

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-5769**

**APPEAL OF ROBERT ZARNETSKE**

OPINION OF THE BOARD  
(Hearing held March 19, 2003)  
(Effective Date of Opinion: July 15, 2003)

Case No. A-5769 is an administrative appeal in which the appellant charges administrative error on the part of the Department of Permitting Services (DPS) in its enforcement of County parking facility regulations at two adjacent parcels in Dickerson, Maryland.

A public hearing was held pursuant to Section 59-A-4.3 of the Zoning Ordinance. Robert Zarnetske, a confronting property owner, prosecuted the appeal. Malcolm Spicer, Esquire represented Montgomery County, Maryland, and Susan Carter, Esquire, represented the property owner, Robert Fowler (the Owner), who intervened in the proceeding. Mr. Zarnetske testified in support of the appeal. The Owner and his daughter, Michelle Ennis, testified in opposition to the appeal, along with Susan Scala-Demby, Program Manager of Zoning Enforcement at DPS.

Decision of the Board: Administrative appeal **granted**.

**FINDINGS OF FACT**

The Board finds by a preponderance of the evidence that:

1. The subject property consists of two adjacent parcels, Lot 897 located at 22145 Dickerson Road zoned "R-200" (residential), and Lot 951 located at 22139 Dickerson Road zoned "C-1" (commercial).

2. Lot 951 is improved with a commercial market which houses a United States post office and an automobile filling station. Lot 897 is improved as a

paved parking facility with striped parking spaces for the patrons of the Post Office housed in the market.

3. In a previous case involving the same parties, the Board found that although the parking facility was lawfully permitted on Lot 897, it was subject to the parking regulations contained in the Montgomery County Zoning Ordinance (See Board opinion, Case A-5606, dated December 20, 2001, Exhibit 21). The Board found:

“Section 59-C-1.31 of the Zoning Ordinance provides that publicly owned, publicly operated uses, such as a United States Post Office, are permitted in the R-200 zone. Section 59-C-1-4 of the Zoning Ordinance authorizes the parking of off-street motor vehicles in connection with any use permitted in the zone. Since the Post Office is permitted in the R-200 zone, and off-street parking is permitted in connection with the Post Office use, off-street parking is permitted at the R-200 zoned property identified as Lot 897.

Section 59-C-1.31 of the Zoning Ordinance also provides that uses designated by the letter “P” are permitted on any lot in the corresponding zone, but are “subject to all applicable regulations”.

. . . The various requirements in Division 59-E, such as those relating to screening and safety, apply whenever there are more than 6 parking spaces.”

4. The Board directed DPS to review the parking facility at the property in accordance with the requirements of Division 59-E and any other pertinent regulations. As a result, DPS reviewed the parking at the property and worked with the owner to implement a parking plan.

5. This appeal was filed on or about May 1, 2002 in response to a letter from DPS to the appellant dated April 1, 2002 regarding the parking area. The appellant challenges the specific steps taken by DPS, as discussed in the April 1 letter, claiming DPS’s actions were inadequate. Specifically, appellant contends that DPS failed to prevent commercial vehicles associated with the non-public use from parking on Lot 897.

6. DPS contends:

a. The DPS letter of April 1, 2002 is not a final appealable decision.

b. DPS assisted the owner with implementation of a parking plan which effectively prevents improper parking by commercial vehicles. In support of its position, DPS cites the December

2002 letter it sent to the owner, directing him to install a “permanent barrier” to prevent commercial vehicles from crossing from one parcel to the other (Exhibit 16).

c. DPS also asserts that the parking area in question is not a parking “facility” subject to the Division 59-E requirements because there are less than 6 parking “spaces”.

7. The property owner has made good faith efforts to address the appellant’s concerns. He delineated parking spaces by striping, posting signs, and installing railroad ties to separate the parking spaces. He retained a professional to prepare a boundary survey and plans for the parking area (Exhibit 20b). Finally, he installed planters adjacent to the lot line and a concrete wheel stop at the curbing, both in an effort to prevent commercial vehicles from crossing onto the residential lot. The Board finds, however, that neither DPS nor the owner went far enough in preventing the crossover of commercial vehicles onto the residential lot.

8. The property owner conceded that the parking area was an “automobile parking facility” subject to Division 59-E because it was used for 7 vehicles (6 or more “vehicles”), notwithstanding that fewer than 6 parking “spaces” were designated. Counsel for the owner proffered that it could modify the parking plan so that it would be used for 5 vehicles, including 1 handicapped vehicle.

## **CONCLUSIONS OF LAW**

1. Section 59-A-4.3(e) of the Zoning Ordinance authorizes de novo appeals to the Board from an “inaction” of a department of the County government. The April 1, 2002 DPS letter determined that no additional action, beyond requiring barriers, would be taken with regard to appellant’s complaint that commercial vehicles were unlawfully parking at Lot 897. This constitutes an “inaction” under Section 59-A-4.3(e) and is appealable, de novo, to the Board.

2. Under Section 59-A-2.1 of the Zoning Ordinance a lot used for off-street parking of 6 or more vehicles is a parking facility subject to Division E requirements in the Zoning Ordinance. Therefore, the lot in question, as configured at the time of hearing, is a “parking facility” even though there may have been only 5 striped “spaces”. Nevertheless, with modifications (such as a reduction in vehicles used), the lot would not have to comply with Division E requirements.

3. The appeal is **Granted**, and the property owner is directed to modify its parking plan (Exhibit 23) as follows:

1. Eliminate the 18-foot by 8 ½-foot asphalt area on the south side of the parking area nearest Dickerson Road and replace it with grass or shrubbery.
2. Install 5-foot tall evergreens spaced 5 feet on center, on the north side of the parking area closest to Dickerson Road.
3. Provide parking spaces for 4 vehicles, plus an additional handicapped space, as shown in Exhibit 23.
4. The owner must make reasonable efforts to deter unlawful parking by commercial vehicles at the site, including making complaints to the police.
5. These modifications will be implemented within 30 days from the date of this Resolution.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman in agreement, the Board adopts the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled appeal.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 15<sup>th</sup> day of July, 2003.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 2-A-10(f) of the County Code).

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.