

Tax Map/Block/Parcel
No. 21-10-241

Building Permit/Zoning
Certificate No. 04-2419

Case 4965

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

APPLICANT: Ricky Lee Jones
304 East Green Street
Westminster, MD 21157

ATTORNEY: N/A

REQUEST: A variance from the required lot area requirement of 1 acre to 8,835 sq. ft. and a variance from the minimum lot width for use as a residence in an existing building.

LOCATION: The site is located at 3416 Littlestown Pike, Westminster, on property zoned "A" Agricultural District in Election District 3.

BASIS: Code of Public Local Laws and Ordinances, Chapter 223-75, 223-177 B and C, 223-186 A (3) and 223-181 as amended by Ordinance 04-15, Sec. 2 (c)

HEARING HELD: August 25, 2004 and September 29, 2004

FINDINGS AND CONCLUSION

On August 25 and September 29, 2004, the Board of Zoning Appeals (the Board) convened to hear a variance from the required lot area requirement of 1 acre to 8,835 sq. ft. and a variance from the minimum lot width for use as a residence in an existing building. Based on the testimony and evidence presented, the Board made the following findings and conclusion:

There was initial argument made by counselors to the parties represented in this matter as to whether an application to the Board of Zoning Appeals for variances was necessary.

Ms. Terri Jones, attorney for the Zoning Administrator, Neil Ridgely, and the Code Official, Mike Maring, offered her opening statement. She stated it was not clear if this request was made pursuant to Code Chapter 223-75 for minimum lot area of 1 acre or conversion apartments lot area to be set forth. Variances are requested for side yards from 30 ft. to 9 ft and 7 ft., respectively. The lot area modification is addressed in 223-177 of the Zoning Ordinance. All other regulations must be complied with. The requirements of Code Chapter 103-24 under parking regulations require two off street parking spaces for a dwelling.

Mr. Jonathan Hodgson, attorney for applicant, opened by stating they are not seeking approval under the conversion provision of the Zoning Ordinance. They are only asking for this building to be used for a single family residence. Neil Ridgely suggested they apply for a variance. Based on 223-177 they don't need a variance from this Board. Chapter 223-177 states that on a pre-existing non-conforming lot, a permitted use can be placed in that building without a variance. Under regulations of the Agricultural District, no uses could be put into this building without a variance. This use should be a principal permitted use.

Mr. Richard Titus, attorney on behalf of Ed and Miranda Bell, neighbors protesting this case, offered his opening statement. This is a non-conforming lot of record and needs two off-street parking spaces and safety is a concern of his clients. There have been three hearings in three years on this site and his clients want to make sure that the off-street parking is established and not in a right of way matter. They are also concerned about the problem with failing septic systems in this area and the lack of Health Department approval for this use.

Ms. Terri Jones responded by saying two issues need to be considered: the non-conforming lot and a non-conforming structure. Code Chapter 223-177 states a dwelling can be erected on a non-conforming lot. It is the Zoning Administrator's position they do need variances when the use of the structure is changed and after 1965 they must meet the stated parking requirements based on 223-70M. The Applicant must demonstrate how he can meet the parking requirements and must comply with Health Dept. regulations. The Board agreed to hear case based upon a variance being required.

Mr. Ned Cueman, professional planning consultant, was accepted as an Expert Witness in the area of planning. He stated he has visited the site 3 times. The bank was built on two separate parcels of land in 1910. 38 ft. wide by 232-1/2 ft long, building sets back 20 ft from State right of way line. A 12 ft. alley runs beside the property, perpendicular to Rt 97. Single family residential use is permitted in the Ag zone. This lot is adequate to authorize any use without applying for a variance. New lots must be 1 acre in size. This building is in line with other buildings along the roadway. Major Health Dept. changes made in 1989, whatever was put in in 1964 was for a business use – not a residential use.

At this point was case was continued to September 29, 2004, at 10:00 a.m.

When the hearing resumed, Mr. Richard Titus stated an agreement had been reached between his clients and Mr. Hodgson on their concerns. He is withdrawing his appearance and will no longer participate in this proceeding. The Chairman clarified for all parties present that the discussion and agreement had nothing to do with this hearing.

Mr. Ned Cueman was questioned by Mr. Hodgson and clarified the record includes documents filed with the application. Mr. Cueman stated the only use that can be made of this property without variances would be a single family dwelling. Subject lot is 8,835 sq. ft. and the

Health Dept. requires 10,000 sq. ft. for a septic system and replacement area. However, these regulations are not applied to pre-existing non-conforming lots.

Mr. Ricky Lee Jones stated he is the owner of subject property and had the septic system pumped out and no problems or leaks were found. He is now putting drain tile system in the back of the property because of a water runoff problem. Terri Jones questioned Mr. Jones on why he never applied for a change of use building permit. He applied to repair a kitchen that was already in place and he stated Mike Maring never indicated he needed a change of use from commercial to residential. He found out about this 6 months after he had people living there. Mr. Jones stated he was informed by Neil Ridgely that the use would be returned to residential use at the Courthouse when his case was heard on the appeal. The bathrooms were there when he bought the property. The only work he did to the property was move kitchen to the front of the building, changed the front door, and repaired the drop ceilings – no structural changes. He told his tenants they must use the back door and could not park in the front of the building. There is a 750 gallon septic tank (concrete) but he has not received any certification from the Health Dept. that the system is sufficient at this time. He has owned the property for 2-3 years and has rented it out for about 8 months as a residence.

