

Tax Map/Block/Parcel
No. 46-15-17

Building Permit/Zoning
Certificate No. 94-0604

Case 3912

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

APPLICANT: Herbert Starlings
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Finksburg, Maryland 21048

ATTORNEY FOR APPLICANT: Clark R. Shaffer, Esquire
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REQUESTS: A conditional use for an indoor shooting range and sales of firearms within part of the existing building and variances reducing the minimum distance requirements of 1,000 feet for the range and 100 feet for a business sign

LOCATION: 535 Old Westminster Pike in Election District 7

BASES: Article 12, Section 12.2(b); Article 10, Section 10.2(a); Article 6, Sections 6.3(p) and 6.7; Article 4, Section 4.12; Article 14, Division II, Section 14.23(f); Article 15, Section 15.5.4(d); Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: May 25, 1994; **CONTINUED:** June 23 and July 1, 1994

On May 25, 1994, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use and variance requests. The public hearing was continued June 23 and July 1, 1994.

In accordance with the provisions of Article 17, Sections 17.6 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 May 23, 1994, and revisited the site June 20, 1994, prior to the continuation of the public hearing on June 23. The purpose of the visits 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 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 reducing the minimum distance requirements of 1,000 feet necessary for establishment of the conditional use.

Although a variance request of the minimum distance requirements of 100 feet for a business sign to identify occupants of the building, including the firing range was requested, the Board declined to decide the matter in conjunction with denials of the conditional use and variances reducing the minimum distance requirements of 1,000 feet for the firing range.

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

FINDINGS OF FACT

As depicted by the site location map used in this case and the plot plan submitted with the application, the building in which the proposed firing range would be established is located on the south side of Old Westminster Road about 1,000 feet west of Maryland Route 97 intersection. As noted on the application, the area of the parcel is four acres, more or less. The firing range would occupy an area within the rear of the building as portrayed by Applicant's Exhibit 2. The firing range would include a lobby and sales area, a classroom for about twelve students, storage rooms, and would be designed for firing handguns and rifles chambered for .22 caliber rim fire ammunition. Sound abatement measures would be incorporated into development of the firing range so that little, if any, sound from firing would be heard outside. Maximum occupancy of the premises was estimated to be 62 people. The lobby and sales area would be the largest area to be occupied by people.

As depicted by zoning map 46A, Protestant's Exhibit 9A, the parcel is zoned "I-R" Restricted Industrial District. The zoning on the opposite side of Old Westminster Pike and abutting the parcel on the easterly side is "R-10,000" Residence District. The zoning to the southwest and west is "I-R" Restricted Industrial District. Homes are located within the residential zoning district opposite from, and adjacent to, the parcel. The principal parking area serving the facility is located between the building and the residential subdivision to the southeast. A stockade fence, eight feet in height, is proposed to screen the parking area from the residential subdivision. Additional parking would be available in front of the building on the premises.

Protestants of the conditional use and variances to the minimum distance requirements pertaining to the firing range presented considerable testimony and evidence, citing the residential characteristics of the properties on the opposite side of Old Westminster Road and those abutting the parcel to the east; generation of vehicular traffic to and from the premises; disturbance of the peace and quiet of the adjoining residential community; detrimental effects to the marketability of adjacent homes and consequent depreciation of residential property values; inappropriate use of the building for the firing range; and, purpose and intent of the zoning ordinance.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The property is zoned "I-R" Restricted Industrial District as depicted on

zoning map 46A. The land use provisions for the district are expressed in Article 12. Section 12.2(b) provides that principal permitted or conditional uses allowed in the "B-L" Local Business District and "B-G" General Business District are subject to Board authorization as conditional uses. Firing ranges are first permitted as conditional uses within the "A" Agricultural District, subject to five times the minimum distance requirements, expressed in Section 4.12, or 1,000 feet from residential zoning districts and lots less than three acres occupied or intended to be occupied by a dwelling. These provisions also apply in the business and industrial districts.

In considering conditional use and variance requests, the Board is governed by the provisions of Article 17, Section 17.7. The provisions of Article 15, Sections 15.0 and 15.5.4 are also applicable in considering variance requests.

In addition to the provisions of the zoning ordinance, the Board is governed by decisions of the courts.

REASONING

Considerable testimony and evidence were presented both in favor of, and in opposition to, the requests.

Although the existing building and parking facilities could be easily adapted to accommodate the proposed firing range, establishment of the firing range so near the residential subdivision would not be an appropriate use of the building and land, and relaxation of the minimum distance requirements of 1,000 feet governing the firing range would simply be a matter of convenience in this instance. Accordingly, the variances are not warranted.

In considering the provisions of Section 17.7 of the zoning ordinance, and the standard governing conditional uses as expressed in the case of *Schultz v. Pritts*, 291 Md. 1, 22, (1981), the Board is convinced that establishment of the firing range as proposed would have particularly adverse effects upon the owners and residents of adjacent homes and the values of their properties. Consequently, the firing range would have a greater adverse effect in this location than in other locations in the "I-R" Restricted Industrial District and must be denied.

CONCLUSION

Based on the findings of fact, applicable law and reasoning expressed herein, the conditional use and variances to the minimum distance requirements pertaining to the firing range are hereby denied.

For purposes of this case, the variance for reduction of the minimum distance requirements for the business sign is moot.

7-22-94
Date

Claude R. Rash
Claude R. Rash, Chairman