

Tax Map/Block/Parcel
No. 37-16-335

Building Permit/Zoning
Certificate No. 94-3804

Case 3983

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Beverly K. Cecil
2522 Uniontown Road
Westminster, Maryland 21158

ATTORNEY: J. Brooks Leahy, Esquire
Dulany & Leahy
127 East Main Street
P.O. Box 525
Westminster, Maryland, 21158

REQUEST: An appeal of the Zoning Administrator's decision denying a variance reducing the minimum required lot area of 3 acres to about 2.618 acres to allow a private stable for one horse in the rear yard of the premises

LOCATION: 2522 Uniontown Road in Election District 2; The Meadows subdivision, Section 1, lot 17 recorded in the Carroll County Plat Records in book 10, page 88

BASES: Article 6, Section 6.4(h); Article 5, Section 5.3(b); Article 15, Section 15.5.4; Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: February 24, 1995

On February 24, 1995, the Board of Zoning Appeals heard testimony and received evidence during a *de novo* hearing concerning an appeal of the zoning administrator's October 13, 1994, decision denying a variance reducing the minimum required lot area of 3 acres to about 2.618 acres to allow a private stable (stable) for one horse in the rear yard of the premises of 2522 Uniontown Road. The appeal was timely filed November 10, 1994.

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 February 1, 1995. The purpose of the visit was for the Board to view the site and adjacent properties so that the Board would 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 Board also visited the site December 22, 1994, prior to a scheduled, but postponed, hearing December 28, 1994.

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, the Board approved the variance, reversing the zoning administrator's decision. The pertinent findings determining the Board's decision include:

FINDINGS OF FACT

The 2.618 acre lot is located on the north side of Uniontown Road, 800 feet west of S Frizzellburg Road intersection. It is surrounded by other lots within The Meadows subdivision. As the site location map and Applicant's Exhibit 7 portray, lots 12-16 to the west and lot 18 to the east are of similar configuration, approximately 200 feet in width by 600 feet in depth--the distance from the front property line to the rear property line. Larger lots are located on the south side of Uniontown Road and still larger lots are located to the north of the site.

Ms. Cecil purchased the lot in 1982 and had her home constructed in 1984. When she was considering buying the lot, the seller and she presumed that she would be able to keep a horse there.

Acquisition of additional land to increase the area of lot 17 to comply with the requirement of a lot of three acres or more is not feasible.

As depicted by the plot plan submitted with the Notice of Appeal, Ms. Cecil's home is located 100 feet from the front property line. The proposed stable is shown in front of a stand of (locust) trees 280 feet from the rear of her home and 82 feet from the side property lines. As noted on the plot plan, the stable which is referred to as a run in shed, 10 feet by 12 feet, will be "...more than 300 feet from any dwelling on [an] adjoining lot."

Ms. Cecil proposes to use the stable to shelter one horse; feed and care for the horse, so that the horse will not be dependent upon grass for food, and erect a fence to keep the horse on the premises. More than an acre of the rear yard will be fenced. Ms. Cecil plans to ride the horse there and elsewhere.

Topographically, the proposed stable will be considerably lower than Ms. Cecil's home and the dwellings to each side. To a lesser extent, the stable will be lower than the topography of lots 16 and 18 adjacent to the site. (Applicant's Exhibits 3-6.)

Ms. Cecil has planted evergreen trees ten feet inside and parallel to the side property lines. Eventually, these trees will partially screen visibility of the rear yard, including the stable. (Applicant's Exhibits 3-6.)

Mr. and Mrs. Cross, adjoining property owners to the north or rear of Ms. Cecil's lot at 832 S Frizzelburg Road, Section 1, lot 8 of The Meadows, testified on behalf of Ms. Cecil. Their property also adjoins the rear property lines of lot 16 to the west and lot 18 to the east. They presently keep a horse and a pony there. Mr. and Mrs. Cross support the request. (Also see 11/22/94 letter.)

Mr. Eugene Aldrich, who owns and resides at 838 S Frizzelburg Road, Section 4, lot 9 of The Meadows which adjoins the property of Mr. and Mrs. Cross, testified on behalf of Ms. Cecil. Mr. Aldrich presently keeps two horses on his property. In his opinion, horses do not adversely affect either nearby residents or properties.