Mike Maring, Code Official, stated he had received a complaint on this property from the livability standpoint about 8 months ago that the bldg was being used as a residence. He investigated and found it was being used as a residential property but no change of use had been requested from commercial to residential. No one had applied for a change of use permit. Mr. Jones applied for this permit on 5/11/04 but it could not be issued until approved by the Health Dept. and Zoning Administrator. Mr. Jones must comply with the Minimum Livability Code and the Building Code. Before this permit is issued an Inspector is sent out to make sure the site is in compliance with all codes. This site would need some kind of sidewalk/walkway from the back of property to a 3 ft. wide entrance to provide safe access to the property – the rear entrance is not 3 ft. wide and is not considered a main entrance. Before the permit could be issued, the site would have to be inspected to make sure it meets the Code for a residence. Acceptable materials would include stepping stones, stone pathway or a complete sidewalk for a safe walkway.

Mr. Charles Zeleski, of the Health Dept., stated he had dealt with this property from a prior owner and a business use and is now dealing with it for a change of use to a residential use. The existing water and septic systems have not been fully evaluated, no replacement system area is available and the Health Dept. cannot sign off on any change of use because of water table issues in that area. They are unable to evaluate until the next wet weather cycle begins in February. Any evaluation prior to that would not be accurate. Potential public health issues of concern since records found for the drilling of the well state it was not grouted in a sealed steel pipe into the ground, which may allow contamination of the water. No reason was indicated as

to why the well could not be grouted when it was initially installed. The water table is fairly shallow in the immediate area and it is very possible that the septic system is inadequate to filter sewage going into it and could be contaminating the ground in the area. There have been significant problems with septic systems in Union Mills. It would not be prudent to occupy this building and use the water supply for drinking and cooking before tests are performed. Mr. Zeleski would recommend they use bottled water. Complaints have been received about the failure of the septic system at this site. February 1 thru April 30 is wet weather season to do tests when water tables are at their highest levels. Quality of water coming out of the well is a concern of the Health Dept. The possibility exists of leakage into the well from surface water tables. The well not being grouted was not acceptable when it was done nor is it now – no one knows why this was done at the time. When the Health Department finds out about a situation like this, they require it be updated.

Mr. Neil Ridgely stated this site does not meet parking requirements or setback requirements in 223-70M. He will not sign off on the change of use permit until all regulations in the Zoning Ordinance have been met. Pursuant to 223-177, it states they do not need a variance per Mr. Hodgson, but Mr. Ridgely does not feel that this section of the Ordinance applies to this request as it refers to newly constructed units. 223-70M requires one acre for the conversion of a building. Safety issues would be at hand on this case. Reference was made to a prior Zoning Administrator's decision on this property by Applicant Karen Haines (the case was heard by Ralph Green, Acting Zoning Administrator).

Mr. Jones stated he had a water test done by Fountain Valley Laboratory as a U&O permit requires a water test be performed but he does not have results of this test with him. Mr. Cueman stated his opinion that sections of the Code that would apply would be 223-177 and not 223-70M. Under cross examination by Ms. Jones after evidence entered of recent changes to the Subdivision Regulations, Mr. Cueman stated based on his reading of the Zoning Ordinance, Subdivision Regulations, and cross references he feels that the definition of a lot in the subdivision regulations applies.

Ms. Jones' closing remarks: Mr. Jones needs a variance to proceed. Zoning Administrator's position is they need a variance from 223-70M and 223-177 does not apply. The County requests the Board make it clear what provision will be applied and any approval should be limited strictly to a single family dwelling and adequate parking be provided.

Mr. Hodgson's closing remarks: He feels they do not need variances because of 223-177B. One thing established from this hearing is that there could be no other use for this property without the approval of this Board. No evidence has been presented that shows the septic is failing. The Board could stipulate no parking in front of the building.

The Board first considered the threshold issue of what section of the Code to apply. The Board agreed that Section 223-70M does apply to this case and therefore variances are needed. The Board agreed to grant the variances as follows: from the required 20 ft. side yard setback to 7 ft. and 9 ft., respectively; from the required 40 ft. front yard setback to 20 ft.; the required lot area from 1 acre to 8,835 sq. ft.; the required lot width of 150 ft. to 38 ft. – all within reasonable approximation. The Board also stipulated that no parking shall be allowed in front of the building; this property be limited to a single family dwelling; and all Health Department and Building Codes must be met. The Board stated the property is to be vacated within 30 days and remain vacant until all requirements have been met and all permits are issued.

10/20/04
Date


Jacob M. Yingling, Chairman