

Case No. 3008

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

APPLICANT: Pheasant Ridge Estates, Inc.  
4307 Elm Drive  
Mt. Airy, Maryland 21771

ATTORNEY: David K. Bowersox, Esquire  
Dulany, Parker & Scott  
127 East Main Street, Box 525  
Westminster, Maryland 21157

REQUEST: Develop 300 additional lots for mobile  
homes on about 65 acres.

LOCATION: 4307 Elm Drive  
Mt. Airy, Maryland 21771

BASES: Article 4, Section 4.3(a), Ordinance 1E

HEARING HELD: September 26, 1988, October 14, 1988,  
and October 17, 1988

The Board of Zoning Appeals for Carroll County heard testimony and received evidence upon an application by Pheasant Ridge Estates, Inc., to expand a lawfully existing nonconforming use, to wit: a mobile home park. Based upon the testimony and evidence presented at these hearings, the Board of Zoning Appeals will deny the request. What follows is a discussion of the facts which we find with regard to the application and our reasons for making this decision.

Initially, the Board understands that a nonconforming use is at odds with the purpose and intent of the Zoning Ordinance but is allowed to continue to protect the rights of users where the use pre-existed zoning. In Carroll County there is latitude with regard to the expansion of a nonconforming use not often found in

other zoning ordinances. A person having a nonconforming use may apply to this Board for approval to make structural alterations and enlargements of the use. Carroll County Zoning Ordinance, Section 4.3(a). The authorization therein granted is limited, however, by Article 17, Section 17.6. (By Ordinance No. T-77 Section 17.6 was amended and it is the Board's interpretation that the official comment to Section 17.7 requires the Board to follow the limitations of Section 17.7 as the successor section to 17.6.) Most importantly, the Board is required and constrained to review any request with regard to the purpose and intent of the Zoning Ordinance. In this case, the property is zoned "C" Conservation District. The Conservation District has as its stated purpose "the conservation of natural geographic factors and existing land uses, to conserve open spaces, water supply sources, woodland areas, life and other natural resources."

Bearing in mind the stated purpose of the Conservation District and the limitations, guides and standards set forth in Section 17.7, the Board finds as facts the following:

1. The proposed expansion of the nonconforming use would increase the existing mobile home park from 100 dwelling units to 400 dwelling units. This expansion is to take place on property owned by the applicant containing approximately 100 acres. Of those 100 acres, 21 acres are now used for the existing mobile home park which contains approximately 100 lots. A proposed minimum lot size for the mobile home park would be 6,000 square feet. Thus the density in this area, if fully developed, would

be a gross density of 4 homes per acre and a net density, once open space, community facilities, maintenance facilities and road ways are deducted, of considerably more than that. This density contrasts sharply with what would be allowed for conforming uses within the zone. For example, a dwelling is required to have 3 acres of lot area and most other uses are required to have 5 acres of lot area. Thus, this property owner developing the property in question as a conforming use within the zone would be authorized 33 dwelling units (100 acres divided by 3 acres per dwelling unit) if no roads are required; or taking the expansion area alone, only 22 additional dwelling units (65 acres divided by 3 acres per dwelling unit), if no roads are required.

2. State Route No. 144 is the road from which people would exit the expanded trailer park, primarily heading to the west to enter Route No. 27, another State highway. The intersection of Route No. 144 and Route No. 27 requires traffic entering Route No. 27 to stop by virtue of a stop sign. Traffic heading south is required to cross two lanes of through travel, a deceleration lane, and a left turn lane before making a left turn to head south. Vehicles entering Route No. 144 from Route No. 27 southbound are required to cross a left turn lane, two through lanes of traffic, and a deceleration lane. The morning peak hour reflects that most traffic heads south in the morning on Route No. 27 and north in the evening. The residents of the area testified that the intersection of Routes No. 27 and 144 are difficult to negotiate if a person is attempting to head south on Route No. 27 in the morning or make an eastbound movement from

southbound Route No. 27 in the evening. Despite the opinion of the expert, Mr. Lukas, the testimony of the residents was clear that the intersection can be a dangerous one and that the introduction of a large number of vehicles generated by the expansion of the mobile home court by 300 units would adversely affect the use of the intersection.

