

Tax Map/Block/Parcel
No. 66-5-277

Building Permit/Zoning
Certificate No. 93-3917

Case 3895

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

APPLICANT: William D. Arterburn
2473 Braddock Road
Mount Airy, Maryland 21771

REQUEST: A conditional use for a contractor's equipment storage facility, and variances to the minimum distance and yard requirements pertaining thereto

LOCATION: 2473 Braddock Road in Election District 9; Gosnell Estates subdivision, Section 1, lot 1 recorded in Carroll County Plat Records in book 17, page 18

BASES: Article 6, Sections 6.3(e)(1) and 6.7; Article 4, Section 4.12; Article 15, Section 15.5.4(d); Article 20; Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: January 26, 1994

On January 26, 1994, the Board of Zoning Appeals heard testimony and received evidence concerning a conditional use for a contractor's equipment storage facility (storage area), and variances to the minimum distance and yard requirements pertaining thereto at 2473 Braddock 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 denied the conditional use and variances necessary for the establishment of the conditional use.

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

FINDINGS OF FACT

This application stems from investigation by Zoning Enforcement of a complaint regarding storage of contractors' equipment on the premises.

As depicted by the site location map, the 3.0375 acre lot is located on the north side of Braddock Road about one-half of a mile east of Ridge Road (Md. Rt. 27). The lot was created with the recordation of a residential subdivision known

as Section 1 of Gosnell Estates and is identified as lot 1.

The lot is improved with a single family dwelling located about 300 feet from the front property line and two accessory buildings located in the rear yard near the westerly side property line. The topography of the lot rises from Braddock Road to the dwelling. When viewed from Braddock Road, the property is impressive and consistent with the residential character of adjacent homes. The detached accessory buildings and rear yard are not visible from Braddock Road. The accessory building nearest the dwelling is a workshop, 30 feet by 40 feet. A pole shed, 30 feet by 40 feet, abuts the northerly side of the workshop. As portrayed by an aerial photograph, Protestants' Exhibit 2, and less accurately by the plot plan filed with the application, the accessory buildings are located opposite the dwelling to the east on adjoining lot 2 of the subdivision. The aerial photograph also portrays a surfaced parking and maneuvering area serving the accessory buildings and extending more than half the width of the lot toward the dwelling on lot 2.

Mr. Arterburn, who has resided there since 1979, is a self employed contractor specializing in the installation of aluminum siding with new home construction. During the last five or six years Mr. Arterburn has placed equipment and materials along the westerly side property line, north of the pole shed. In a statement submitted before the public hearing, Mr. Arterburn listed the equipment to be parked or stored in the proposed storage area as one utility trailer and two van bodies, each 16 feet in length, and one 1962 International dump truck. During the public hearing, Mr. Arterburn indicated that he owned three van bodies and two flatbed trailers, one 14 feet in length and the other 16 feet in length, that could be parked or stored in the proposed storage area. The equipment is usually moved from job site to job site without being brought back to the premises. However, due to the economy and lack of continuous jobs he has had to store equipment, including transportation trailers and van bodies used for storage, in the rear yard of his home.

As shown on the plot plan submitted with the application, the proposed storage area of 30 feet by 40 feet is located in the northwest corner of the rear yard abutting both the westerly side property line and the rear property line. The location does not comply with the minimum required side yard of 30 feet and rear yard of 50 feet specified in Section 6.7 of the zoning ordinance. The distance between the storage area and the dwelling on lot 2 is noted as not less than 350 feet.

State tax assessment records indicate that the area of lot 2 is slightly more than three acres. The minimum distance requirement applicable to the proposed storage area is 400 feet from the curtilage area of the dwelling on lot 2. However, neither the plot plan nor the aerial photograph, Protestants' Exhibit 2, portrays the existing improvements, including an inground swimming pool located in the rear yard. Consequently, the distance between the proposed storage area and the curtilage area of lot 2 is significantly less than 350 feet. (See Applicable Law below).

Except for the fact that the proposed storage area would not be visible from Braddock Road, Mr. Arterburn presented no testimony or evidence to substantiate either unreasonable hardship or practical difficulty in the use of the property necessary to justify authorization of the variances. Mr. Arterburn also failed to establish that the storage area would not disturb the peace and

quiet of nearby residents or depreciate the values of their properties.

An adjoining property owner to the west and north of the proposed storage area, Mr. Robert Shaw, and an adjoining property owner of lot 2 to the east, Dr. Sureja, reluctantly appeared before the Board and testified in opposition to authorization of the conditional use and variances. Both Mr. Shaw and Dr. Sureja described unacceptable effects and difficulties that each has experienced because of Mr. Arterburn's use of his property in conjunction with his contracting business. They also expressed concerns regarding detrimental affects that the storage area would have upon the use and value of their properties. Their testimony was credible and convincing.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The site and adjoining properties on the north side of Braddock Road are zoned "A" Agricultural District as depicted on zoning maps 61B and 66B. The properties located on the southerly side of Braddock Road in the area of Mr. Arterburn's property are zoned "R-40,000" Residence District as depicted on the same zoning maps. The land use provisions for the "A" Agricultural District are expressed in Article 6. Section 6.3, Conditional Uses (requiring Board authorization), paragraph (e)(1) reads:

Contractor's equipment storage facility located in an area of the property comprising no more than 43,560 square feet and which shall comply with at least twice the distance requirements of Section 4.12.

For conditional uses not specifically listed, the minimum lot area, lot width and yard requirements specified in Section 6.7 are:

Lot Area	-	3 acres
Lot Width	-	200 feet
Front Yard	-	40 feet
Side Yard	-	30 feet
Rear Yard	-	50 feet

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:

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

As Section 6.3(e)(1) specifies, the use is subject to twice the distance requirements, and the minimum required distance is 400 feet.

Article 20 defines the following terms:

Conditional Uses

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.

Contractor's equipment storage facility

Property used for the parking or storage of equipment, vehicles or machinery used in construction; including, but not limited to, equipment, vehicles or machinery used in excavating, earthmoving, paving or in the hauling of earth and building materials.

Curtilage

Buildings and areas in close proximity to a dwelling which are habitually used for residential purposes.

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.

(Note: Section 15.2 is not relevant to this case, and Section 17.2 specifies the general powers of the Board.)

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 the decision of *Schultz v. Pritts*, 291 Md. 1, 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*, 22 Md. App., 38 the decision 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. (Citations omitted.) 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.)

Denial of the conditional use and variances was announced publicly by the Board in compliance with the state open meetings act January 26, 1994, following completion of the hearing of the case.

REASONING

In considering the various factors of Section 17.7 relative to the conditional use and variances necessary to permit establishment of the conditional use, and the standard expressed in *Schultz v. Pritts, supra*, governing conditional uses, the Board is convinced that the storage area would be incompatible with the residential subdivision; particularly harmful to the values of adjoining properties; an inappropriate use of the property and detrimental to the orderly growth of the area; and, contrary to the purpose of the zoning ordinance.

Accordingly, the conditional use must be denied.

In weighing the provisions of Section 17.5.4(d) and the standards expressed in *Anderson v. Board of Appeals, supra*, relative to the requested variances reducing or waiving the minimum requirements governing location of the storage area, there is no evidence of either unreasonable hardship or practical difficulty in the use of the property that would justify authorization of the variances.

Therefore, the variances necessary for establishment of the storage area are without merit and must be denied.

CONCLUSION

In accordance with the findings of fact, applicable law and reasoning expressed herein, the conditional use and variances pertaining thereto must be, and are hereby, denied.

Feb-25-94
Date

Claude R. Rash
Claude R. Rash, Chairman