

Tax Map/Block/Parcel
No. 39-12-684
Case No. 5588

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Legacy Contracting
1538 Manchester Road
Westminster, Maryland 21157

ATTORNEY: Clark R. Shaffer
73 East Main Street
Westminster, Maryland 21157

REQUEST: For a conditional use for a landscaping service (and storage of vehicles in connection therewith) in conjunction with a nursery operation on the same premises and a variance from the distance requirement of 400 feet to 100 feet.

LOCATION: The site is located at the corner of MD Rt. 482 and Old Manchester Road and MD Rt. 27 in Westminster on property zoned as "R-40,000" Residential District in Election District 6.

BASIS: Code of Public Local Laws and Ordinance, Chapter 223-63(I) and 223-186

HEARING HELD: May 26, 2011

FINDINGS AND CONCLUSION

On May 25, 2011, the Board of Zoning Appeals (the Board) convened to hear a request for a conditional use for landscaping service (and the storage of vehicles in connection to the business) in conjunction with a nursery operation on the same premises and a variance from the minimum tract size of 50 acres to 4.7 +/- acres and a variance from the distance requirement of 400 feet to 100 feet. Based on the testimony and evidence presented, the Board made the following finds and conclusion:

Legacy Contracting is owned by George Schooley and his wife and it has been in operation since 1963. The business performs landscaping and hardscaping jobs ranging from \$4,000 to \$10,000. Exhibit 1 shows the area where trees and shrubs will be planted strictly for the use of the business. Exhibit 3 submitted to the Board shows the equipment used at the nursery for business purposes. The Applicant would like to build a

greenhouse on the property where starter trees would be planted. He plans on using 2.393 acres of the property for commercial storage and 2.424 acres for nursery use. The Applicant would also like to store mulch and decorative stone for jobs in Carroll, Baltimore and Howard County.

There will be no customers on site and typical hours of operation would be 7:30 am to 5:30 pm with approximately 16 employees.

Jay Voight, Chief, Zoning Administration, stated that he was opposed to the use of the property as it is zoned for residential use. Mark Brewer, Zoning Inspector, stated that there are several zoning violations on the property as it relates to the storage of unlicensed vehicles and a junkyard site. A neighbor testified that the property has been cleaned up by the Applicant and was a clean operation.

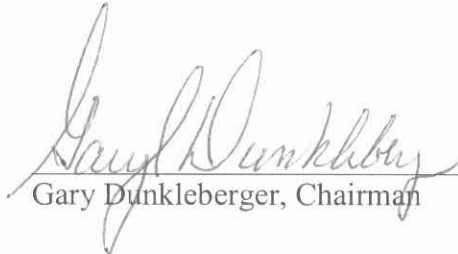
The property has been used by the State Highway Administration as a staging area in the past. There is a cell tower on the property.

A surveyor for the Applicant testified that soil on the site will not support a septic system. The topography of the property renders it practically invisible for the road. It is bound by the State roads on three sides. Other area uses include a day care center, junkyard, BGE substation, and a property management company.

The Board found that the site was unsuitable for residential purposes as a house cannot be built on it due to soil. The landscaping service in conjunction with the proposed nursery is a use that is compatible with the neighborhood. Noise, dust, fumes and other adverse effects generated by the landscaping service/nursery and attendant storage of vehicles at this location are no greater here than elsewhere in this zone. There was no opposition from the neighbors. No evidence of reduction in property values was received. As a result, the conditional use request was granted.

Turning to the variance request, the Board found the property to be unique. Although zoned R-40, houses cannot be build on it. It is at the top of a hill and is not visible from three state roads which surround it. Fifty acres is not needed for this small scale operation. A cell tower exists on the property. With all these conditions of the property, none of which were the result of the actions with its Applicant, a strict application of the minimum tract size and distance requirements for the R-40 zone would result in practical difficulty and undue hardship. Accordingly, both variances were granted.

23 June 2011
Date


Gary Dunkleberger, Chairman

Pursuant to Section 223-192C of the County Code, this approval will become void unless a concept site plan has been submitted to and accepted for review by the Bureau of Development Review within 6 months from the date of this decision. This approval may become void if the applicant fails to take action to secure approval of the site plan in a timely manner as determined by the Bureau of Development Review. For more information on the site plan process, please contact the Bureau of Development Review at (410) 386-2143.

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.