

Tax Map/Block/Parcel
No. 39-3-690

Building Permit/Zoning
Certificate No. 93-3805

Case 3890

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

APPLICANT: Frances R. Yost
2845 Albert Rill Road
Westminster, Maryland 21157

ATTORNEY: Charles D. Hollman, Esquire
189 East Main Street
Westminster, Maryland 21157

REQUEST: A conditional use for parking facilities for commercial vehicles; a variance reducing the minimum required lot width of 200 feet to about 198 feet; and, confirmation of an accessory use of an adjacent garage for storage of cleaning supplies and vehicles

LOCATION: 615 Sullivan Road in Election District 7

BASES: Article 6, Sections 6.3(x), 6.4, and 6.7; Article 15, Section 15.5.4(d); Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: December 28, 1993

On December 28, 1993, the Board of Zoning Appeals heard testimony and received evidence concerning a conditional use for parking facilities (area) for commercial vehicles; a variance reducing the minimum required lot width of 200 feet to about 198 feet; and, confirmation of an accessory use of an adjacent garage for storage of cleaning supplies and vehicles at 615 Sullivan Road.

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 December 22, 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 properties 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 approved the conditional use and variance, and confirmed the accessory use of an adjacent garage for storage of cleaning supplies and vehicles, subject to conditions of authorization imposed below.

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

FINDINGS OF FACT

Ms. Yost's property, a two acre lot located on the east side of Sullivan Road north of Lemmon Road intersection, is identified as P. (Parcel) 690 on the site location map. The property is improved with a dwelling and detached garage, 40 feet by 40 feet. The garage is located to the rear of the dwelling and slightly more than 200 feet from Sullivan Road. Due to the irregular configuration of the lot, the width of lot as measured at the midpoints of the side property lines is 198.26 feet, 1.74 feet less than the minimum requirement of 200 feet. While the difference must be addressed, the variance is essentially a technicality--not a significant relaxation of the lot width requirement.

The lot was subdivided by deed from Ms. Yost's parents' property, Parcel 350, which abuts the north, east and south sides of the lot. The area of Parcel 350 is 21 acres. Ms. Yost now resides elsewhere and rents the home as a single family dwelling.

Ms. Yost's parents resided there during the time that they operated a wholesale egg distribution business on the premises. As portrayed by Applicant's Exhibit 2, the property was improved with a large barn, a small barn, two large buildings used in the egg distribution business, and the dwelling. The egg distribution building and small barn to the rear of the dwelling, and the large barn in front of the remaining egg distribution building have been demolished. As observed by the Board during the site visit, the egg distribution building adjacent to the northerly side property line apparently has been neglected since the business closed, and has been decaying for at least several years. A photograph of part of the building, Applicant's Exhibit 11, fails to depict the actual deterioration of the building. Regardless of its appearance and deterioration, at least part of the building is used for storage. Since the egg distribution business ceased about 1960, the parcel has apparently been used for crops and pasturing. Authorization of this request does not preclude use of the 21 acre parcel for agricultural purposes.

In 1981, Ms. Yost started the business of providing cleaning services. At that time she resided in the dwelling and used part of the egg distribution building to the rear of the dwelling in her business. Employees reported to the premises, changed to company vehicles, and drove to designated job sites. The business has been successful and has grown in recent years.

Although opponents testified regarding establishment and operation of the business without authorization by the zoning administrator, the Board is not the enforcement agency for the zoning ordinance. Furthermore, the previously unauthorized operation of the business is not an issue in this case.

In 1991-1992, the egg distribution building to the rear of the dwelling was demolished and the existing detached garage erected. As portrayed on the plot plan, Applicant's Exhibit 1, the proposed parking area of 70 feet by 90 feet is located to the rear of the garage on a portion of the concrete pad that was part of the egg distribution building's floor. The dimensions of the parking area are sufficient to comply with the minimum requirements governing the parking spaces and access drives.

Part of the "U" shaped driveway providing vehicular access to the garage and parking area is located on Ms. Yost's parents' parcel. Although the width of the driveway is less than the minimum requirement of 20 feet for two-way traffic, the driveway can be made to comply with the provisions of the zoning ordinance.

