

Tax Map/Block/Parcel
No. 48-13-143

Building Permit/Zoning
Certificate No. 91-0497

Case 3538

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Jesse L. Gouge
444 Lees Mill Road
Hampstead, Maryland 21074

REQUEST: A conditional use for a garden supply center

LOCATION: 444 Lees Mill Road in Election District 8; Blue
Grass Manor subdivision, Tract 3, recorded in
Carroll County Plat Records in book 12, page 57

BASIS: Article 6, Sections 6.3(q) and 6.7; Ordinance
1E. (The Carroll County Zoning Ordinance)

HEARING HELD: April 25, 1991

On April 25, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use request for a garden supply center at 444 Lees Mill Road.

The Board visited the site April 23, 1991.

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 deny the request.

The pertinent findings determining the Board's decision include the following facts:

FINDINGS OF FACT

The 8.382 acre lot is located on the northwesterly side of Lees Mill Road about one-half mile south of Bortner Road and St. Paul Road intersection in Election District 8. The property is further identified as Blue Grass Manor subdivision, Tract 3, recorded in the Plat Records of Carroll County in plat book 12, page 57. It is improved with a dwelling and barn as depicted on the plot plan filed with the application. The barn is located in the rear yard, probably over 100 feet from the rear property line. A large garage, which is not relevant to this request, is located near the dwelling.

The proposed garden supply center, limited by the applicant's testimony to the storage and sale of mulch, would be located in front of the barn, in excess of 100 feet from each side property line. The mulch is produced from hard wood and would be seasoned before it would be transported to the premises.

The mulch would be delivered by tractor-trailers. The maximum number of loads would be about 30 per year. Deliveries would be made during normal business hours. Vehicular access to and from the mulch storage site would be by a recently constructed driveway extending from a paved parking area to the rear of the dwelling, and in the case of the deliveries to the site, by a driveway serving the adjoining tract to the west. The off-premises driveway would provide better alignment for tractor-trailers. Each trailer load would equal about 50 cubic yards of mulch.

The sale of mulch tends to be seasonal with about two thirds of business during spring and one third during fall. Sales average about one to five cubic yards each. Sales would be frequently made by telephone, and the mulch would be delivered to the buyers in the majority of sales. Each trailer load of mulch would average about 35 trips of a pickup truck for deliveries. A rubber tired back-hoe would be used to load mulch in buyers' vehicles and the applicant's pickup truck for delivery. The applicant's sons would assist in operation of the business. No other employees would be hired. Normally, the hours of operation would be from 7:30 a.m. to dusk, Monday through Saturday.

The applicant has been conducting the business from the property for about three years, without being aware that it was not allowed as a matter of right--a principal permitted use. The application was filed after discovering that the business required authorization by this Board as a conditional use.

Contrary to the position of several parties in opposition to the request, the application does not involve rezoning of the property. The authority to rezone rests solely with the County Commissioners of Carroll County.

The subdivision in which the applicant's property is located is known as Blue Grass Manor and also as Blue Grass Manor I. The applicant's property, Tract 3, adjoins Tracts 1, 2 and 4 of Blue Grass Manor I, and a separate lot identified as Parcel 138 on the site identification map used to post the hearing notice on the property. The applicant's property also abuts to lots 11, 12 and 13 of Blue Grass Manor II.

With the subdivision and residential development of Blue Grass Manor I and II, as well as other properties located north of Lees Mill Road and southwest of St. Paul Road, the land use has changed from agriculture to residential. It is only on the south side of Lees Mill Road opposite the applicant's property that the adjoining properties have apparently not been subdivided for residential development.

As portrayed by the site location map, the majority of the properties adjacent to the residential area are relatively large tracts of land, including those on the south side of Lees Mill

Road. Such properties presumably are still used in the pursuit of agriculture.

Many of the opponents of the request are residents within Blue Grass Manor I and II. Testimony and evidence substantiated that due to the topography of the area and unobstructed view--except for the barn--the proposed mulch site would be visible from seven of the adjacent lots or tracts within one or the other subdivision.

Parties in opposition to the request generally contrasted the commercial characteristics of the proposed use with the prevailing residential characteristics of the properties within the subdivisions. In support of their position the opponents cited restrictions, also identified as Protective Covenants, of the subdivisions. Even though such covenants are civil and are not enforceable as public law, the adverse affects of vehicular traffic, depreciation of property values, and detrimental affects on the growth of the community are factors that must be considered by this Board.

Although concerns were expressed regarding traffic safety and inadequate sight distance on Lees Mill Road, no probative evidence was introduced to substantiate the allegations regarding traffic safety and the sight distance. Accordingly, the Board cannot place great weight on these factors.

