

Case 3273

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

APPLICANTS: Michael Robert Beaver and Roxanne Irene Beaver
45 Kate Wagner Road
Westminster, Maryland 21157

ATTORNEY: James Willard Davis, Esq.
237 East Main Street
Westminster, Maryland 21157

REQUEST: A conditional use for a one-chair beauty shop
operated by a resident within the dwelling, and a
variance reducing the minimum required front yard
of 60 feet to about 51 feet, as presently existing

LOCATION: 45 Kate Wagner Court in Election District 7;

BASES: Article 5C, Sections 5C.2(h) and 5C.5; Article
15, Section 15.5; Ordinance 1E (The Carroll County
Zoning Ordinance)

HEARING HELD: November 30, 1989

On November 30, 1989 the Board heard testimony and received evidence concerning the conditional use for the establishment of a beauty shop within the residence and a variance to the minimum required front yard pertaining to the conditional use at 45 Kate Wagner Court.

The Board visited the property on November 27, 1989, prior to the public hearing.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board will authorize both the conditional use and variance. The pertinent findings include the following facts.

FINDINGS OF FACT

The property is lot 2 of the Law Farm subdivision. Although the southerly side of the lot fronts on Kate Wagner Road, vehicular access is provided by a fee simple connection to Kate Wagner Court. A minimum building line of 40 feet paralleling the northerly property line, and a second minimum building line of 75 feet paralleling Kate Wagner Road were included on the subdivision plat recorded in the Carroll County Plat Records in Book 22, page 13. The two minimum building lines effectively

require two front yards for the lot. The dwelling, as presently existing, complies with the minimum building line requirements. And as noted on the Location Survey, Applicants' Exhibit 2, the northwesterly corner of the dwelling is 51 feet from the northerly property line. The minimum requirement, as specified in Section 5C.5 for conditional uses, is 60 feet.

The beauty shop is proposed to be established within the lower level of the dwelling, with a separate entrance to the shop. The applicant, Mrs. Beaver, testified that she proposed to operate the shop on Thursday from 9:00 a.m. to 5:00 p.m., Friday from 9:00 a.m. to 7:00 p.m., and on Saturday to not later than 12:00 noon. The shop would be limited to one chair and one shampoo bowl. No business identification sign is proposed, and the sign required by the state Board of Cosmetologists will not be visible from the adjoining properties. The shop will normally be operated on an appointment basis.

An expert in real estate testified that the proposed beauty shop would not affect the neighborhood or property values of adjacent residences.

An adjoining property owner opposed the request, citing restrictions recorded in the Land Records of the county governing lots within the subdivision and the additional vehicular traffic to and from the shop.

APPLICABLE LAW

The property is zoned "R-40,000" residents district as shown on zoning map 52A. The land use provisions for that district are specified in Article 5C of Ordinance 1E. Section 5C.2, Conditional uses (requiring Board authorization), paragraph (h) states:

"Beauty shops, or Barber Shops provided that they are one-chair operations and that one resident provides all services in connection with the operation.
(Added 12/27/82) (Amended 9/23/86)"

Section 5C.5, Lot area, lot width and yard requirements specifies that the minimum front yard depth for conditional uses--not otherwise specified--is 60 feet.

Article 17, Section 17.7 of Ordinance 1E governs the Board in considering conditional use requests. In addition, the Board is governed by decisions of the courts. In the case of *Schultz v. Pritts*, 291 Md.1, (1981) at 22, 23 the Court wrote:

"We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are

"facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." Citations omitted.

For purposes of clarification, a conditional use is also known as a special exception.

Article 15, Exceptions and Modifications; Sections 15.0 and 15.5 of Ordinance 1E govern the Board in considering variances.

The restrictions expressed in the deed recorded in the Carroll County Land Records in Book 45, page 871, Protestant's Exhibit 1, are not enforceable by either the Zoning Administrator or the Board of Zoning Appeals.

REASONING

Establishment and operation of the beauty shop as requested and in compliance with the conditions imposed below will not unduly affect residents of the adjacent dwellings, or the value of adjacent properties.

Authorization of the variance is necessary and reasonable in conjunction with the authorization of the conditional use, and relaxation of the minimum required setback will have no adverse effects.

CONCLUSION

The Board of Zoning Appeals hereby authorizes the conditional use and variance, subject to the conditions imposed below. The conditions are imposed in order to promote the intent and purpose zoning ordinance. The conditions are:

1. In accordance with the applicant's testimony and the regulations of the zoning ordinance, the beauty shop shall be limited to one chair, operated by the applicant as a resident of the dwelling. The hours of operation for the beauty shop shall be:

Thursday	9:00 a.m. to 5:00 p.m.
Friday	9:00 a.m. to 7:00 p.m.
Saturday	9:00 a.m. to no later than 12:00 noon
2. No business identification sign is authorized in conjunction with the establishment and operation of the beauty shop. This condition does not preclude signs required by the state Bureau of Cosmetologists.

3. Due to the particular circumstances in this case, the authorization of the conditional use and variance is hereby restricted solely to the applicant, and shall not inure to the benefit of heirs or assigns. This condition shall not preclude application by others in the future in accordance with the provisions of the zoning ordinance.

Jan. 4, 1990
Date

John Totura
John Totura, Chairman