Mr. and Mrs. Larry Baker, who reside and keep horses at 2525 Uniontown Road, Section 4, lot 23 of The Meadows, located diagonally west and on the south side of Uniontown Road support Ms. Cecil's request. (Applicant's Exhibit 8.)

Harold L. Baumgartner and Audrey S. Baumgartner, who own and reside at 2524 Uniontown Road, Section 1, lot 16 of The Meadows, do not object to the request provided that the stable be at least 187 feet from a dwelling on an adjoining lot. (Applicant's Exhibit 11.)

Mr. and Mrs. Joseph Dippery, who have resided since 1976 at 2521 Uniontown Road, Section 4, lot 21 of The Meadows, on the south side of Uniontown Road do not object to Ms. Cecil's request to erect a small stable for her horse. (Applicant's Exhibit 12.)

Mr. and Mrs. Wayne Myers, who reside at 2200 Uniontown Road, do not object to Ms. Cecil keeping her horse on her property, "...providing the animal is properly housed and cared for." (Applicant's Exhibit 9.)

Raymond T. Murphy and Patricia W. Murphy, designed The Meadows subdivision to accommodate residents who wish to keep horses and other farm animals except pigs. Mr. and Mrs. Murphy reside at 2523 Uniontown Road, Section 4, lot 22 of The Meadows, which partially confronts Ms. Cecil's property. Mr. and Mrs. Murphy support the request. (Applicant's Exhibit 10.)

Applicant's Exhibit 7 depicts properties in the neighborhood where horses, or horses and cattle are kept, and one property where ducks are kept. Evidently, geese are also kept at the same property.

Mr. Michael J. Harris and Ms. Mariko T. Bleyhl, who own and reside at 2520 Uniontown Road, Section 1, lot 18 of The Meadows subdivision appeared before the Board with their attorney, Charles A. Fineblum, Esq. to oppose the request. Their property abuts Ms. Cecil's lot along the east side. They testified:

- they purchased the property in May of 1994 because of its amenities
- they relied on the provisions of the zoning ordinance regulating private stables and livestock
- they would not have purchased their home if horses or livestock had been present on Ms. Cecil's lot
- their home is downwind from the proposed stable and they will be adversely affected by noise, odors and insects associated with horses
- the proposed site is not suitable for the proposed stable due to the topography and storm water drainage
- the proposed area for the stable is inadequate and inhuman for a horse
- the stable will be detrimental to their enjoyment of their property

- the stable will depreciate the value of their property

Neither Mr. Harris nor Ms. Bleyhl introduced any probative evidence in substantiation of their allegations.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The lot and adjacent properties are zoned "A" Agricultural District as depicted on zoning map 37B. The land use provisions for the district are expressed in Article 6.

The preface of the article states:

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 an 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.

Section 6.1, Agriculture Preferred Use, reads:

Agriculture is the preferred use in the Agricultural District. All agricultural operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to

restriction because it interferes with other uses permitted in the District.

Section 6.4 Accessory Uses, paragraph (h), specifies:

One private stable as regulated in Section 5.3(b).

Article 5 contains the land use provisions for the "C" Conservation District, including Section 5.3, Accessory Uses, paragraph (b), which reads in relevant part:

(Added 6/6/72) One private stable* as defined in Section 20.34A in a rear yard on a lot or tract of three acres or more and as hereinafter regulated:

- (3) No less than 1/4 the distance requirements of Section 4.12 provided 300' from a dwelling on an adjoining lot and/or 300' from a dwelling on a lot across the road from the lot in question.

Note: The requirement for a lot or tract of three acres or more for a private stable is not included in Section 5.5, which specifies the minimum lot area, lot width and yard requirements for uses in the "C" Conservation District.

Article 4, General Provisions; Section 4.12, Distance Requirements specifies in relevant part:

Any uses or buildings subject to compliance with this section shall be located at least 200 feet from:

(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;

Terms defined in Article 20 are no longer identified by Section number.

A private stable (stable, private) is defined in Article 20 as:

An accessory structure designed for the shelter, feeding and care of no more than two (2) horses, ponies or cattle or equivalent numbers of sheep, goats or other ruminants, maintained on the property as pets or for domestic use, as distinguished from agricultural or commercial stables.

An accessory use is defined in Article 20 as:

A use of land or all or part of a building which is customarily incidental and secondary to the principal use of the property and which is located on the same lot

with the principal use.

