

Tax Map/Block/Parcel
No. 47-20-537

Case 5488 Remand

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

APPLICANTS: Newman's Crane Service
c/o Vanessa Newman
2169 Woodview Road
Finksburg, Maryland 21048

ATTORNEY: n/a

REQUEST: *Remanded in part by Circuit Court (for further deliberations, vote and fact finding) - conditional use for a storage lot for up to 4 commercial vehicles.*

LOCATION: The site is located at 2169 Woodview Road, Finksburg, MD 21048 on property zoned "A" Agricultural District in Election District 4.

BASIS: Code of Public Local Laws and Ordinances, Section 223-71 A (23)

HEARING HELD: October 26 and December 1, 2010

FINDINGS AND CONCLUSION

On June 17, 2009, the Board, after a full evidentiary hearing, issued a decision granting a conditional use to the Applicants to park up to four (4) commercial vehicles at their residence at 2169 Woodview Road. A neighbor filed an appeal of the Board's decision to the Circuit Court of Carroll County. On July 21, 2010, the Honorable J. Barry Hughes remanded the case to the Board in part "for the purpose of conducting further deliberations, vote, and written fact findings in accordance with the Schultz (v. Pritts) standard". In accordance with the Court Order, the Board reviewed the transcript of the evidentiary hearing which was held on May 21, 2009, conducted public deliberations, and issued the following findings of fact and conclusion in support of the grant of a conditional use.

The Schultz test can be summarized as follows: A request for a conditional use should be examined to determine whether there are facts and circumstances that show that the particular use proposed at the subject location would have any adverse effects above and beyond those

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inherently associated with such a use irrespective of its location within the zone. In applying this test, the Board is guided by Chapter 223, §191 of the Code, which provides as follows:

§ 223-191. 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, 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 chapter as set forth herein.
- I. Type and kind of structures in the vicinity where public gatherings may be held, such as schools, religious establishments, and the like.
- J. Compatibility.
- K. Public convenience and necessity.

In applying these standards, the Board made the following finds of fact. The Applicants' residence is remotely located at the end of the road. The garage and cranes are well screened by trees and by the topography of the land, and are not visible to most of the neighbors. There will be no additional buildings or new facilities constructed on the property. Thus, there are no measureable visual impacts on the neighborhood. It will not increase the population of the community, which consists of 26 large lot homes on a public street. The Board found that traffic generated by up to four commercial vehicles for this business will be negligible (usually one trip in and out per vehicle per day) and can be easily accommodated on this lightly travelled public street. The number of fuel trucks, buses, delivery vehicles, and other commercial vehicles typically traveling in neighborhoods is similar. For these reasons, the Board found that the Applicants' commercial vehicles travel back and forth so infrequently and so slowly that they will have almost no impact on the peaceful enjoyment of the residents in their homes. As for conservation of property values, there was no evidence presented by opponents of the application that property values would be adversely impacted if the application was granted. On the contrary, the Applicants have constructed an attractive building which will conceal their equipment and may enhance the neighborhood. As for odors, noise and dust smoke and similar effects, the Board noted that no commercial activity will occur on the property, and that the minimal traffic generated by this use will not result in odors or excessive periods of noise, smoke or similar effects. The purpose of the Agricultural Zone set forth 223-67 is to "provide for continued farming activities, conserve agricultural land, and reaffirm agricultural use, activities

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and operations as the preferred dominant use in the district". The property and the neighborhood are residential in nature, rather than agricultural, so the Applicants' use cannot be said to defeat the purposes of the Agricultural Zone. Furthermore, there are no schools, churches or other public uses in the vicinity which would be impacted by the Applicants' use. Finally, the Applicants' use is compatible with this neighborhood. Other properties in the neighborhood have large house trailers, campers, trucks, and multiple vehicles parked on them. The Applicants' storage of vehicles inside and around their building is consistent with other uses and practices in the neighborhood.

Few, if any, uses of property do not generate any adverse effects. The County Commissioners at Chapter 223 § 71 (A) (23) determined that the storage of commercial vehicles should be a conditional use in the Agricultural zone. After applying the Schultz test and the factors set forth in Chapter 191 to the application, the Board concluded that the adverse effects inherent in this use as set forth above will be no greater here than elsewhere in the zone. Thus, the Application met the criteria and the conditional use for up to four commercial vehicles was granted.

15 December 2010
Date

Howard B. Kramer
Howard B. Kramer, Chairman

Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court for Carroll County within 30 days of the date of the decision pursuant to Article 66B, Section 4.08 of the Annotated Code of Maryland Rules of Procedure.

Pursuant to Section 223-192C of the County Code, this approval will become void within 1 year from the date of this decision unless the use or variance is implemented. Please contact the Zoning Administrator at (410) 386-2980 to obtain a zoning certificate.