

Tax Map/Block/Parcel  
No. 66-19-48,127,306

Building Permit/Zoning  
Certificate No. 93-3710

Case 3889

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

**APPLICANT:** James J. Sweet  
5604 West Falls Road  
Mount Airy, Maryland 21771

**ATTORNEY:** J. Brooks Leahy, Esquire  
Dulany & Leahy  
127 East Main Street  
P.O. Box 525  
Westminster, Maryland 21158

**ATTORNEY FOR  
PROTESTANTS:** Brian M. Bowersox, Esquire  
23 North Center Street  
Westminster, Maryland 21157

**REQUEST:** A conditional use for a retreat and conference center

**LOCATION:** 5604 West Falls Road in Election District 13

**BASIS:** Article 5, Sections 5.2(h) and 5.5; Ordinance 1E (The Carroll  
County Zoning Ordinance)

**HEARING HELD:** February 25, 1994

On February 25, 1994, the Board of Zoning Appeals heard testimony and received evidence concerning a conditional use for the establishment of a retreat and conference center (center) on the premises of 5604 West Falls Road.

In accordance with the provisions of Article 17, Sections 17.6.6 and 17.7 of the zoning ordinance, and the Board's longstanding policy of visiting sites prior to the public hearing, the Board visited the site February 10, 1994. The purpose of the visit was for the Board to view the site and the 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 compliance with the state Open Meetings Act, the Board denied the conditional use.

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

**FINDINGS OF FACT**

The proposed center is located on the west side of West Falls Road about one-half mile north of its intersection with Ridge Road (Md. Rt. 27). It is important to note that West Falls Road is only paved from its intersection with Ridge Road to a point past the proposed center, possibly halfway to its intersection with Buffalo Road to the west. The unpaved section of the road is not suitable for large volumes of traffic. Therefore, the use of the paved section of West Falls Road is similar to that of a cul-de-sac.

As portrayed on the plat of West Falls Farmstead, Applicant's Exhibit 1, the proposed site is composed of three parcels of land having a total area of 22.4165 acres. The three parcels are identified as P. 48, P. 127 and P. 306 on the site location map for this case. The site is improved with a single family dwelling, detached shed, two ponds and a pavilion. The pavilion is located adjacent to, and to the north of the ponds. The dwelling and pavilion were constructed in 1950, prior to the adoption of zoning in Carroll County. Mr. Sweet resides in the dwelling.

About half of the site is wooded with gentle to moderate slopes extending from the southerly property line to form an extended meadow between West Falls Road and the easterly pond. The trees screen view of most of the site from adjacent properties.

A brochure, Applicant's Exhibit 2, notes:

- The center would specialize in informal corporate meetings, sales and educational seminars, and single day religious retreats
- The fee would include use of the grounds, pavilion, recreation facilities, and planning services
- The 1,200 square feet pavilion would have a seating capacity of 200 people and a dining capacity of up to 150 people depending upon the seating arrangement
- Twenty-five picnic tables would be located adjacent to the pavilion
- The center would be limited to a maximum of 500 people
- Tents could be rented for groups in excess of 200 people
- Recreation facilities would include a softball field, two volleyball courts, three sets of horseshoe pits, a playground, fishing in the upper pond, and open space for field games
- Recreation equipment, except for fishing and softball mitts would be provided

- Caterers and vendors would be subject to approval by the management and would have to adhere to rules and restrictions and file an insurance certificate with the center

Operation of the center would not be before 7:00 a.m. to the earlier of either dusk or 8:00 p.m. from May through October. While Mr. Sweet noted that twenty to thirty events are anticipated during that period, apparently nothing would preclude operation of the center more frequently, even on a daily basis. Potable water would be provided from off-premises sources, and portable sanitary facilities would be provided on the premises. The volume of audio equipment would be subject to that deemed appropriate and reasonable by the management. Beer and wine would be permitted to be served by licensed caterers in accordance with applicable laws and the rules of the management.

