

Tax Map/Block/Parcel
No. 48-19-26

Building Permit/Zoning
Certificate No. 95-1095

Case 4022

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

APPLICANT: William Ray Sheeley
3633 Carrollton Road
Upperco, Maryland 21155

REQUESTS: A conditional use for a cottage industry consisting of a small machine shop within a proposed accessory building, 24 feet by 50 feet, and a variance to the minimum required driveway width

LOCATION: 3727 Carrollton Road in Election District 8

BASES: Article 6, Sections 6.3(ff) and 6.7; Article 14, Division I, Section 14.1(b)(3); Article 15, Section 15.5.4(d); Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: May 24, 1995

On May 24, 1995, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use for a cottage industry consisting of a small machine shop within a proposed accessory building, 24 feet by 50 feet, and a variance to the minimum required driveway width at 3727 Carrollton Road.

Articles and Sections cited below are of Ordinance 1E.

In accordance with the provisions of Article 17, Sections 17.6.6, 17.7 and the Board's longstanding policy of visiting sites prior to public hearing, the Board visited the site May 22, 1995. 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 and in accordance with the state Open Meetings Act, the Board approved the conditional use and variance.

FINDINGS OF FACT

The 30.67 acre parcel is located at the southwest corner of Carrollton Road and Emory Church Road intersection. The parcel is improved with a single family home and detached garage. A 1.326 acre parcel, improved a home and detached garage, was evidently divided from the property in December of 1991. A single driveway located on the south side of Carrollton Road, over 600 feet from Emory Church Road, serves both dwellings, and will serve the proposed machine shop.

A new building, 24 feet by 50 feet, is proposed for construction adjoining the south side of the existing garage as depicted by the surveyor's plat submitted with the application, drawn to a scale of 1 inch equals 100 feet, dated August 5, 1988 and December 3, 1991. The building will comply with the minimum lot area, lot width and yard requirements for the district and would be allowed as an accessory use to the agricultural use of the property.

Operation of the machine shop will be restricted to a member or members of the family residing on the property and not more than one nonresident employee. Mr. William Ray Sheeley, son of William C. and Margaret D. Sheeley, appeared before the Board to offer testimony on behalf of the request. As Mr. Sheeley indicated, he proposes to establish and operate the machine shop, including preparing or manufacturing parts and equipment which he will routinely transport to customers. Deliveries to the shop may be made from time to time by commercial delivery companies. Mr. Sheeley stated that work would normally be conducted within the building and that there would not be significant noise associated with the operation. Mr. Sheeley noted that normal maintenance of farm equipment is accomplished there now.

No business identification sign is proposed. However, an identification sign not larger than 1 foot by 2 feet may be erected without obtaining a zoning certificate.

APPLICABLE LAW

The site and adjoining properties are zoned "A" Agricultural District as depicted on zoning maps 48A and 54A. The land use provisions for the district are expressed in Article 6. Agriculture is a preferred use in the district, and a number of other land uses are included as principal permitted uses, subject to compliance with lot area, lot width and yard requirements. Section 6.3, Conditional uses (requiring Board authorization), paragraph (ff) specifies:

Cottage industry, provided it is conducted within the dwelling or within an accessory building which does not exceed 1,200 sq. ft. in area.

The minimum required lot area, lot width and yard requirements for conditional uses not otherwise listed are: Lot Area - 3 acres; Lot Width - 200 feet; Front Yard Depth - 40 feet; Side Yard - 30 feet; and Rear Yard Depth - 50 feet.

Conditional uses are defined 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.

Cottage industry is defined as:

Manufacturing or assembling conducted by a member or members of the family residing on the property with no more than one (1) nonresident 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 resident 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 one foot by two feet; and creates a hazard to any person or property, results in electrical interference, or becomes a nuisance.

A variance is defined as:

...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, Board of Zoning Appeals, paragraph (d) reads in relevant part:

....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.

Section 17.7, Limitations, Guides and Standards governs the Board in considering conditional uses and variance requests.

The Board is also governed by decisions of the courts. In the case of *Schultz v. Pritts*, 291 Md. 1, 22, (1981) the court wrote:

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)

REASONING

Construction of the accessory building and establishment of the machine shop as proposed and restricted by the zoning ordinance will have little, if any, effect upon the residents of adjacent properties, the values of those properties, or public interests.

With respect to the variance pertaining to the minimum required driveway width of 20 feet, the Board finds that to enforce compliance to provide for two way traffic would result in practical difficulty for reason that valuable evergreen trees that enhance the appearance of the property would have to be removed in order to comply with the standard. Removal of the evergreens would depreciate the value of the property and seriously detract from the residential characteristics of the home. In addition, as there will essentially be no increase in vehicular traffic to and from the premise, there is no need to increase the width of the driveway.

CONCLUSION

Based on the findings of fact, applicable law, and reasoning expressed above, the conditional use and variance are hereby approved in accordance with the Board's oral decision at the conclusion of the public hearing.

6-20-95
Date

Claude R. Rash
Claude R. Rash, Chairman