

Tax Map/Block/Parcel  
No. 15-23-428

Building Permit/Zoning  
Certificate No. 93-2954

Case 3869

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

**APPLICANT:** Franciscan Sisters of Baltimore, Inc.  
3725 Ellerslie Avenue  
Baltimore, Maryland 21218

**ATTORNEY:** James N. Phillips, Esquire  
18 West Franklin Street  
Baltimore, Maryland 21201-5050

**REQUEST:** A conditional use to allow the existing dwelling to also be used as a retreat center, and variances to the minimum required lot area of five acres and setback of 100 feet from adjoining properties

**LOCATION:** 4800 Hoffmanville Road in Election District 6; Wildflowers subdivision, lot 2, recorded in Carroll County Plat Records in book 29, page 52

**BASES:** Article 6, Sections 6.3(cc) and 6.7; Article 15, Section 15.5.4(d); Ordinance 1E (The Carroll County Zoning Ordinance)

**HEARING HELD:** October 26, 1993

On October 26, 1993, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use request to allow the existing dwelling to also be used as a retreat center, and variances to the minimum required lot area of five acres and setback of 100 feet from adjoining properties at 4800 Hoffmanville Road.

In accordance with the provisions of Article 17, Section 17.6.6 and 17.7 of the zoning ordinance, and the Board's longstanding policy of visiting sites prior to the public hearing, the Board visited the site October 25, 1993. The purpose of the visit was for the Board to view and become reasonably familiar with the site and adjacent properties to assist the Board in appraising testimony and evidence, either pro or con, presented during 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 authorized the conditional use and variances subject to the conditions of authorization specified in the conclusion of this decision.

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

**FINDINGS OF FACT**

The 3.19775 acre lot is on the easterly side of Hoffmanville Road about 1,000 feet west of Falls Road intersection, and is identified as the Remaining Portion of the two lot subdivision known as Wildflowers. From inspection of the aerial photograph of the dwelling and adjacent area to the northwest, Applicant's Exhibit 3, and the site location map used in this case, the area can be characterized as farmland with some residential development to the north on Falls Road and Roller Road, and to a lesser extent on Hoffmanville Road. The dwelling to the east on lot 1 of the subdivision is the nearest dwelling and is easily visible from the property. A second dwelling on the adjoining lot to the northeast is also visible, but is further from the premises than the dwelling on lot 1. The area is moderately hilly and the topography of the lot rises significantly from Hoffmanville Road toward and beyond the rear property line, affording an exceptional view of the countryside.

The lot is improved with a single family dwelling with an attached two car garage. It is located slightly more than 100 feet from the easterly side property line, about 80 feet from the westerly side property line, and about 125 feet from the northeasterly, or rear property line. The paved curvilinear driveway provides vehicular access from Hoffmanville Road to the dwelling and garage. The driveway connection to the road appears to be located in compliance with the restriction of the Carroll County Planning and Zoning Commission noted on the recorded subdivision plat. As depicted on Applicant's Exhibit 4, a parking pad for two vehicles is adjacent to the driveway connection to the road, with another pad for four cars next to the garage.

As described by the applicants, the retreat center is a new mission for the order. Retreats will be conducted as spiritual and ecumenical programs for religious adults seeking spiritual counseling or direction and quiet contemplation, reflection and prayer. The programs will be offered to individuals, couples and small groups, generally during the day. Overnight accommodations within the dwelling are planned for guests. As proposed, the retreat center will not generate a significant increase in vehicular traffic to and from the premises.

The dwelling will continue to be the principal use of the property.

Several residents and property owners of adjacent properties testified on behalf of the applicants and in favor of the request. Others opposed the requests and presented a petition, statements, and testimony in opposition alleging:

Authorization of the conditional use and variances would be a change of zoning.

The retreat center would have commercial characteristics incompatible with the agricultural and residential neighborhood.

Hoffmanville Road and the driveway serving the dwelling are hazardous, particularly in inclement weather, and that the retreat center would cause traffic congestion

and dangerous traffic conditions for pedestrians and motorists using Hoffmanville Road.

The premises would be used for something other than the dwelling and retreat center.

The peace, quiet and security of the neighborhood would be threatened by guests of the retreat center.

The surface and ground water would be adversely affected by the more intense use of the premises as a retreat center.

The variances reducing the minimum required lot area and setback from the property to the northwest are unwarranted.

The conditional use and variances are not required to use the premises as planned.

