

**Tax Map/Block/Parcel**  
**No. 61-23-59**  
**Case 5991**

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

**APPLICANT:** William Caswell  
2407 West Old Liberty Road  
Westminster, MD 21157

**ATTORNEY:** David K. Bowersox, Esq.  
Hoffman, Comfort, Offutt, Scott & Halstad, LLP  
24 North Court Street  
Westminster, MD 21157

**REQUEST:** A request for a variance to allow the establishment of a sawmill on the site without being restricted to “cutting timber grown primarily on the premises”.

**LOCATION:** The site is located at 2407 West Old Liberty Road, Westminster, Maryland on property zoned “A” Agricultural District, in Election District 9.

**BASIS:** Code of Public Local Laws and Ordinances, Sections 158.070(D)(8) and 158.133(B)(1)(c).

**HEARING HELD:** December 28, 2016

**FINDINGS AND CONCLUSION**

On December 28, 2016, the Board of Zoning Appeals (the Board) convened to hear the request for a variance to allow the establishment of a sawmill on the site without being restricted to “cutting timber grown primarily on the premises”. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

Two variances were requested by the applicant in this case. One variance was to allow the establishment of a sawmill on the site without being restricted to “cutting timber grown primarily on the premises”. The other variance dealt with minimum distance requirements of 600 feet.

William Caswell testified in favor of the application. He owns the property in question as part of an limited liability company. His occupation is that of a cattle farmer, and his current farming operation is in Baltimore County. His current operation in Baltimore County includes a sawmill. He purchased property in Carroll County to operate his farm on July 7, 2016. He owns approximately 52 acres of property in the Agricultural district. He estimated that about fifteen

percent of his property was a wooded area. He stated that his sawmill operation would cater to the farming community. The market for his sawmill business would include agricultural grade: fence boards, fence posts barn siding, beamery, barn flooring and miscellaneous things as requested by farmers or other customers with ag related needs. The proposed area of timber operation would be one acre. There would be no exterior lights. The equipment used to cut the wood would be a portable saw. The saw would not be located on a permanent structure. There would be three sheds needed for the operation: 40' X 40' Lean-to Shed (wood construction); 20' X 20' Storage Shed for air drying; and 20' X 20' Shed for timber storage. He would have two to three people working in his sawmill business. He anticipated timber deliveries of as much as one per day. The hours of operation for the business would be up to eight hours a day on the weekdays. The sawmill would typically operate for five or six hours a day. There would also be work on the occasional Saturdays. He stated that he would have a small timber processing operation. There would be a low amount of traffic. The noise generated from the saw mill operation would be consistent with other agricultural uses.

Mr. Caswell stated that his saw mill operation would be for the purpose of making a profit. He stated that most of the wood he would be cutting would be trucked onto his property and would not come from his wooded land.

Exhibit 2 is an article from the 1990s about portable sawmills. The article is from the Maryland Cooperative Extension and the Western Maryland Research & Education Center.

Exhibit 3 was a powerpoint presentation that was used for approval by the Agricultural Preservation Advisory Board. He stated that the information in the powerpoint indicated maximum usage. However, he did not anticipate maximum usage all of the time. He anticipated that his sawmill business in Carroll County would be similar to his business in Baltimore County where he earned about \$100,000 a year.

Deborah Bowers testified that the Agricultural Preservation Advisory Board approved of the applicants use of the property for sawmill operations. Such operations would be in compliance with the easement. The operation was on a small scale and related to agricultural business. Ms. Bowers stated that the Agricultural Preservation Advisory Board considered whether the proposed use was related to agriculture, whether it was small scale, and whether it was contained within a structure.

Sandra Stillwell stated that she was in opposition to the application. She stated that the area was a quiet neighborhood. She believed that the portable sawmill in operation for eight hours a day would be noisy. She was also concerned that although the operation may start out as small that it could grow to a larger operation in the future. The \$100,000 that the applicant made in Baltimore County seemed like a substantial business to her.

Ann Michelson testified in opposition to the application. She had the same concerns that Ms. Stillwell had. Her main concern was noise. She claimed that tractors do not operate all day for eight hours. She considered the sawmill operation a business.

A December 14, 2016 memorandum from Lynda Eisenberg, Chief, Bureau of Comprehensive Planning, and signed by Clare Stewart, Planning Technician stated that "the staff finding is that this request is consistent with the 2014 Carroll County Master Plan and would not have an adverse effect on the current use of the property or its environs."

