

Tax Map/Block/Parcel  
74-14-417

Building Permit/Zoning  
Certificate 94-4119

Case 3994

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

**APPLICANTS:** Rosario D. Rizzo and John Serra  
1333 Liberty Road  
Sykesville, Maryland 21784

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

**REQUEST:** A conditional use for residential housing for senior citizens  
in a retirement home community

**LOCATION:** On about 10.76 acres to the south of Liberty Road (Md. Rt. 26)  
with access therefrom about 250 feet east of Monroe Avenue in  
Election District 5

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

**HEARING HELD:** January 24, 1995

On January 24, 1995, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use for residential housing for senior citizens in a retirement home community on about 10.76 acres located to the south of Liberty Road with access therefrom about 250 feet east of Monroe Avenue.

Articles and Sections cited below are of Ordinance 1E.

In accordance with the provisions of Article 17, Sections 17.6.6 and 17.7 and the Board's longstanding policy of visiting sites prior to public hearing, the Board visited the site January 17, 1995. The purpose of the visit was for the Board to view the site and adjacent properties so that the Board would be reasonably familiar with the properties to assist in the Board's appraisal of 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 and in accordance with state Open Meetings Act, the Board approved the conditional use in conformity with Sections 7.2(c) and 7.5. (See APPLICABLE LAW below.)

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

### FINDINGS OF FACT

The existing 12.2± acre unimproved tract is located to the south of Liberty Road (Md. Rt. 26) about 250 feet east of Monroe Avenue. As depicted on Applicants' Exhibit 1, the plat submitted with the Application for Hearing, approximately 1.44 acres of the tract fronts directly on Liberty Road and is zoned "B-L" Local Business District. Except for use for vehicular access to and from Liberty Road, the 1.44 acres are not part of this request.

The remaining 10.76 acres are located 200 feet from the right of way of Liberty Road. The width of the site at the midpoints of the side property lines is slightly more than 574 feet and the distance between the front and rear property lines averages about 816 feet. As observed by the Board, the site is wooded and will require clearing and grading to develop.

On December 14, 1977, the Carroll County Commissioners adopted the Comprehensive "Mini" Plan for the Freedom Area and Environs, including the zoning maps for the area. Twelve years earlier on August 17, 1965, the commissioners adopted Ordinance 1E and the accompanying zoning maps. The 1977 maps superseded the maps adopted in 1965. Since 1977, the adjoining properties between the site and Liberty Road including the 1.44 acres have been and presently are zoned "B-L" Local Business District. The abutting properties to the east, south and west are zoned "R-20,000" Residence District. (Zoning Map 74A and Applicants' Exhibit 1.) The land located on the north side of Liberty Road is also zoned "B-L" Local Business District, and is being prepared for development of a planned business center.

Of the contiguous properties fronting on Liberty Road, a restaurant is adjacent to the northwest corner of the site; the 1.44 acre site is unimproved; the two adjoining properties to the east are improved commercially; and a real estate office is adjacent to the northeast corner. The rear yards of residential lots improved with dwellings adjoin the east, south and west sides of the site.

The area is served with public water and sanitary sewerage facilities, and the proposed development is contingent upon connection to those facilities.

As portrayed on the plat, Applicants' Exhibit 1, a future collector street identified as a planned major street on the Freedom Area and Environs Comprehensive "Mini" Plan extends across the site, paralleling Liberty Road. The street intersects Monroe Avenue to the west and Carroll Highland Road to the east. The right of way width for the street is noted as 50 feet.

As proposed, a road will be constructed to provide vehicular access to and from Liberty Road. The connection to Liberty Road is opposite a access road intersection for a planned business center being developed north of Liberty Road. Improvements are also planned for Monroe Avenue as a result of the planned business center. All improvements are subject to obtaining State Highway Administration permits.

The conceptual plan for development of the retirement home community includes twenty-three multifamily dwellings with a centrally located recreation building.

One hundred fifty-six dwelling units, to be sold as condominiums, are proposed based on the maximum allowable density of one dwelling unit for each 3,000 square feet of lot area.

The residential buildings are oriented to a circular access driveway, providing parking spaces on both sides of the driveway in front of the buildings. Fifteen single story quadruplexes, 50 feet by 80 feet, are depicted by the plan to the exterior side of the driveway--a total of 60 dwelling units. Eight apartment buildings, 50 feet by 90 feet, limited to two and one-half stories or maximum height of 35 feet, are portrayed surrounded by the driveway. Each apartment building would have 12 apartments--a total of 96 dwelling units.

All of the dwelling units are intended to be handicapped accessible, with elevators in the two and one-half story buildings. The plan notes that one parking space is required for each dwelling unit and provision for 284 spaces. However, the plan does not depict any parking spaces for the physically handicapped, which could reduce the number of spaces provided.