However, the allegations were not substantiated by probative evidence, and in assessing the allegations in light of the testimony presented on behalf of the requests and the characteristics of the proposed retreat, it is evidence that the allegations are without merit.

With regard to whether or not the conditional use and variances are required for the premises to be used as a retreat center, the authority and responsibility for enforcement of the provisions of the zoning ordinance rests with the Zoning Administrator. During the public hearing, the Zoning Administrator confirmed that establishment of the retreat center as a conditional use and the variances pertaining thereto are subject to authorization by the Board.

#### APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The lot and adjacent properties are zoned "A" Agricultural District as depicted on zoning map 15B. The land use provisions for the district are expressed in Article 6. The preamble reads:

The purpose of this District is to provide for continued farming activities, conserve Agricultural land, and reaffirm Agricultural use, activities and operations as the preferred and dominant use of the land within the District, except in an area designated "MR" within the "MRO" Mineral Resource Overlay where mineral resource recovery is also a preferred use. While relatively small existing hamlets, villages and residential communities appear within, as do occasional dwellings, and other uses, the District is primarily composed of

land which, by virtue of their highly productive soils, rolling topography and natural beauty, are the very essence of the County's farming heritage and character. A substantial portion of the residential development in the County has previously taken place in the Agricultural District. This has the effect of taking agricultural land out of production and creating a demand for public facilities and services - roads, water and sewerage, schools, police and fire protection - in areas where provision for such additional services and facilities is not consistent with the purpose of the Agricultural District. The intent of this article is to recognize the need for and appropriateness of very limited residential development in the Agricultural District, but to prohibit residential development of a more extensive nature. It is the further purpose of this district to maintain and promote the open character of this land as well as to promote the continuance and viability of the farming and agri-business uses.

However, the preamble is not part of the statute, and the statute speaks for itself. The title, "A" Agricultural District, does not dictate the land uses permitted in the zone, and subdivision of agriculturally zoned land for residential development is allowed in the district. Clark v. County Commissioners for Carroll County, 270 Md. 343, 349-350 (1973).

While agriculture and agricultural operations are a preferred land use within the district (Section 6.1), numerous other uses are listed in Section 6.2 as principal permitted uses which do not require Board authorization. Such uses include single and two-family dwellings, protective care homes, group homes, alternate living units, churches, recreation areas and centers including country clubs and swimming pools, riding academies and livery stables, veterinary clinics, and animal hospitals.

Section 6.3, Conditional Uses (requiring Board authorization), paragraph (cc) reads:

Retreat or Conference Centers as defined in Section 20.30C, provided that a site development plan shall be approved by the Commission, and subject to the following:

- (1) The use shall be located on a property of not less than five (5) acres.
- (2) All buildings and housing shall be located not less than one hundred (100) feet from adjoining property.
- (3) Such use shall be designed so as to preserve the maximum amount of land

for agricultural purposes.

- (4) The use shall be shown by the owner not to adversely affect the quantity or quality of ground or surface waters, or be otherwise detrimental to neighboring properties.
- (5) The Board may limit the maximum occupancy of the site based on such factors as its proximity to a public water supply and adequacy of the access to the site.
- (6) The Board may require an Environmental Impact study based on the scale of the project and on the recommendation of technical staff.

The Board notes that the minimum lot area, lot width and yard requirements specified in Section 6.7 for other principal permitted or conditional uses are:

lot area	-	3 acres
lot width	-	200 feet
front yard depth	-	40 feet
side yard (width each side yard)	-	30 feet
rear yard depth	-	50 feet

For purposes of the zoning ordinance, a retreat or conference center is defined in Article 20 as:

A facility used for professional, educational or religious conclaves, meetings, conferences or seminars and which may provide meals, housing and recreation for participants during the period of the retreat or program only. Such centers may not be utilized by the general public for meals or overnight accommodations. Housing for participants may be in lodges, dormitories, sleeping cabins (with or without baths) or in such other temporary quarters as may be approved by the Board, but kitchen and dining facilities shall be located in a single centrally located building or buildings.

Section 17.7, Limitations, Guides and Standards govern the Board in deciding conditional use and variance requests. It reads:

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.

Conditional Uses are defined in Section 20 as:

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.

Variations are defined in Section 20 as:

A variance is a relaxation of the terms of the Zoning Ordinance in accordance with Sections 15.0, 15.2, and 17.2 where such variance will not be contrary to the

public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the Ordinance would result in practical difficulty or unreasonable hardship.

