

Tax Map/Block/Parcel
No. 73-3-215

Building Permit/Zoning
Certificate No. 01-3378

Case 4640

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

APPLICANT: Alan Ackerman
2028 Elderwood Court
Sykesville, Maryland 21784

ATTORNEY: Thomas F. Stansfield

REQUEST: An application for a conditional use to allow a drive-in theatre in an "I-R" Restricted Industrial District

LOCATION: The site is located at 600 Liberty Road, Eldersburg, MD 21784, on property zoned "I-R" Restricted Industrial District in Election District 14.

BASIS: Code of Public Local Laws and Ordinances, Chapter 223-118

HEARINGS HELD: November 28, 2001; December 17, 2001; January 23, 2002

FINDINGS AND CONCLUSION

On November 28, 2001, December 17, 2001, and January 23, 2002, the Board of Zoning Appeals (The Board) convened to hear the request of Alan Ackerman (the Applicant) to construct a drive-in theatre complex consisting of two screens on property zoned "I-R" Industrial Restricted District. Based on the testimony and evidence presented, the Board makes the following findings and conclusion of law.

The Applicant is the contract purchaser of approximately 44 acres at 600 Liberty Road, Eldersburg, MD, ("The property"). The property is zoned "IR" Restricted Industrial District, and is one of the few remaining parcels so zoned in the South Carroll area. The property is bounded to the south by Maryland Route 26, to the northwest by a recreational golf center; and, most significantly to the southeast and northeast by residential developments. The Applicant is proposing a large outdoor entertainment complex for the property, including a drive-in movie theatre with two movie screens and parking for about 1,400 vehicles. In addition, the Applicant wishes to build indoor and outdoor seating for the larger screen, a 3,500 Square Foot indoor gaming arcade with up to fifty machines; a stage for outdoor performances; a large concession

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area and a playground for children of patrons. The theatres would open for business just before dusk, and the movies would end at or before 1:00 A.M. The theatre would be open six days a week between the months of April to September.

The Applicant has requested a conditional use in this case. Section 223-191 of the Code of Public Local Laws and Ordinances of Carroll County provides that, the Board, when considering applications for conditional uses, should consider whether the proposed use would adversely affect the public health, safety, security, morals or general welfare. In addition, the Board should determine if the proposed use would result in dangerous traffic conditions or otherwise jeopardize lives or property in the neighborhood. That section also provides that the Board should consider the following before granting a conditional use:

- 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 (ie).
- G. The most appropriate use of land and structures.
- H. The purpose of this chapter 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 above provisions are subject to the limitation that the adverse effects must be greater than or above and beyond the effects normally inherent with such a use anywhere within the "IR" Zone of Carroll County.

Turning to the facts in this case, the Board finds that the Applicant has proposed an innovative and daring project. We find however, that the project is unsuitable for the property. The key factor militating against the proposed use is the extremely close proximity of several hundred existing residences. While the Board is not persuaded that the proposed use would result in a wave of crime or immorality, it is clear to us that a drive-in theatre and the other uses proposed would adversely impact the surrounding existing homes in a manner unique and different from the adverse impact which would otherwise result if the theatre were located elsewhere within the zone.

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Specifically, the Board notes the noise and glare generated by a nightly gathering of almost 1,400 vehicles, departing "en masse" as late as 1:00 A.M. Although those effects may be buffered somewhat by an existing tree line, the Board finds they will undoubtedly adversely impact the peaceful enjoyment of the neighboring residences. One resident's deck would be located a mere 40 feet from a parking space on the property. Secondly, the Board is concerned that the traffic generated by the theatre cannot be adequately handled. The Board is unconvinced that the Applicant will be able to process vehicles in as little as 14 seconds as he testified. The inability to do so will result in a spillover of traffic onto an already crowded MD Route 26. Additionally, the Board is troubled by the seemingly still evolving nature of the proposed use. In addition to showing films in the evening, the Applicant testified that he would also convene car shows, outdoor musical performances, and even possibly flea markets during the daylight hours. The Applicant would also rent the facility to other groups for large outdoor gatherings. In short, these other uses were neither advertised nor applied for, and the Board notes that many of these uses are not permitted at all in the IR zone.

Finally, the Board finds that the proposed use in such a close proximity to the residences would decrease their property values. The Board cannot imagine how such an intensive use occurring so frequently and so late into the night could not adversely affect property values. The Board disagrees with the Applicant's expert that a light manufacturing or processing facility would result in greater adverse impacts. Such uses typically occur in enclosed buildings, with regular employee shift change traffic. The proposed use is outdoors, with almost continuous lines of traffic entering and exiting at the same time almost every night of the week.

In conclusion, the Board finds that the close proximity of hundreds of existing residences to the proposed drive-in theatre makes this property unsuitable. Accordingly, the request for a conditional use is denied.

2-25-02

Date

Karl V. Reichlin

Karl V. Reichlin, Chairman