

Tax Map/Block/Parcel
No. 74-13-348

Building Permit/Zoning
Certificate No. 93-1044

Case 3842

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

APPLICANT: Magic Partnership
1949 Liberty Road
Eldersburg, Maryland 21784

**ATTORNEY FOR
APPLICANT:** David K. Bowersox, Esquire
24 North Court Street
Westminster, Maryland 21157

**ATTORNEY FOR
OPPONENTS:** John T. Maguire, II, Esquire
189 East Main Street
Westminster, Maryland 21157

REQUEST: A conditional use for retirement homes for citizens age 55 or older on 3.8 acres

LOCATION: Northwest side of Marvin Avenue about three hundred feet southwest of Ridge Road intersection in Election District 5

BASES: Article 8, Section 8.2(a); Article 7, Sections 7.2(c) and 7.5; Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: May 26, 1993; continued to June 22, 1993

On May 26 and June 22, 1993, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use request for retirement homes for citizens age 55 or older on 3.8 acres located on the northwest side of Marvin Avenue about three hundred feet southwest of Ridge Road intersection.

The Board visited the site and adjacent area May 24 and June 21, 1993.

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 approved the conditional use.

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

FINDINGS OF FACT

The 3.8305 acre lot is located on the northeasterly side of Marvin Avenue about 300 feet south of Ridge Road intersection. It is identified as Parcel 348 on the site location map used in this case and Applicant's Exhibit 3.

The configuration of the lot is generally rectangular as depicted on the plans identified as Applicant's Exhibits 1 and 2. As portrayed by the topographic contour lines of Applicant's Exhibit 1, the land slopes downward from near the southwesterly side property line toward the northeasterly side and front property lines. Public water and sanitary sewerage facilities are available to the property. Most of the land is cleared except for trees and brush located along the rear property line, and another line of trees near the center of the lot, paralleling the side property lines. Applicant's Exhibit 3 and Protestants' Exhibit 5. Although extensive excavation and grading of the site is planned, the existing trees along the rear property line will be retained, where possible, for landscape screening purposes. The tree line near the center of the parcel will be removed in excavating and grading the site.

As proposed, the retirement homes will be developed as six single story brick buildings with eight dwelling units in each building. A seventh building will have seven dwelling units, and a meeting hall with kitchen facilities and restrooms. Although only one parking space would be required for each of the 55 dwelling units, 88 parking spaces are planned.

The retirement homes will be sold as condominiums, which are subject to the provisions of the state Horizontal Property Act. Sale of the condominiums will be restricted to buyers aged 55 years or older. No subdivision is involved with development of the property. The developers will establish an association for homeowners, including covenants and restrictions consistent with the purpose and objectives of the association, and the regulations of the zoning ordinance. The developers will retain control of the association until 80 percent of the condominiums are sold. At that time control of the association will be transferred to the condominium owners, and ownership of the meeting room and facilities will be transferred to the association.

Vehicular access to the condominiums and on-site parking facilities will be provided by a private driveway connecting with Marvin Avenue which intersects Ridge Road. There will be no direct connection with any road in the adjoining planned unit development. While Marvin Avenue and Ridge Road were established long ago, the additional vehicular traffic to and from the condominiums will not unduly affect the existing traffic in the neighborhood.

Mr. Rizzo, a partner in Magic Partnership, testified that landscape screening with evergreens, 6 to 8 feet tall, is planned around the entire site in order to screen the adjacent single family dwellings from the condominium. The evergreens to be added to the tree line paralleling the rear property lines will improve screening of the existing deciduous trees and bushes that shed their leaves annually. The landscape screening will be beneficial to the owners and residents of the condominiums as well as to the owners and residents of adjacent properties.

Appropriate lighting of the parking facilities, walkways, and entrances to the condominiums will be provided by low level fixtures compatible with residential development in the neighborhood.

As described in Applicant's Exhibit 3 and depicted by several exhibits, the

parcel adjoins rear lot lines of single family dwellings fronting on Ridge Road to the northeast; unimproved land to the southeast on the opposite side of Marvin Avenue; a single family dwelling fronting on Marvin Avenue to the southwest; and, rear lot lines of single family dwellings fronting on Midsummer Night Court to the northwest.