3. Testimony was presented regarding the amount of ground water in the vicinity necessary to support the expansion and its potential effect on neighboring wells. The residents of the area testified about the many problems which they and their neighbors have had in obtaining water. The Mayor of Mt. Airy testified about the town's struggle to obtain a public water supply in the area to provide for the needs of its citizens. Without objection, the Board took notice of the Carroll County Water Resources Study. While the developer has engaged a reputable firm (the firm which the town is also using to secure a public water supply and which conducted the water resources study) to find it a suitable water supply for the expansion, there is no evidence to indicate that the proposed expansion will be served by a sufficient supply of water to provide for the new dwelling units. More importantly, while there is evidence to suggest there may be such an effect, there is no evidence that the effect of the proposed expansion on water demand would not jeopardize the wells of others living in the community. Furthermore, projected demand for water in the area already far exceeds the known available supply and the ability to recharge

the groundwater is detrimentally affected by an increase in the impermeable surface.

4. The purpose of the ordinance and conservation zone is to provide for protection of water supplies and natural resources.

5. The Town of Mt. Airy, through Mayor Boyer, opposed this expansion because of its potential adverse effect on the availability of services within the town. The testimony of Mayor Boyer shows that there are inadequate recreation and transportation facilities within the town to meet the expected demand caused by this expansion. Based upon her testimony, we so find.

6. The Mayor also testified about inadequate school facilities as did the representative of a local PTA. Thus we find that this expansion would adversely affect the ability of the school system to meet the need of the community.

Based upon these facts, the Board concludes that the expansion of this nonconforming use would act as an impediment to the orderly growth of the community by interjecting several scores of dwelling units into an area which is not particularly suited to that type of development. The struggle of the residents to obtain and to maintain adequate supplies of water for their homes is at cross purposes with the developers' desire to expand the mobile home park. A development this dense would reduce the recharge area for the community and would increase the draw upon an already deficient supply of ground water. We agree with the residents that an increase in the number of homes in the

mobile home park to the extent requested would seriously harm the traffic system and would not be in keeping with good planning.

The applicant has referred the Board to one of its prior decisions, wherein we indicated that the issue of water was best left to state agencies. This case is different. It is not a conditional use application; it is an application to expand a nonconforming use. The presumptions of acceptability of a conditional use are not available to the applicant in this case. Therefore, the Board considers the purpose of the Conservation District and the availability (or lack) of water to be important considerations when deciding to allow an increased drain on the available water supply.

Finally, it is important to note that the plans of the developer include building structures which do not qualify as mobile homes within the definition of "mobile home" in the Carroll County Zoning Ordinance. Specifically, the definition limits the vehicles which may be used as mobile homes to those which "arrive at the site complete and ready for occupancy except for minor and incidental unpacking or assembling operations, connection to utilities and the like". The definition specifically does not include "modular homes which are constructed to specifications for single family dwellings as set forth in the local building code and which are transported to the site in several pieces requiring completion of the construction on the site". Carroll County Zoning Ordinance, Section 20.26.

Based upon the testimony of Mr. Homa, we believe that the Manufactured Housing Act as adopted by the Federal Government would allow the structures about which he testified to be built in Carroll County as modular homes. These homes could comply with the Federal Code in substitution for the local building code. But, these trailers do not accord with the definition of "mobile home" within the Zoning Ordinance. Therefore, the proposal to construct the vehicles as described by Mr. Homa would not be allowed within a mobile home park and the application as presented must be denied for that reason, as well.

Although the issue is not before us today, we would assume that manufactured housing as proposed for this development could be used on sites suitable for single family homes in Carroll County. However, we will wait until those issues are presented to us before making that decision.

Accordingly, it is the decision of the Board of Zoning Appeals of Carroll County to deny the application as requested. We believe that the density requested is too great for the zone within which this project is contemplated and we believe that the effect of this project upon the orderly growth of the community,

particularly the town of Mt. Airy, would cause too great an impact to justify its approval.

Dec. 13, 1988  
Date

John Totura  
John Totura, Chairman

APPROVED FOR LEGAL SUFFICIENCY:

Charles W. Thompson, Jr.  
County Attorney

Our File No. 4417-BZA  
CWT, Jr., /dmg/Pheas.p  
December 12, 1988