The purpose of this request is for Ms. Yost to be allowed to park the commercial vehicles used in her business to the rear of the garage. Ordinarily, the business hours are 8:00 a.m. to 6:00 p.m. Monday through Thursday, 8:00 a.m. to 10:00 p.m. Friday, and 9:00 a.m. to 4:00 p.m. every other Saturday. Employees drive to the premises, park their vehicles, report, receive their work assignments, and proceed in company vehicles to their assignments, normally returning at the end of work to park the company vehicles and depart in their own vehicles. Presently, Ms. Yost employs eight to ten people, and operates five commercial vehicles. The commercial vehicles consist of automobiles, station wagons, and vans. Up to eight commercial vehicles will be parked to the rear of the garage when not in use. Employees' vehicles will be parked there while the employees are using the commercial vehicles. As discussed during the hearing and conditioned by the Board, not more than twelve personal (noncommercial) vehicles may be parked there in conjunction with this authorization. The parking area complies with the minimum yard requirements as noted below. Cleaning supplies and equipment used in operation of the business are stored within a small area of the garage, and either commercial or personal vehicles may be parked in the garage. (Applicant's Exhibits 5a - c). No hazardous materials are stored on the premises.

Although parking of the commercial vehicles will increase vehicular traffic to and from the site, the traffic will not be excessive for the site or Sullivan Road, nor unduly affect the residents of adjacent properties. The parking area will not result in noise other than vehicles arriving and leaving the property, and will not create odors, dust, gas, smoke, vibrations, or glare that would adversely affect the residents or values of adjacent properties.

Mr. Norm Rebert, Jr., having power of attorney for his father, owner of the adjoining Parcel 350 and Mr. Yost's father, testified in behalf of the request. In addition, several persons appeared in support of the request and six statements, identified as Applicant's Exhibits 6 through 11, were submitted on behalf of the request. The gist of the statements is that the parking area will not be detrimental to the neighborhood.

From inspection of the site location map, large parcels of land are located in the neighborhood of Ms. Yost's property. The presence of large parcels suggests that agriculture is the principal use of the land. Although some residential subdivision has occurred to the north and south on Sullivan Road, only lot 2 of Pleasant Meadow subdivision, Section 1 faces Ms. Yost's property. The lot is improved with a dwelling owned by Mrs. Rebecca E. Valianti. The dwelling located to the north of Mrs. Valianti's home is on lot 3 of the subdivision and is owned by Mr. and Mrs. George T. Dryhurst. The next lot, which is improved with a dwelling owned by Mr. Bertsch, is lot 1 of Section 2 of the subdivision. Neither Mr. and Mrs. Dryhursts' nor Mr. Bertsch's lots confront Ms. Yost's property, and their respective dwellings are a significant distance from

the detached garage and proposed parking area to the rear of the garage. The land abutting the rear of their lots has not been subdivided, and is presumedly used for agricultural purposes.

Opponents of the request expressed fears of establishing a precedent with authorization of the request. In addition, the opponents cited disturbing noise of employees and vehicles, constant vehicular traffic, and adverse affects to real property values and marketability of adjacent dwellings as reasons that the request should be denied. However, no probative evidence was introduced to substantiate any of their allegations.

With the parking area located behind the garage, and landscape screening established in front and to the northerly side of the garage and parking area, the parking area will not be readily visible from the homes of Mrs. Valianti, Mr. and Mrs. Dryhurst or Mr. Bertsch. The landscape screening will enhance the appearance of the property and minimize visibility of the parking area that could otherwise be argued would be detrimental to the neighbors' peaceful enjoyment of their homes and property values. As proposed and in compliance with the conditions of authorization imposed below, the Board is convinced that the parking operation will not disturb neighboring properties.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The site and surrounding properties are zoned "A" Agricultural District as depicted on zoning map 39A. The land use provisions for the district are expressed in Article 6. Although agriculture is the preferred use in the district, single and two family dwellings are allowed as principal permitted uses. Sections 6.1 and 6.2(b). Section 6.3 lists numerous conditional uses that require Board of Zoning Appeals authorization. Subsection (x) reads:

Parking facilities for commercial vehicles, not to include truck or motor freight terminals, provided the Board shall have the authority to limit the number of vehicles based on the considerations enumerated in Section 17.6 and provided the Board determines sufficient space is available to park the vehicles without disturbance to neighboring properties. Notwithstanding the area requirements of Section 6.7, the Board may consider applications on site of less than 3 acres.

