

Tax Map/Block/ Parcel
No. 27-21-191

Building Permit/Zoning
Certificate No. 99-0616

Case 4389

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

APPLICANTS:

Dennis P. and Brenda L. Young
1585 Francis Scott Key Highway
Keymar, Maryland 21757

ATTORNEY:

David K. Bowersox, Esquire
Hoffman, Comfort, Galloway & Offutt, LLP
24 North Court Street
Westminster, Maryland 21157

REQUEST:

A conditional use request for a privately-owned commercial airport and accessory uses and structures or alternatively a modification of a prior conditional use authorized by the Board of Zoning Appeals in Case 657 on property zoned "A" Agricultural District¹.

LOCATION:

1585 Francis Scott Key Highway in Election District 10

BASIS:

Basis: Article 6, Section 6.3(b); Ordinance 1E (The Carroll County Zoning Ordinance)

HEARINGS HELD:

April 28, 1999 and May 25, 1999

FINDINGS AND CONCLUSIONS

On April 28, 1999 and May 25, 1999, the Board of Zoning Appeals (the Board) convened to hear the application of Dennis P. and Brenda L. Young for a conditional use for a privately-owned commercial airport² and accessory uses and structures or alternatively a modification of a prior conditional use authorized by the Board of Zoning Appeals in Case 657 on property zoned "A" Agricultural District in Election District 10. The applicants were represented by David K. Bowersox, Esquire.

The following is the procedural history of the airport on the subject property. In 1970, the Board

¹ The current application for the conditional use was filed under protest due to the \$800 application fee which the applicants deemed to be unlawfully discriminatory.

² Section 6.3(b) of the Zoning Ordinance of Carroll County authorizes as conditional uses "Airports or landing fields, public or private, subject to approval of the State Aviation Commission". The Code of Maryland Regulations 11.03.04.02 (I)(J) define private use airport as an airport open to specific individuals and occasional guests. Private airports are not open to the public at large. Commercial airport is defined as an airport which charges fees or receives payment for goods services. (See Code of Maryland Regulations 11.03.04.02(c).

approved a request by Robert M. Miller for a conditional use for a private landing field (BZA Case No. 657) with the conditions that the length of the runway could not be less than 2,000 feet and that the Maryland Aviation Administration (MAA) approved the private landing field. In 1998, the Board heard an appeal (BZA Case No. 4272) by Dennis P. Young of a Notice of Violation dated September 12, 1997, pertaining to the alleged illegal use and operation of the private landing field. The Board found no violation.

Dennis P. and Brenda L. Young, are the current owners of the property. The property consists of 15.7748 acres more or less, and it is zoned Agricultural. Mr. Young, ("the Applicant") presented the following testimony. He wants to change the status from a private airport to a private commercial airport with accessory uses and structures. He rented the airpark from Robert and Freddie Miller for ultra-light aircraft instruction from 1994 to 1996. From 1971 to the late 1990s, the prior owners ran a flying club at the location. A few contiguous properties have been improved with homes and the remaining area is agricultural. The existing runway is unpaved and there are lights along the runway. The Applicant stated that he does not intend to pave the runway. The ends of the runway are clear with no obstructions. The runway exceeds the current MAA required runway length for this airport. There is an existing multi-purpose building on the southeast portion of the site used to store farm and garden equipment, personal aircraft, and a few other ultra-light aircraft which he allows friends to keep in the building at no charge. The Applicant would be required to monitor the operations of the airport. As a private airport, pilots will be permitted to land only if he has given them permission. In an emergency, he would be required by law to allow an aircraft to land at his airstrip. The commercial status is requested to allow the Applicant to collect rent from planes using "tie downs" and to sell pilot accessories (i.e., radios, Global Positioning System instruments, and other supplies). No gasoline will be sold at the location. A flying club and flight instruction may be offered at the location in the future. Three (3) to four (4) hangar buildings to be located on the north end of the runway are proposed in the future. Only small, single engine low performance aircraft will use the airstrip. Pilots will be required to depart from the northeast portion of the runway away from the existing contiguous homes. Pilots will be required to land on the south of the runway. No tow planes and no parachutists will be permitted. He envisions up to 40 tie downs at the airport in the future.

The testimony of Mr. Bruce F. Mundie, Aviation Administrator with the Maryland Aviation Administration (MAA) is summarized as follows. A private commercial airport status allows an airport to be operated for profit. Noise from airplanes at the location is below the acceptable level determined by the FAA (Federal Aviation Administration) and MAA. The grass airstrip limits the type of aircraft able to use the runway as only single engine aircraft may safely land on a grass strip. The current takeoff and landing patterns are sufficient and the ends of the runway are clear of obstructions. Pilots using a private commercial airport must obtain approval prior to landing at an airstrip. The airport exceeds MAA's required runway length and clearance area. Although lighting is provided along the airstrip, it is not required by the MAA. Mr. Mundie stated that this location was ideally suited for the proposed use.