Article 15, Exceptions and Modifications, Section 15.0, Generally, and Section 15.5.4, Board of Zoning Appeals, read respectively and in relevant part:

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

(a) Appeals of decisions made pursuant to this Section 15.5 may be made to the Board within thirty (30) days of the date of the Zoning Administrator's decision in accord with Section 17.4.

(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.

Article 17, Board of Appeals; Section 17.7, Limitations, Guides and Standards, states:

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 case of *Anderson v. Board of Appeals, Town of Chesapeake Beach, Md.* 22 Md. App. 28, 39 (1973) the decision reads:

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 accordance with the provisions of Article 17, Section 17.10.4, the Board extended the time for issuing this decision.

REASONING

When the provisions for private stables were added to the zoning ordinance in 1972, the minimum required lot area for a dwelling in "C" Conservation District was three acres. To maintain consistency with the minimum required area for a dwelling, a lot or tract of three acres or more was specified for the accessory use. As of September 1, 1993, Section 14.5.2 was amended to allow cluster subdivisions in the "C" Conservation District, with a minimum required lot area of two acres for a dwelling. (Sections 5.5 and 14.5.2.)

The minimum requirements governing location of a private stable specified in Section 5.3(b) clearly do not dictate a minimum area requirement for a private stable, either expressly or indirectly. Thus, the land necessary for the establishment of a private stable in the rear yard of a three acre lot or tract is much less than three acres. However, Section 5.3(b) does not specify a minimum area.

In the "A" Agricultural District although dwellings are principal permitted uses, they are not the preferred land use, and the amenities of agriculture prevail over residential amenities. In the opinion of the Board, the characteristics of a private stable are more closely associated with agricultural amenities than residential amenities.

In designing The Meadows subdivision, Mr. and Mrs. Murphy sought to combine the amenities of agriculture and a residential community. From inspection of Applicant's Exhibit 7, all other lots in the various sections of the subdivision are larger than lots 12-18 of Section 1, even though the minimum required lot area for a dwelling in the agricultural district is one acre.

The character of the subdivision is, in fact, that of a "farmette community", as Mr. and Mrs. Murphy intended it to be.

Although a private stable could possibly be located within the rear yard of a dwelling on a one acre lot, it would be improbable that the private stable could comply with the location requirements expressed in Section 5.3(b), except for isolated lots.

The circumstances are different in this case.

For Ms. Cecil, the configuration and area of the lot allow the private stable to be located in the rear yard in excess of the minimum requirements specified in Section 5.3(b)3, and provide more than adequate space for the horse.

The provisions of the zoning ordinance ^{do} not preclude Ms. Cecil from erecting a fence along the property lines of her lot; erecting an utility building or shed in the rear yard; or feeding, caring for, and riding a horse on

her lot. The issue is the use of a shed on a lot of less than three acres to provide shelter for a horse.

In considering the provisions of Section 17.7 relative to establishing the private stable as an accessory use for one horse on the 2.618 acre lot, the Board finds no probative evidence that the stable will unduly affect the residents of adjacent properties, the values of those properties, or public interests.

With respect to the standards expressed in *Anderson v. Board of Appeals, Town of Chesapeake Beach, Md.*, the Board is convinced that:

- denial of the variance request reducing the minimum requirement of a three acre lot or tract to 2.618 acres would be "...unnecessarily burdensome"
- authorization of the variance is reasonable and appropriate, and will not adversely affect the owners of adjoining properties or the values of those properties
- reduction of the minimum requirement of a three acre lot to 2.618 acres, a difference of 0.382 of an acre or 16,639 square feet, is consistent with the purpose of the zoning ordinance

The fact that Mr. Harris and Ms. Bleyhl are opposed to Ms. Cecil establishing a stable in the rear yard of her lot is not sufficient cause for the Board to deny the variance.

CONCLUSION

Based upon the findings of fact, applicable law, and reasoning expressed above, the Board hereby approves the variance reducing the minimum requirement of a three acre lot to 2.618 acres for the establishment of a private stable for one horse in the rear yard of the premises of 2522 Uniontown Road, as requested, reversing the Zoning Administrator's decision of November 10, 1994, in Case ZA-138.

3-29-95
Date

Claude R. Rash
Claude R. Rash, Chairman