Jay Voight, Zoning Administrator, wrote a memorandum for the Board that is included in the Board's file. That memo states that "the Carroll County Zoning Ordinance does allow Commercial Sawmills without the requirement that the timber being sawed is grown primarily

on the premises, as a conditional use in the Restricted Industrial (IR) section 158.079(D) and are subject to the same setback requirement of section 158.040.

During his opening and closing arguments Mr. Bowersox stated that the applicant's request was for two types of variances. One variance was to allow the establishment of a sawmill on the site without being restricted to "cutting timber grown primarily on the premises". The other variance dealt with minimum distance requirements of 600 feet. He emphasized that the zoning code permitted sawmills in the Agricultural district as a principal permitted use. So the use of a sawmill was permitted in the ordinance. He argued that the ordinance did not state that the wood used in the sawmill operation was exclusively to come from the property. He stated the code stated that the term "primarily" was nebulous and subjective. He also noted that if the applicant had thirty-seven acres of wooded land (instead of his actual amount of seven acres) as a part of his farm that the sawmill operation would be the same use. Whether the wood came from the property or not, wood would be coming in and going out.

The Board considered that commercial sawmills are permitted by the ordinance in the Restricted Industrial district in section 158.179(D). There is nowhere else in the ordinance that permits commercial sawmills. In two sections of the code there is a reference to commercial logging not being a part of the definition of "agricultural activity." See sections 154.02 and 150.20 It appears that commercial logging activity was different from other logging activity. Sawmills are allowed in the Agricultural district "for cutting timber grown primarily on the premises..." Section 158.070(D)(8).

The applicant wanted an exception from the language "for cutting timber grown primarily on the premises..." The Board would not allow the exception because granting the exception would mean that a commercial sawmill could be operated anywhere in the Agricultural district. The Board believed that its mission was to apply the zoning ordinance and not to create new law. The Board believed that the allowance of sawmills in the Agricultural district was specifically when wood from the property would be primarily used in the sawmill operation. In this case Mr. Caswell testified that the majority of the wood for his operation would be trucked onto the property. The Board found that the word "primarily" meant that the majority of the wood used in the sawmill operation would come from on the premises. The Board did not want to allow where the wood came from as being a minor or technical requirement in the code. The fact that the timber had to be grown on the premises was an important factor in the permitted use of a sawmill in the Agricultural district. Therefore, the Board denied the applicant's request to delete the requirement of "for cutting timber grown primarily on the premises..." Because the Board denied the application of the sawmill in the first place, it did not need to resolve the variance request for the minimum distance requirement.

Carroll County has a permissive zoning ordinance. *County Comm'rs of Carroll County v. Zent*, 86 Md. App. 745, 759 (1991). The ordinance lists the uses permitted and all else is prohibited. From all of the facts set forth above, it is clear that the zoning code does not allow a commercial sawmill in an Agricultural district.


The word timber is mentioned six times in the Carroll County Maryland Code of Ordinances. It is only mentioned once in the zoning code. That zoning reference is in Section 158.070(D)(8). The zoning code permits sawmills in an agricultural district "for cutting timber grown primarily on the premises..." The applicant testified that the majority of the wood he would cut would be trucked onto the property. Therefore, he does not comply with the provision that the timber be grown primarily on the premises. It was argued that the Code did not state that the wood for the sawmill operation did not require exclusivity that all the wood for the sawmill

operation had to come from the premises. However, the Code is clear that the wood be cut from “timber grown primarily on the premises...” The Code specifically mentioned sawmills, commercial in Section 158.079(D)(1)(f). The Code also specifically mentioned sawmills for “cutting timber grown primarily on the premises” in Section 158.070(D)(8). No other types of sawmills were considered, and there is no mention of a commercial saw mill in the Agricultural district.

The Board was not bound to grant the applicant’s request because the Agricultural Preservation Advisory Board granted a similar request. The Board was guided by the zoning code for its decision, and the Agricultural Preservation Advisory Board reviewed other considerations.

The Board was convinced that authorization of the request with regard to the requested use was inconsistent with the purpose of the zoning ordinance. Based on the findings of fact made by the Board above, the Board found that the proposed project would not be in compliance with the zoning code.

1-3-2017  
Date

  
Melvin E. Baile, Jr., Chairman

Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court for Carroll County within 30 days of the date of the decision pursuant to Land Use Article, Section 4-401 of the Annotated Code of Maryland.

Pursuant to Section 158.133 (H)(3) of the County Code, this approval will become void unless all applicable requirements of this section are met. Contact the Office of Zoning Administration at 410-386-2980 for specific compliance instructions.