Additional concerns were expressed regarding potential pollution of ground water and a small stream located adjacent to the proposed mulch site. Again, no probative testimony was presented regarding pollution resulting from the storage and sale of mulch, which is commonly used in residential landscaping. Therefore, the Board does not consider such concerns to be material in this case.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The applicant's property and surrounding properties are zoned "A" Agricultural District as depicted on zoning map 48A. The land use provisions for the district are expressed in Article 6. As announced during the public hearing, agriculture is the preferred use in the Agricultural District. (Section 6.1.)

However, principal permitted uses listed in Section 6.2(d) include single and two family dwellings, as well as protective care homes, group homes, and alternate living units. (See Section 20.11.)

Section 6.3, Conditional Uses (requiring Board authorization), paragraph (q) provides:

Garden supply centers, including the sale of small or light garden supplies, equipment and tools, customary and incidental to the sale of garden plants and nursery stock; and including the sale of woodburning stoves, fireplaces and their accessories. (Amended 4/17/79)

Accordingly, the application was filed to allow the storage and sale of mulch, which is one of the products customarily associated with, and available for purchase from, garden supply centers.

Section 20.09 defines a conditional use as:

Uses which are specified for Board of Appeals approval prior to authorization and which uses, after public hearing, may be approved conditionally or disapproved in accordance with Section 17.2. The term "conditional use" shall constitute the same meaning as "special exception" specified as one of the general powers of the Board of Appeals in accordance with Article 66B of the Annotated Code of Maryland.

Article 17, Board of Appeals; Section 17.2, General Powers, states in relevant part:

The Board shall have the following powers:

- (b) To hear and decide conditional uses to the ordinance upon which such Board is required to pass.

In addition, the Board is governed by Section 17.7, Limitations, Guides and Standards, which specifies:

Where in these regulations certain powers are conferred upon the Board or the approval of the Board is required before a conditional use may be issued, the Board shall study the specific property involved, as well as the neighborhood, and consider all testimony and data submitted. The application for a conditional use shall not be approved where the Board finds the proposed use 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.
- (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 this ordinance as set forth herein.
- (i) Type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches, and the like.

The Board is also governed by decisions of the courts.

In the case of *Schultz v. Pritts*, 291 Md. 1, 20-21, (1981) the decision reads:

Generally, when a use district is established, the zoning regulations prescribe that certain uses are permitted as of right (permitted use), while other uses are permitted only under certain conditions (conditional or special exception use). In determining which uses should be designated as permitted or conditional in a given use district, a legislative body considers the variety of possible uses available, examines the impact of the uses upon the various purposes of the zoning ordinance, determines which uses are compatible with each other and can share reciprocal benefits, and decides which uses will provide for coordinated, adjusted, and harmonious development of the district. (Footnote omitted.) (Citations omitted.)

Because the legislative body, in reaching its determination, is engaged in a balancing process, certain uses may be designated as permitted although they may not foster all of the purposes of the zoning regulations and, indeed, may have an adverse effect with respect to some of these purposes. Thus, when the legislative body determines that the beneficial purposes that certain uses serve outweigh their possible adverse effect, such uses are designated as permitted uses and may be developed even though a particular permitted use at the particular location proposed would have an adverse effect above and beyond that ordinarily associated with such uses. For example, churches and schools generally are designated as permitted uses. Such uses may be developed, although at the particular location proposed they may have an adverse effect on a factor such as traffic, because the moral and educational purposes served are deemed to outweigh this particular adverse effect.

When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. (Citations omitted.)

On Page 22, 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.)

REASONING

The agricultural characteristics of the former farm land have been superseded by those of residential development. As stated in Article 1, a fundamental purpose of the zoning ordinance is to conserve the value of property. Although Tracts 1 through 4 of Blue Grass Manor (I) would comply with the minimum required lot area and lot width for agricultural use, in practice it is likely that any such use would be only casual. The lots in Blue Grass Manor II and parcel 138, adjoining Tract 3 to the east, are of less area and width than Tracts 1 through 4, and are therefore less likely to be used for other than residential purposes.

As proposed, the storage and sale of mulch would generate vehicular traffic, including tractor-trailers, far in excess of that incidental to residential use. Such traffic and activities associated with the storage and sale of mulch would not be compatible with the residential development of the community and would tend to depreciate the property values of nearby residences. In turn, the depreciation would be detrimental to the growth of the residential community.

Accordingly, the Board is convinced that the storage and sale of mulch, as proposed at this particular property, would result in adverse effects beyond those that could be expected elsewhere in the district. Furthermore, the Board is convinced that authorization of the conditional use, as proposed, would be contrary to the purpose and intent of the provisions of the zoning ordinance.

CONCLUSION

Therefore, the Board hereby denies the requested conditional use for a garden supply center to allow the storage and sale of mulch from the premises.

May 22, 1991
Date

JDN/bdc/C3538DEC
May 10, 1991

John Totura
John Totura, Chairman