

Tax Map/Block/Parcel
No. 32-6-36

Building Permit/Zoning
Certificate No. 99-3257 &
99-3256

Case 4448 & 4458
TO BOTH

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANTS:

Darlene M. Lauterbach, Owner
2010 Old Washington Road
Westminster, MD 21158

Martin P. Hill Landscaping, Lessee
4223 Hanover Pike
Manchester, MD 21102

ATTORNEY:

Elwood E. Swam
1326 Main Street
P. O. Box 176
Hampstead, MD 21074

REQUEST:

Appeal of a Notice of Violation from County Zoning Administrator dated October 5, 1999.

LOCATION:

Located at Cape Horn Road and MD Rt. 30 (Hanover Pike) on property zoned "R-40" Residence District in Election District 6

BASIS:

Article 17; Section 17.2(a) Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD:

January 4, 2000

FINDINGS AND CONCLUSION

On January 4, 2000, the Board of Zoning Appeals (the "Board") convened to hear the appeals filed by Darlene M. Lauterbach (the owner of the subject property) and Martin P. Hill Landscaping (the tenant). The consolidated appeals were filed in response to Notices of Violation sent by the Zoning Administrator, dated October 5, 1999 (attached). The Notices of Violation cite the "(o)peration of a non permitted use (illegal business - mulch storage and sales) in a "R-40,000" Residence District; contrary to the provisions of Article 5C, Section 5C.1 of the Carroll County Zoning Ordinance....".

At the time of the adoption of the Carroll County Zoning Ordinance in 1965, the subject property was being used as an auxiliary concrete plant and was considered a non-conforming use. In 1991, the zoning for the property was changed to "BG" General Business, and in February 1998, it was re-zoned to "R-40,000" Residence District.

The concrete facility was not a commercial operation and was not open to the public. It was designed to supplement another larger facility and served various construction projects in the North Carroll area. Based on the testimony of the Zoning Administrator which the Board finds credible, the concrete plant and storage operations ceased operations in approximately 1991. Although the concrete company had a valid lease for the property until late 1997, it became overgrown with weeds long before that time, and we are not convinced that any concrete was manufactured there after the early 1990's. The Board notes that a long time employee of the concrete company testified that, in the last years of the lease, he was certain that approximately once a year they tested the equipment to keep it operational and maintain their non-conforming status. The Board notes that intention or token usage of the property alone are insufficient to establish or maintain a non-conforming use. The Board feels the use was in fact effectively abandoned in accordance with the Zoning Administrator's testimony. Even assuming arguendo that the non-conforming use was not abandoned, the current tenant is operating a commercial outlet for landscaping materials rather than a concrete plant. There is no record of any approval granted by the Board for such a change of use as required by Article 4.1 of the Zoning Ordinance.

In effect, what currently exists is a commercial operation that is open to the public for the sale of landscaping materials. This operation is functioning at the busy corner of Cape Horn Road and Route 30 without a valid site plan, zoning certificate, Health Department approval, or building permits as required by law. Accordingly, the Zoning Administrator did not err in issuing Notices of Violation and his decision is upheld.¹

2/4/00

Date

Karl V. Reichlin

Karl V. Reichlin, Chairman

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¹Mr. Tegeler dissented from the decision.