No new construction is proposed. However, depending upon the condition of the pavilion, the structure could require extensive repair work or replacement. The area of the pavilion is noted as 1,500 sq. ft. in the August 13, 1993 statement submitted with the application to the Board, and as 40 feet by 40 feet on the Building Permit/Zoning Certificate Application. For the purposes of this decision, the apparent discrepancies pertaining to the area of the pavilion and dimensions of 40 feet by 40 feet which would indicate an area of 1,600 square feet are of significance only for the building permit.

An expert in land use and transportation planning presented a traffic analysis pertaining to the proposed center and the intersection of West Falls Road and Ridge Road (Md. Rt. 27). The expert notes that the analysis was based on operation of the center from March through October several times a month. With a limitation of 500 persons and 35 percent driving vehicles to the site, there would 175 trips to and from the site, a total of 350 trips per day. Additional traffic would result from caterers and vendors. As noted by Mr. Sweet, an average of 200 persons are anticipated to attend a retreat or conference, using 70 vehicles (35 percent of 200 people equals 70 drivers and vehicles). Thus, the total number of vehicular trips to and from the center would be in excess of 140 for the average event.

The conclusions of the expert, based on the "Critical Lane Technique" were that vehicular traffic to and from the center would not affect vehicular traffic significantly. If each of the 500 people attending the retreat or conference drove to and from the premises, the level of service would only drop to level B for both morning and evening peak hours. (Applicant's Exhibit 3).

Vehicular traffic on West Falls Road proceeding past the driveway connection was also considered. During the morning peak hour between 7:00 a.m. and 8:00 a.m., 34 vehicles passed the connection. During the peak hour in the evening of 5:00 p.m. to 6:00 p.m., 39 vehicles passed the connection. The expert concluded that even with the maximum number of trips to and from the site added to the respective trips in the morning and evening, a driveway connection with West Falls Road would operate at level of service A during both morning and evening peak hours.

The affects of the center's traffic on existing traffic is one thing; the affects of the center's traffic on the residential community served by a road that is in effect a cul-de-sac is a substantially different matter. In fact, such traffic would be particularly detrimental to the residential community and its orderly growth.

No plans for parking were presented, and parking facilities were only vaguely addressed. The applicant's projected requirements for a retreat or conference attended by a maximum of 500 people are 175 parking spaces based on 35 percent of those attending driving vehicles to the site. Although the zoning ordinance requires parking facilities for more than five vehicles to be constructed with an all weather surface, plans are to stabilize the parking area in some manner in order to support the weight of vehicles, but still permit percolation of stormwater into the ground to minimize surface runoff.

Whether or not the parking facilities could be established in compliance with applicable regulations is at least questionable.

As depicted by the site location map used in this case, residential subdivisions are located opposite the site on the east side of West Falls Road and adjoining the southerly property lines. Dwellings have been constructed on most of the lots in Olde Oak Runne subdivision opposite the site, and within Ridgely Estates subdivision to the south. Furthermore, the developer of the subdivision, Mr. Ridgely, noted that additional residential development is planned to the south with vehicular access to and from West Falls Road.

The land use to the north and west is agriculture.

A considerable number of property owners in opposition to the request were represented by counsel. The thrust of their opposition involved the dramatic increase in vehicular traffic on West Falls Road from its intersection with Ridge Road to the driveway connection to the site, and possibly beyond to the intersection of Old Oak Runne which could be used by drivers to turn around; noise of guests participating in recreational activities, radios, loudspeakers, and similar sound amplifying equipment that would disturb the peace and quiet of the residential subdivisions; odors and smoke from barbecuing; wet soil conditions that would restrict use of the premises; and, detrimental effects to the values and marketability of dwellings adjacent to the premises.

Of at least equal importance in this case, the protestants also attacked the application on the basis that the proposed use actually constitutes a commercial recreation area--not a retreat and conference center.

#### APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The property is zoned "C" Conservation District as depicted on zoning maps 66A and 65B. The confronting properties on the east side of West Falls Road, Old Oak Runne subdivision, and those to the north are zoned "A" Agricultural District. The properties to the south, Ridgely Estates subdivision, are zoned

"C" Conservation District. The land use provisions for the district are expressed in Article 5.