Mr. Edmund R. Cueman, a professional land planning consultant, offered the following testimony. The airport location is in a rural area with minimal residential development. He saw no adverse impacts from the proposed use. Mr. Cueman opined that the Board's decision in Case 4272 should be corrected as the 2,000 foot runway requirement is now in excess of the minimum required for this private landing field by the MAA. Drawing on his experience as a previous Director of the Carroll County Department of Planning, he provided historical evidence to support the contention that the Zoning Ordinance does not

distinguish between a private commercial and a private non-commercial landing field. The Board in granting Mr. Miller the conditional use in 1970 made no such distinction and Mr. Cueman posited that any attempt to do so now would be a legislative act beyond the Board's authority. Mr. Cueman interpreted the applicable zoning regulations and concluded that a private landing field could operate as a non-commercial landing field or as a commercial landing field subject to meeting applicable requirements of the MAA. In the event the County wished to distinguish private commercial landing fields from private non-commercial landing fields, he recommended an ordinance amendment. Mr. Cueman argued that the applicants currently have a duly authorized private landing field use pursuant to 6.3(b) of the Ordinance and the use includes the authority to operate as a private commercial landing field subject to MAA requirements and approval.

Mr. Kenneth E. Baker, a Maryland certified general real estate appraiser, testified regarding his evaluation of possible positive and negative external factors affecting residential uses surrounding the Keymar Airpark. He reviewed records of similar grass strip airparks in the State of Maryland, and concluded that the adjacent properties will not be adversely affected by the proposed use of the airpark. Mr. Baker stated that a positive and significant increase in the values of homes adjacent to the airstrip is possible if they have access to the grass runway. He found no decrease in the value of homes located in the proximity of the airpark. Based on his research and analysis, he concluded homes in a one mile radius of the airpark will remain unaffected by the proposed use.

Mr. Warren Shirey appeared in support of the proposed use. He will soon become a licensed pilot and plans to rent a "tie down" from the applicants.

The following individuals voiced opposition to the proposed use: Mr. Greg R. Altig, Ms. Linda Bilo, Mr. Wayne Wachter, Mr. Larry G. Bond, Ms. Dana Shifflet, Ms. Patricia A. Phares, Mr. Robert May, Mr. Calvin Ogletree, and Mr. Harmon Luzier. These individuals testified that there were prior aircraft accidents and low flying airplanes and ultra-light aircraft disturbing them in their homes. They were concerned that an increase in air traffic and noise could adversely affect people and farm animals in the area³.

In considering a request for a conditional use, it is incumbent on the Board to determine whether the proposed use would have any adverse affects above and beyond those inherently associated with such use irrespective of its location within the zone. The adverse effects the Board considers are enumerated in Section 17.7 of the Ordinance. The section requires the Board to consider all the evidence to determine whether the use proposed would adversely affect "The public health, safety, security, morals or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood. In deciding such matters, the Board shall give consideration , among other things, to the following:

- (a) The number of people residing or working in the immediate area concerned.
- (b) The orderly growth of a community.

³ The Court of Appeals in the case of Harrison v. Schwartz, 319 Md 362 (1990). ruled that a zoning board's conditions on an airport that were designed to reduce the effect of airport noise on neighboring properties were pre-empted by Federal law and therefore invalid.

- (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 values.
- (g) The most appropriate use of land and structures.
- (h) The purpose of (the) Ordinance...
- (i) Type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches, and the like.

Based on the testimony of the Applicant and Mr. Mundie of the Maryland Aviation Administration which was largely uncontradicted, the Board concludes that any adverse effects resulting from the proposed operations are inherent in the operation of a private airfield and airplane storage use, regardless of where it may be sited within the zone. In addition, the Board is persuaded by the testimony of Mr. Baker that the proposed use will not impair neighboring property value to a greater extent than it would elsewhere in the zone. However, the Board is concerned about the potential impact of the unrestricted growth of aircraft operations and ground traffic at the Applicant's airport. While the Applicant's proposed use is appropriate at this location, the Board is persuaded by the testimony of the adjoining neighbors that uninhibited traffic on the grounds of the airport would substantially interfere with the use, peaceful enjoyment, and economic value of surrounding properties and the general neighborhood. The Board is justified in limiting the conditional use in such a way as to mitigate the effects on the neighboring property and the community at large. Accordingly, the Board grants a conditional use for a privately-owned commercial airport and accessory uses and structures, with the following conditions:

- 1) The airport is restricted to a grass runway.
- 2) No more than 15 "tie downs" are authorized for registered general aviation aircraft.
- 3) The runway length must comply with Maryland Aviation Administration regulations⁴.
- 4) This use is restricted to a privately-owned commercial airport.

6.16.99

Date

Karl V. Reichlin

Karl V. Reichlin, Chairman

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June 14, 1999

⁴ This amends the 2,000 foot runway requirement in the Decision in Case 4272.