Landscaping will be established for each building and a row of evergreen trees are tentatively planned to be planted, fifteen feet on centers, adjacent to and paralleling the exterior property lines of the site. The plan does not depict such landscaping.

An expert in real estate appraisal testified on behalf of the request that the site is appropriate for the retirement community, the retirement community would be compatible with the residential and commercial development in the area, and that neither the residents of adjacent properties, nor the values of those properties will be adversely affected by development of the retirement community.

The Director of Economic Development of the county testified that the retirement home community would benefit the county.

Although a number of residents of the area express concerns regarding development of the retirement home community, no probative evidence was presented substantiating the proposed use would be particularly harmful at this location.

#### APPLICABLE LAW

The land use provisions for the "R-20,000" Residence District are expressed in Article 7. Principal permitted uses, legislatively determined to be mutually compatible in this district, which do not require authorization by this Board include: churches, schools and colleges; single family dwellings including sheltered housing; buildings and properties for a cultural, civic, educational, social or community service; and conversion and alteration of a building existing at the time of the enactment of this ordinance to accommodate two families, subject to several requirements.

Section 7.2 lists conditional uses allowed in the district, subject to authorization by this Board. 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.

Conditional uses listed in Section 7.2 include:

- (a) Antique shops and arts and crafts shops where operated solely by the resident.
- (b) Beauty shops or barber shops
- (c) 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.  
(Emphasis added.)
- (d) Funeral establishments
- (f) Nursery schools or day care centers
- (i) Within a dwelling, the professional office of the resident physician, insurance agent, realtor, or other profession determined by the Board to be similar in use and characteristics.
- (k) Bed and breakfast inn
- (l) Country inn
- (m) Cottage industry, provided it is conducted solely within the dwelling.
- (n) Clubs, fraternal organizations, lodges and similar organizations; provided they are not conducted for profit and obtain and maintain appropriate designation as non-profit entities exempt from federal income tax requirements pursuant to federal tax law regulating the conduct of such businesses; subject to site plan approval under Section 4.26.

The minimum requirements specified Section 7.5 for retirement homes are:  
a lot area of 45,000 square feet; a lot width of 150 feet; a density of one

dwelling unit per 3,000 square feet; a front yard of 50 feet; side yards of 40 feet; and a rear yard of 50 feet. In addition, the provisions state:

For those areas in excess of 180,000 square feet, the determination of the density factor will be made by the Commission and the Health Department upon review and approval of the site development plan.

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.

The provisions governing site development plans are expressed in Section 4.26.

Retirement communities are defined in Section 20 as, "Planned developments designed to meet the need of, and exclusively for, the residences of senior citizens."

In considering an application for authorization of a conditional use, the Board is governed by the provisions of Section 17.7, which read:

#### Limitations, Guides and Standards

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

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 is arbitrary, capricious and illegal. (Citation omitted.) (Emphasis added.)

In the case 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 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.)(Emphasis added.)

#### REASONING

The issue before the Board in this case is whether the retirement home community is an appropriate land use of the 10.76 acres in accordance with the provisions of Section 17.7 and decisions of the courts. From the testimony and evidence presented, it is evident that use of the land for residential purposes is likely to have less impact upon residents of adjoining properties and the values of those properties than other conditional uses having commercial characteristics listed in Section 7.2.

In considering the provisions of Section 17.7, the retirement home community will have residential characteristics, similar to the dwellings

adjacent to the side and rear property lines even though the density--or number of dwelling units--will be substantially greater than if the site would be developed with single family dwellings. The retirement home community will not adversely affect either the use or the values of the "B-L" Local Business District properties located between the site and Liberty Road .

However, the plan in maximizing the potential density of the site minimizes the distance between buildings, the setback of the buildings from the access driveway and parking spaces in front of the buildings, and provides only the minimum setbacks for the required yards.

Traffic and facilities are of equally serious concern. For those residents of the area who can recall when there was less than half of the vehicles traveling Liberty Road than there are presently, the comparison is not pleasing. A thorough study of present and projected vehicular traffic on Liberty Road and generation of vehicular trips likely to result because of the retirement home community is essential. As the number of vehicular trips that would be generated by the retirement home community is directly related to the density, particular attention should be directed to the total number of dwelling units that may be authorized by the planning commission, and consequent vehicular traffic. In addition, the connection at Liberty Road of the proposed access road to and from the retirement home community should be constructed with sufficient lanes to facilitate turning maneuvers and permit safe ingress and egress to and from Liberty Road.

Consequently, the Board does not endorse the plan, Applicants' Exhibit 1, as presented during the public hearing. However, the merits of the site plan, including those issues, rest with the planning commission.

#### CONCLUSION

Based on the findings of fact, applicable law and reasoning expressed above, the conditional use is hereby approved in accordance with the Board's oral decision at the conclusion of the public hearing.

Feb. 22, 1995  
Date  
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Claude R. Rash  
Claude R. Rash, Chairman