Considerable testimony, both pro and con, was presented by witnesses accepted as experts in real estate appraisal. On behalf of the applicant, it was noted that the adjoining development to the northwest, Carrolltowne, is a planned unit development, allowed in the "R-10,000" Residence District as a principal permitted use. The provisions governing planned unit developments permit single-family, two-family, and multi-family dwellings. Attention was also directed to the fact that visibility of the condominiums from the adjoining properties to the northwest was, and would be further diminished by the evergreens to be added to the tree line. As portrayed by photographs identified as Protestants' Exhibit 5, the dwellings near the rear property lines are significantly lower than the elevation of the common rear property lines and tree line on the applicant's parcel. This difference in elevation and the planned excavation and grading of the site will substantially reduce visibility of the condominiums adjacent to the rear property lines. Applicant's Exhibit 3, page 6 reads in relevant part:

The Carroll County Zoning Ordinance, under the Planned Unit Development Section, recognizes that various types of residential development in the immediate neighborhood are not inconsistent with good planning. It is appraiser's opinion that the proposed use--a "retirement" complex--is not unlike or incompatible with other higher density uses permitted in the "R-10,000" Residence District. It is but one of many uses that permit the optimum amount of freedom and variety in the design and management of land zoned for residential use.

While neither appraiser presented a study of actual effects of the establishment of retirement homes adjacent to residential and planned unit developments, both appraisers relied on principles of real estate appraisal. However, the Board finds that the opinion of the appraiser appearing on behalf of the applicant is reasonable and persuasive. In fact, the Board finds no probative evidence to support the opinion that the retirement condominiums would unduly affect the owners and residents of adjacent properties, the values of those properties, or the public interests.

The petition submitted as Protestants' Exhibit 3 in opposition to the conditional use request provides no foundation for opposition to the conditional use. As the issue before the Board is not a question of how many signatures can be obtained for either approval or denial of the conditional use, the Board is prohibited from assigning any value, whatsoever, to the petition.

Finally, the conditions listed in Protestants' Exhibit 4 to be imposed if the Board authorized the conditional use are either unnecessary, excessively restrictive, arbitrary, and without merit.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The site and surrounding properties are zoned "R-10,000" Residence District as depicted on zoning map 74A. The land use provisions of the district are expressed in Article 8. The preamble reads:

The purpose of this district is to provide for smaller lot sizes (10,000 square feet minimum) for single and two-family dwellings, based on the use of public water and sewerage facilities. This would essentially mean more dwellings per acre (approximately 3 to 4 families) and less open area than the "R-20,000" Residence District.

For purposes of clarification, the minimum required lot area for dwellings in the "R-20,000" district is 20,000 square feet.

Section 8.2, Conditional Uses (requiring Board authorization), paragraph (a) specifies that conditional uses listed in the "R-20,000" Residence District are permitted in the "R-10,000" Residence District.

Section 7.2, Conditional Uses, paragraph (c) (Amended 8/12/71) states:

Nursing and/or retirement homes, hospitals (Class A), medical and dental clinics subject to prior approval of the site development plan and exterior design of the structure by the Commission.

Section 7.5, Lot Area, Lot Width and Yard Requirements, specifies the following for retirement homes:

Lot Area	-	45,000 square feet
Lot Width	-	150 feet
Density	-	One dwelling unit per 3,000 square feet
Front Yard	-	50 feet**
Side Yard	-	40 feet**
Rear Yard	-	50 feet**

**As lot area increases above minimum of 45,000 square feet increased provision for front, side and rear yards shall be determined by the Commission and the Health Department based on the site development plan.

Definitions expressed in Article 20 read respectively:

Dwelling Unit: A single unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping,

cooking, eating, and sanitation.

Retirement Communities: Planned developments designed to meet the need of, and exclusively for, the residences of senior citizens.

Senior Citizen: A person at least 55 years of age.

Conditional Uses: Uses which are specified for Board approval prior to authorization and which uses, after public hearing, may be approved conditionally or disapproved in accordance with Sections 17.2 and 17.7. 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; Sections 17.2, General Powers, paragraph (b) and 17.7, Limitations, Guides and Standards read respectively:

The Board shall have the following powers:

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

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 decision of Schultz v. Pritts, 291 Md. 1, 20-21 (1981), the court wrote:

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 designed 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.)

In accordance with the provisions of Section 17.4.10, the Board extended the time for issuing this decision.

REASONING

The applicant clearly established that the conditional use of the retirement condominiums complies with the provisions of the zoning ordinance. The location of the site with both the "R-10,000" Residence District, and the neighborhood is particularly appropriate, and the conceptual development plans for the retirement homes reflect unusual efforts to minimize potentially adverse affects of the retirement condominiums upon the owners and residents of adjacent properties, the values of those properties, or the public interests. Furthermore, the Board is convinced that the retirement condominiums, as proposed, comply with the standard expressed by the court in Schultz v. Pritts, particularly as the record is absent of substantive evidence to the contrary.

CONCLUSION

Based on the findings of fact, applicable law and reasoning expressed herein, the conditional use is authorized in accordance with the Board's determination at the conclusion of the public hearing.

7/26/93
Date

William Law
William Law, Chairman