The citation of Section 17.6 is no longer correct. The applicable provisions are now Section 17.7.

The minimum requirements for lot area, lot width and yards are specified in Section 6.7. For conditional uses not otherwise listed, the minimum requirements are:

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

However, the minimum lot area requirement is superseded as stated above.

Conditional uses and variances are defined respectively in Article 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.

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; Section 15.0, Generally, and Section 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,

which govern the Board in considering conditional use and variance requests 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.

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 the interest of brevity, and the fact that reduction of the minimum required lot width of 200 feet to 198 feet is not considered significant, no court decisions pertaining to the authorization of variances will be cited.

The conditional authorization of this request was made and announced publicly by the Board in compliance with the state Open Meetings Act December 28, 1993, following completion of the hearing of the case. However, the Board extended the time for issuing this decision in accordance with the provisions of Section 17.4.10.

REASONING

The existing use of the site and adjacent properties is consistent with the land use provisions of the "A" Agricultural District, and there is not probative evidence that establishment of the parking area, as conditioned below, will adversely affect the orderly growth of the neighborhood.

Adjacent dwellings that were constructed after 1950 were presumably constructed with awareness of the egg distribution business, including vehicular traffic to and from the premises until the business ceased, and the gradual deterioration of the buildings after the business ceased. The removal of the small barn and egg distribution building to the rear of Ms. Yost's home have been aesthetically beneficial to the property as well as the adjacent properties. In addition, the appearance and location of the new detached garage compliments and enhances the value of Ms. Yost's property.

With regard to the limited use of the garage for storage of cleaning supplies and equipment incidental and subordinate to operation of the business, the Board is convinced that the use qualifies as an accessory use to the parking facilities for commercial vehicles in accordance with the provisions of Section 6.4(a) of the zoning ordinance.

The Board's responsibility is to determine from the evidence before it if the proposed conditional use conforms with the provisions of the zoning ordinance and either approve or deny the request in light of the standards expressed in

decisions of the courts. Unfavorable opinions, fears, or unsubstantiated allegations expressed by opponents are insufficient grounds to deny the conditional use.

From the record, there is no probative evidence before the Board that authorization of the parking area would be contrary to the standards governing conditional uses. In fact, the Board is convinced that Ms. Yost has met her burden of proof that the proposed use complies with the intent and purpose of the zoning ordinance, including the provisions of Section 17.7, as well as the standard expressed in *Schultz v. Pritts, supra*.

CONCLUSION

Based on the findings of fact, applicable law and reasoning expressed herein, the conditional use, variance and confirmation of use of the detached garage as an accessory use to the conditional use are authorized in accordance with the Board's determination at the conclusion of the public hearing, subject to the following conditions of authorization:

1. The parking area for the commercial vehicles shall be located in accordance with Ms. Yost's testimony and the plot plan submitted with the application in this case. (Applicant's Exhibit 1.)
2. Not more than eight commercial vehicles shall be parked within the designated area, and not more than twelve personal vehicles of employees of the business shall be parked on the premises at one time.
3. The driveway providing vehicular access between Sullivan Road and the parking area to the rear of the garage shall be increased to 20 feet in width at, and for sufficient distance from the connection with Sullivan Road to allow two-way traffic in the interest of vehicular traffic safety. Either an agreement assuring Ms. Yost's right to use and improve the driveway where located on her parents' property shall be supplied to the Board of Zoning Appeals for inclusion in the file of this case, or vehicular access shall be restricted to the driveway located wholly on the property of Ms. Yost.
4. Landscape screening consisting of one row of evergreen trees, such as white pines, hemlocks, or similar species, 7 to 8 feet

in height shall be planted 10 feet on centers as generally indicated on the plot plan identified as Applicant's Exhibit 1. As depicted on the plot plan, the trees are to be planted in front of the garage across the width of the lot except where they would conflict with the driveway, and paralleling the northerly side property line from a point opposite the front of the garage to a point opposite approximately 25 feet beyond the rear of the proposed parking area. Except for good cause provided to the zoning administrator, the landscape screening shall be planted in 1994, and maintained as long as the parking area is used for parking commercial vehicles.

2-7-94

Date

Claude R. Rash

Claude R. Rash, Chairman

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