

Tax Map/Block/Parcel
No. 73-5/6-760

Building Permit/Zoning
Certificate No. 96-2759

Case 4140

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Eldersburg Business Center, Inc.
c/o Merritt
2066 Lord Baltimore Drive
Baltimore, Maryland 21207

ATTORNEY: William B. Dulany, Esquire
127 East Main Street
Westminster, Maryland 21158

REQUEST: A conditional use to allow a "B-G" General Business District use in the "I-R" Restricted Industrial District, to wit: a post office building

LOCATION: 1380 Progress Way in Election District 5; Eldersburg Business Center, Section 1, lot 1, recorded in Carroll County Plat Records in book 32, page 35

BASES: Article 12, Section 12.2(b); Article 11, Section 11.1(a); Ordinance 1E (The Carroll County Zoning Ordinance).

On August 29, 1996, the Board of Zoning Appeals (The Board) held a hearing in the above captioned case. The applicant, Eldersburg Business Center, Inc., sought approval of a conditional use, to wit: a post office on Lot 1, Section 1 of Eldersburg Business Center recorded in Carroll County Plat Records in book 32, page 35, on property zoned "I-R" Restricted Industrial District. The applicant was represented by William B. Dulany, Esquire.

For the reasons noted below, the Board hereby approves the Applicant's request for a conditional use for a post office in the "I-R" Restricted Industrial Zone, subject to following conditions:

1. Vehicle ingress and egress is limited to Progress Way.
2. The application is subject to the Carroll County Site Plan Review.

FINDINGS AND CONCLUSIONS

Several witnesses appeared and testified on behalf of the applicant. Much of the testimony presented was uncontroverted. Unless noted otherwise, the Board finds the following facts based

on the credibility of the uncontroverted testimony. The proposed use is for a post office on a portion of Lot 1 of the Eldersburg Business Center as depicted on the record plat recorded in Plat Book 32, page 35. The U.S. Postal Service is the contract purchaser of the subject property and proposes to construct a single story 21,550 square foot post office facility to serve approximately 11,000 delivery stops. A conditional use for a medical center has very recently been approved by the Board on the balance of Lot 1, (see BZA Case 4115). The applicant seeks approval of the concept plan which was submitted at the hearing. The concept plan depicts entrances and exits only from Bennett Road. No access to Progress Way is shown nor was one requested. The record plat contains note #12 which states vehicular ingress and egress from Bennett Road to Lots 1, 2, 3, 5 and 6 is prohibited. A landscape berm intended to buffer the residential area northeast of Bennett Road from the industrial subdivision was required along Bennett Road as part of subdivision approval. The concept plan removes a portion of the berm.

Mr. Mickey Cornelius testified on behalf of the applicant as a traffic expert. He indicated that the use would generate approximately 900 vehicle trips into the site each day. Bennett Road currently has approximately 2300 vehicles per day which travel on it. Mr. Cornelius indicated that he had not studied the intersection of Progress Way and Route 32 and was not very familiar with it. The level of service on the segment of Bennett Road adjacent to the proposed use is currently "B/C". Numerous residents of Bennett Road testified that northeast of Bennett Road is a quiet residential neighborhood and that the proposed increase of vehicle traffic on Bennett Road would be detrimental to their quiet enjoyment of their properties. The Board did not receive any other significant evidence that the proposed use would have adverse effects enumerated in Section 17.7 of the Zoning Ordinance. Based on the above findings, the Board makes the following conclusions: Use of Bennett Road for ingress and egress to the site is contrary to the original intent of the industrial park and would have adverse effects on the neighboring properties above and beyond those inherently associated with such a use irrespective of its location within the "I-R" zone. The additional vehicular traffic of 900 vehicles a day entering and leaving the site on a road which currently has 2300 vehicles is an unacceptable increase. Limiting the use proposed to Progress Way for ingress and egress would reduce the adverse effect to an acceptable level. Further, due to the commercial nature of the use and the number of vehicle trips which will be generated on a daily basis, site plan review is warranted.

In approving the conditional use the Board is keenly aware of the purpose of the Restricted Industrial district as noted in the Ordinance. The purpose enunciated therein is not to promote or encourage conditional uses such as retail services but to promote

the lighter manufacturing uses. However, it is well settled in law that conditional uses are presumed to be valid permissible uses. Absent adverse effect above and beyond those inherently associated with the use proposed, at the location proposed, this Board must approve the conditional use regardless if other uses are preferred uses.

Although the applicant sought conditional use approval in its application, the applicant presented two additional theories for approval at the hearing. By approving the use, the alternative theories presented are rendered moot. However, in the interest of judicial economy, the Board will address them. The applicant argues that the use proposed is of the same general character as the enumerated principal permitted uses in the I-R District and thereby qualifies as a principal use authorized by Section 12.1(d) of the Ordinance. In support thereof, testimony was presented that service operation proposed resembled a United Parcel Service Distribution Center, or similar overnight delivery service. The applicant presents that a distribution center is a principal use in the zone. While there are numerous similarities between the United States Postal Service and United Parcel Service or any other delivery services, the Board finds them to have substantial differences. The Board finds that the Federal Post Office operation at this location to more closely resemble a public service building and perform a public function rather than that of a distribution station contemplated by the applicant. Accordingly, the Board does not accept this argument of the applicant.

The second argument presented by the applicant was that: the applicant is exempt from the requirements of the Zoning Ordinance because the party in interest, the contract purchaser, is the United States Postal Service. In presenting this argument, the applicant states that while the United States Postal Service is exempt from the local zoning requirements, it wants to be a good neighbor and abide by them. The Board concludes that the applicant is voluntarily submitting itself to the requirements of zoning Ordinance of Carroll County and therefore will not address the issue of whether the applicant is except from the Zoning regulations.

9/27/96

Date

Karl V. Reichlin

Karl V. Reichlin, Chairman