Section 15.5.4, paragraph (d) reads in relevant part:

The Board may grant or deny the requested variance based on the evidence before it after a de novo hearing. The Board may grant a variance only in cases where the strict compliance with the terms of the ordinance would result in practical difficulty or unreasonable hardship which have not been caused by the applicant or the applicant's predecessor in title. The Board shall not grant a variance if to do so would violate the spirit and intent of the regulation, or cause or be likely to cause substantial injury to the public health, safety and general welfare. The Board shall be guided in its decision by those considerations set forth in Section 17.7.

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.)

Continued on page 22, the decision reads:

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 Turner v. Hammond, 270 Md. 41, 55 (1973), the decision states:

While the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements he does not have the burden of showing affirmatively that his proposed use accords with the general welfare. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses, is, of course, material but if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal. (Citation omitted.)

In Anderson v. Board of Appeals, Town of Chesapeake Beach, Md., 22 Md. App. 28, 39 (1974) the decision pertaining to the authorization of variances reads in relevant part:



Where the standard of "practical difficulty" applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the "undue hardship" standard. In order to justify the grant of an area variance the applicant need show only that:

- "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- "2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- "3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured." (Citations omitted.)

In *Steuart Petroleum Company v. Board of County Commissioners of Saint Mary's County, Md.*, 276 Md. 435, 445 (1975) the court wrote:

In the context of zoning law, a "plebiscite of the neighbors" or "of the neighborhood" refers to instances where the action of an administrative body which effects a change in zoning and deprives an individual of a property right is predicated on the pleasure of the owners of nearby property rather than on a comprehensive plan, which imposes mutual restrictions and confers mutual benefits on all,....(Citations omitted.)

In *Entzian v. Prince George's County, Md.*, 32 Md. App., 256, 262, 263 (1976) the decision quotes from the opinion of the Circuit Court for Prince George's County quoting *Rockville Fuel and Feed Company v. Board of Zoning Appeals of City of Gaithersburg, Md.*, 257 Md. 183 and 193 (1970):

"'Zoning is not a plebiscite'" and therefore testimony in opposition restricted solely to lay witnesses, petitions of objection to the proposal by residents, and testimony amounting to unsupported dislike and fear of

(a) project, "...amounted to no evidence at all."  
(Citation omitted.)

### REASONING

The Board agrees with the Zoning Administrator's determination that the proposed retreat center is a conditional use, requiring Board authorization.

However, and more importantly, it is difficult to imagine a less offensive retreat center as a conditional use. The continued use of the existing dwelling as a residence and establishment of the retreat center within the dwelling is much less intensive than contemplated by the provisions of the zoning ordinance for a principal use of land. As proposed, neither the minimum required lot area of 5 acres nor the minimum required setback of 100 feet from the adjoining property to the northwest are required to ensure the intent and purpose of the zoning ordinance. In fact, the area and width of the lot, and the location of the dwelling greatly exceed the minimum requirements of the zoning ordinance governing dwellings and the site is particularly suited for the proposed use. The appearance of the premises will continue to be that of a residence, and the peace and quiet of the area will be maintained. While vehicular traffic will be generated to and from the premises, there is no evidence to conclude that such traffic will result in congestion or produce dangerous traffic conditions.

In considering the standards for both conditional uses and variances expressed in decisions of the courts as noted above, and the provisions of the zoning ordinance expressed in Section 17.7, the Board finds no evidence that establishment of the retreat center, as requested and conditioned below, will unduly affect the residents of adjacent properties, the values of those properties or public interests.

The Board is also convinced that authorization of the variances is justified in order to allow establishment and operation of the retreat center as proposed and conditioned below.

Regardless of the finding noted above that the allegations expressed in opposition were without merit, the petition constitutes a plebiscite of neighbors and is of no value in this case.

### CONCLUSION

Based on the findings of fact, applicable law and reasoning expressed above, the conditional use for the retreat center and variances reducing the minimum required lot area of 5 acres to 3.19775 plus or minus acres and minimum required setback of 100 feet to about 80 feet, both as presently existing, and pertaining to the retreat center are authorized subject to the following conditions:

1. The authorizations are limited to the applicants and shall not inure to the benefit of heirs or assigns. This condition shall not preclude application in

the future by others in accordance with the provisions of the zoning ordinance.

2. Retreats shall be limited to not more than ten guests on the premises at a particular time.

11-22-93

Date

Claude R. Rash  
Claude R. Rash, Chairman

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