

Tax Map/Block/Parcel
No. 59-13-301

Building Permit/Zoning
Certificate No. 93-3776

Case 3887

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

APPELLANT: S & B Enterprises, Inc.
Stanley A. Potash, President
1819 Fawn Way
Finksburg, Maryland 21048

ATTORNEY: Charles M. Preston, Esquire
Stoner, Preston & Boswell
188 East Main Street
Westminster, Maryland 21157

APPEAL: An appeal of an October 27, 1993, Notice of Violation, pertaining to operating a newspaper distribution business; and, in the alternative, a conditional use for the newspaper distribution business as a cottage industry, and a variance reducing one minimum required side yard of 25 feet to 12 feet for a detached accessory building

LOCATION: 1819 Fawn Way in Election District 4; Deer Park subdivision, Block A, lot 23 recorded in Carroll County Plat Records in book 5, page 7

BASES: Article 17, Section 17.4; Article 7, Sections 7.2(m), 7.3(b) and 7.5; Article 15, Sections 15.2(b) and 15.5.4(d); Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: March 24, 1994

On March 24, 1994, the Board of Zoning Appeals heard testimony and received evidence concerning the appeal of the Notice of Violation pertaining to operating a newspaper distribution business; and, the alternative request of a conditional use for the newspaper distribution business as a cottage industry, and a variance reducing one minimum required side yard of 25 feet to 12 feet for the detached accessory building (storage shed) at 1819 Fawn Way.

In accordance with the provisions of Article 17, Sections 17.6.6 and 17.7 of the zoning ordinance, and the Board's longstanding policy of visiting sites prior to public hearing, the Board visited the site March 17, 1994. 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 properties to assist in the Board's appraisal of testimony and evidence, either pro or con, presented during the public hearing.

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, and in compliance with the state Open Meetings Act, the Board denied the appeal and

affirmed the October 27, 1993, Notice of Violation. The Board also denied the conditional use for establishment of the newspaper distribution business as a cottage industry, and the variance reducing one minimum required side yard of 25 feet to 12 feet for the storage shed that would otherwise be used in operating the newspaper distribution business.

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

FINDINGS OF FACT

The 0.4600 of an acre lot is located on the southeasterly side of Fawn Way opposite the intersection of Doe Drive within the residential subdivision known as Deer Park.

The appellant, Mr. Potash, asserts that the newspaper distribution business constitutes a home occupation, or in the alternative, requests a conditional use for operation of the newspaper distribution business as a cottage industry, and a variance reducing one minimum required side yard of 25 feet to 12 feet for a storage shed that has been placed in the driveway serving the premises.

Mr. Potash indicated that he is a self-employed, independent newspaper distributor working seven days a week. He serves 1,400 customers. Newspapers are brought to the premises, unloaded and placed in the storage shed where two employees prepare the newspapers for delivery. He estimated that about 90 percent of the deliveries of newspapers to the premises are during daytime. Such deliveries are conducted three times a week. The two employees are non-resident. Mr. Potash argued that the vehicular traffic to and from the premises would not be excessive.

An adjacent resident and homeowner testified that deliveries had been made from 11:30 p.m. to 1:30 a.m. with noticeable noise, and that the business was not appropriate in the residential subdivision.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The site and residential subdivision are zoned "R-20,000" Resident District as depicted on zoning map 59A. The land use provisions for the district are expressed in Article 7. Section 7.2, Conditional Uses (requiring Board authorization), paragraph (m) states:

Cottage industry, provided it is conducted solely within the dwelling.

Section 7.5 specifies a minimum required side yard of 25 feet for conditional uses. As depicted on the plot plan submitted with the appeal, the storage shed is located approximately 12 feet from a side property line.

The definitions of home occupation and cottage industry are defined in

Article 20 respectively:

Home Occupation

Any use of a dwelling, conducted solely by a resident, or use of any accessory building which is incidental or subordinate to the main use of the principal building for dwelling purposes provided that the use:

- a) utilizes space equal to not more than 500 square feet;
- b) does not generate vehicular parking or non-residential traffic to a greater extent than would normally result from residential occupancy;
- c) does not involve the sale of goods in the same form as purchased; and,
- d) involves no evidence from the outside of the dwelling to indicate it is being used for anything other than residential purposes, other than a sign not exceeding 1 foot by 2 feet.

Cottage Industry

Manufacturing or assembly conducted by a member or members of the family residing on the property with no more than one (1) non-resident employee. The use is not a cottage industry if it generates traffic, parking, sewerage or water use to a greater extent than would normally result from residential occupancy; includes inventory or merchandise kept for sale on the premises; changes the external appearance of the dwelling and is visible from the street; includes any outside storage or display, other than a sign not exceeding 1 foot by 2 feet; and creates a hazard to any person or property, results in electrical interference, or becomes a nuisance.

In considering conditional use and variance requests, the Board is governed by provisions of Article 17.7. In considering variances, the Board is also governed by the definition of a variance as expressed in Article 20 and the provisions of Article 15, Section 15.5.4(d). The provisions read respectively:

Section 17.7

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.

Article 20, Definitions.

Variance

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.

Section 15.5.4(d)

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.

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

REASONING

Operation of the newspaper distribution center does not qualify as a home occupation because of the delivery vehicles bringing the newspapers to the site, the two non-resident employees, and the self-evident operation of the business from the storage shed located in the driveway in front of the dwelling and visible to the residents of adjacent properties, as well as the public from Fawn Way.

In considering the request for the conditional use to allow the business to be conducted as a cottage industry in the storage shed and not in the dwelling as required, it is evident and the Board is convinced that the business exceeds the specifications for a cottage industry as quoted above.

However, based on the presumption that the use would qualify as a conditional use, authorization of the request would be contrary to the purpose and intent of the zoning ordinance because of its detrimental affects of deliveries of newspapers to the premises and noise to the peace and quiet of the residential subdivision, the property values of adjacent properties, and their marketability.

As for the variance necessary to locate the storage shed, as a cottage industry, closer than 25 feet to the side property line, the Board finds no evidence of either practical difficulty or unnecessary hardship in use of the property that would justify authorization of the variance. In fact, reduction of the minimum required side yard of 25 feet would simply be a matter of convenience--not of necessity--and is clearly without merit.

CONCLUSION

In accordance with the findings of fact, applicable law, and reasoning expressed herein, the appeal of the October 27, 1993, Notice of Violation,

pertaining to operating a newspaper distribution business is hereby denied and the Notice of Violation affirmed. As the newspaper distribution business does not constitute a cottage industry and because of its otherwise detrimental affects in this location, the conditional use request must, and is hereby, denied. The variance request associated with the conditional use request is not warranted and must also be, and is hereby, denied.

4-29-94

Date
JDN/bmh/c3887dec.bmh

Claude R. Rash
Claude R. Rash, Chairman