

Tax Map/Block/Parcel
No. 29-18-285

Building Permit/Zoning
Certificate No. 91-2322

Case 3605

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

APPLICANT: Parker Leimbach, II
1715 Richardson Road
Westminster, Maryland 21158

REQUEST: A conditional use for a mail order business for
firearms within the dwelling

LOCATION: 1715 Richardson Road in Election District 2;
Allendale subdivision, Section 5, lot 32
recorded in Carroll County Plat Records in book
27, page 143

BASIS: Article 6, Sections 6.3(w) and 6.7; Ordinance
1E. (The Carroll County Zoning Ordinance)

HEARING HELD: September 24, 1991

On September 24, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use request for establishment of a mail order business for firearms within the dwelling at 1715 Richardson Road.

The Board visited the site September 18, 1991, prior to 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 will deny the request.

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

FINDINGS OF FACT

The 3.0469 acre lot, which is improved with a single family dwelling, is part of a residential subdivision identified as Allendale subdivision, Section 5, lot 32. The lot is located to the rear of lot 33, which fronts on Richardson Road. Vehicular access to the lot is provided by fee simple frontage and a use-in-common driveway shared with adjacent properties (Protestants' Exhibit 1).

Richardson Road is not constructed to county standards.

Although use of land west of Richardson Road is agriculture, the land use within the subdivision is residential.

The applicant, who is employed full time elsewhere, proposes to establish a mail order business for firearms, including handguns, within his home. The dwelling would continue to be the principal use of the property.

Details pertaining to operation of the mail-order office were generalized and vague. Assumably, the applicant proposes to purchase guns for customers from wholesalers and then resell the guns to his customers. While the applicant indicated that he did not expect to have a great number of monthly sales, no method of limiting the amount of vehicular traffic to the premises or the number of sales were proposed. Again assumably, the business would be conducted evenings and on weekends to avoid conflict with the applicant's principal job. No advertising or employees are proposed. At least initially, sales would be to friends and acquaintances. Later, sales would be to individuals or businesses recommended by previous customers.

The applicant indicated that he did not plan to maintain an inventory but that his state license, which he acquired allowing him to purchase guns for himself, limits such an inventory to a value of \$1,500. (The zoning ordinance prohibits mail order offices from maintaining an inventory, but allows samples.) Customers purchasing a gun would normally have to visit the premises to complete the transaction and receive the gun.

Owners and residents of adjacent homes opposed authorization of the request on the grounds that the business would:

- be incompatible with the existing residential development of the area;
- cause additional vehicular traffic on Richardson Road and the use-in-common driveway;
- depreciate residential property values; and,
- seriously harm the marketability of the adjacent homes.

A real estate appraiser, qualified to testify regarding real estate appraising in the Circuit Court for Carroll County, testified that if prospective buyers perceived the business to be objectionable, the property values and marketability of the adjacent homes would be adversely affected. In the opinion of the appraiser, the respective values of the lots and homes range from \$120,000 to \$200,000.

APPLICABLE LAW

Unless otherwise noted, Articles and Sections cited below are of Ordinance 1E.

The lot and adjacent properties are zoned "A" Agricultural District as shown on map 29B. The land use provisions for the district are specified in Article 6. Although agriculture is the preferred use in the district and is specified as a principal permitted use, limited subdivision for residential purposes is allowed and single and two-family dwellings are principal permitted uses.

Section 6.3, Conditional Uses (requiring Board authorization), paragraph (w) reads in relevant part:

Offices to conduct mail order and catalogue-type operations where operated by a resident of the property, provided no inventory or merchandise is kept on the premises for sale (except samples and the like)....

Article 20, Section 20.09 defines conditional uses as:

Uses which are specified for Board of Appeals approval prior to authorization and which uses, after public hearing, may be approved conditionally or disapproved in accordance with Section 17.2. 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.

For purposes of clarification, Section 17.2(b) specifies that one of the powers of the Board is to hear and decide conditional use requests.

Article 17, Board of Zoning Appeals; Section 17.7, Limitations, Guides and Standards, governs the Board in considering a conditional use request. The provision 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.

The Board is also governed by decisions of the courts. In the case of *Schultz v. Pritts*, 291 Md. 1, 20-21, (1981) the decision reads in relevant part:

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.)

REASONING

The zoning ordinance provides for offices to conduct mail order and catalogue-type operations as a conditional use in the "A" Agricultural District. Although agriculture is the preferred

land use in the "A" Agricultural District, as specified in Section 6.1, single and two-family dwellings are principal permitted uses in the district, and limited subdivision of the land for residential development is permitted.

The characteristics of offices that conduct mail order and catalogue-type operations are essentially those of businesses. As such offices are not listed as either a principal permitted use or a conditional use in the residential districts established by the zoning ordinance, they must be considered to be incompatible with residential development.

The development of Allendale subdivision from land previously used for agricultural purposes not only established new residential land use characteristics, it also brought new owners and residents who value the residential amenities of the subdivision and oppose change that threatens these amenities.

In considering the potential effects of the office upon the neighborhood, the Board must presume that the business will be more than an isolated visit and an occasional sale, but will flourish, with increasing vehicular traffic and sales--to the detriment of the residential amenities of the subdivision.

Furthermore, the record substantiates that the business would detrimentally affect the marketability of nearby homes and their residential property values contrary to the purpose and intent of the zoning ordinance.

As specified in Section 17.7, another consideration involves the appropriate use of land and structure. With the particular circumstances in this case, it is evident the business cannot be considered to be an appropriate use of the property.

CONCLUSION

The Board is convinced that the office, as proposed in this particular location, would not be compatible with the residential development or an appropriate use of the property; and, that authorization of the conditional use would be contrary to the standard expressed in *Schultz v. Pritts* and the purpose and intent of the zoning ordinance.

Accordingly, the conditional use request is hereby denied.

Oct. 16, 1991
Date

John Totura
John Totura, Chairman