probative evidence that operation of the shop as requested and conditioned below would

adversely affect the residents of adjacent properties, the values of those properties or the public interests to a greater extent at this location than elsewhere in the district.

Due to the severely restricted operation of the shop and negligible effects on residents and values of abutting and adjacent properties, strict conformity with the regulations specifying the minimum distance requirements and driveway width is unwarranted. With all activities conducted within the shop except for deliveries, the distance between the shop and adjacent dwellings and residential lots is more than sufficient to protect the residents and values of the properties from being adversely affected. From inspection of Applicant's 12, the driveway is easily over 200 feet in length. To widen the driveway throughout its length would be unproductive and costly, particularly when vehicular traffic safety can be maintained by increasing the width of the driveway at its connection to Bollinger Mill Road to allow simultaneous two-way traffic. In both instances, the variances are merely a relaxation of the requirement, not waivers. Although the requirements are relaxed in each instance the purpose of the zoning ordinance is preserved and the public interests protected.

In considering the record, the Board is convinced that the applicant has satisfactorily met his burden of proof pertaining to both the conditional use and variances.

CONCLUSION

Based on the findings of fact, applicable law and reasoning expressed herein, the conditional use for the meat processing shop solely for venison in the existing building and variances to the minimum distance requirements of 600 feet pertaining thereto are authorized subject to the following conditions of authorization hereby imposed:

1. A fence shall be erected to shield the lights from headlights of customers' vehicles parking on the premises that would otherwise stir the residents of the dwelling on the southerly side of Bollinger Mill Road, parcel 48 as depicted on the site location map, and known as 2125 Bollinger Mill Road.
2. While delivery of deer for processing may be dictated by necessity and not by appointment, deliveries and pickups shall generally not be scheduled after 9:00 p.m.

10/5/93
Date
JDN/bmh/c3853dec.bmh


William Law, Chairman