The preamble for the district reads:

The purpose of this district is to prescribe a zoning category for those areas where, because of natural geographic factors and existing land uses, it is considered feasible and desirable to conserve open spaces, water supply sources, woodland areas, wildlife and other natural resources. This district may include extensive steeply sloped areas, stream valleys, water supply sources, and wooded areas adjacent thereto.

The Board recognizes that the preamble is not part of the statute and the statute speaks for itself; the title of the zone, "C" Conservation District, does not dictate the land uses permitted in the zone; and the zoning ordinance allows subdivision of land zoned "C" Conservation for residential development.

Section 5.2, Conditional Uses (requiring Board authorization), subsection (h) specifies:

Retreat or Conference Centers as defined in Section 20.30C, provided that a site development plan shall be approved by the commission, and subject to the following:

- (1) The use shall be located on a property of not less than five (5) acres.
- (2) All buildings and housing shall be located not less than one hundred (100) feet from adjoining property.
- (3) Such use shall be designed so as to preserve the maximum amount of land for agricultural purposes.
- (4) The use shall be shown by the owner not to adversely affect the quantity or quality of ground or surface waters, or be otherwise detrimental to neighboring properties.
- (5) The Board may limit the maximum occupancy of the site based on such factors as its proximity to a public water supply and adequacy of the access to the site.
- (6) The Board may require an Environmental Impact study based on the scale of the project and on the recommendation of

technical staff.

Due to amendment of the zoning ordinance deleting corresponding section numbers, the definition is found in alphabetical order in Article 20. The definition reads:

Retreat or conference center

A facility used for professional, educational or religious conclaves, meetings, conferences or seminars and which may provide meals, housing and recreation for participants during the period of the retreat or program only. Such centers may not be utilized by the general public for meals or overnight accommodations. Housing for participants may be in lodges, dormitories, sleeping cabins (with or without baths) or in such other temporary quarters as may be approved by the Board, but kitchen and dining facilities shall be located in a single centrally located building or buildings.

Article 17, Board of Appeals; Section 17.7, Limitations, Guides and Standards, governs the Board and reads as follows:

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.

In addition, the Board is governed by decisions of the courts. In the decision 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 designed 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.)

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

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 for a special exception is arbitrary, capricious and illegal. (Citation omitted.)

In accordance with the provisions of Section 17.4.10, the Board extended the time for issuing this decision.

#### REASONING

As advocated by those opposing the center, the characteristics of the proposed use as described by Mr. Sweet are those of a commercial recreation area—not those of a retreat or conference center. While recreational facilities may be provided to enhance the attractiveness of a center, they may not substitute for retreat or conference activities in keeping with the intent and purpose of the provisions of the zoning ordinance.

In considering the testimony and evidence presented on behalf of the



request, Mr. Sweet failed to meet his burden of proof that the actual use of the property would be a retreat or conference center. On that basis alone, the request would have to be denied.

However, on the presumption that the use would somehow qualify as a retreat or conference center, the Board is convinced that the provisions of Section 17.7, as well as the decisions of the courts preclude authorization of the conditional use.

Although described as a part-time facility, the center could conceivably operate on a daily basis.

Even though the protestants presented no experts to testify in opposition to the request, the Board is convinced that the volume of vehicular traffic to and from the center, the number of people and noise of recreational activities including radios and sound systems, and odors and smoke from barbecuing would disrupt the peaceful enjoyment of people in their homes during the months that the center would operate, depreciate residential property values and marketability of dwellings adjacent to the premises, and severely affect the orderly growth of the existing and planned residential community, all of which are contrary to the purpose of the zoning ordinance.

In considering the standard governing conditional uses established by *Schultz v. Pritts*, the Board is convinced that the exceptionally intrusive and pervasive concentrations of traffic, people, noise, odors and smoke that would characterize this particular center and adversely affect the residents of adjacent properties, the values of those properties, and the orderly growth of the community to a much greater extent than would ordinarily be expected preclude authorization of the center as proposed.

#### CONCLUSION

In accordance with the findings of fact, applicable law and reasoning expressed herein, the request for authorization of the retreat and conference center as a conditional use must be, and is hereby, denied.

4-20-94  
Date

Claude R. Rash  
Claude R. Rash, Chairman