

Tax Map/Block/Parcel
No. 39-21-723

Building Permit/Zoning
Certificate No. 94-0624

Case 3913

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

APPLICANTS: Donald Nave and Donald Patton
5903 Eric Drive
Mount Airy, Maryland 21771

ATTORNEY: Clark R. Shaffer, Esquire
6 North Court Street
Westminster, Maryland 21157

REQUEST: A conditional use for thirty-four two-family dwellings of semi-detached design, and variances to the minimum rear yard requirements

LOCATION: The northwesterly side of North Cranberry Road about 4,000 feet northeast of Baltimore Boulevard (Md. Rt. 140) in Election District 7

BASES: Article 8, Sections 8.2(e) and 8.5; Article 15, Section 15.5.4(d); Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: April 26, 1994

FINDINGS AND CONCLUSION

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 authorized the conditional use and a variance to the minimum rear yard requirement for proposed lot 20 of 40 feet to about 35 feet. The pertinent findings determining the Board's decision include the following facts.

The Board authorized a conditional use for eleven two-family dwellings on 8.5 acres of this property October 27, 1977, in Case 1213. A request for an extension of time to obtain the required zoning certificate was received by the Board October 3, 1978. Even though the Board authorized an extension of one year until October 27, 1979, the authorization expired and for some unknown reason the project was not pursued.

Almost ten years later on May 29, 1986, the Board authorized a conditional use for thirty-four two-family dwellings of semi-detached design on approximately 10.25 acres in Case 2526 for a new applicant. Again, the Board was requested to extend the time to obtain the required zoning certificate, and an extension of one year was authorized to May 29, 1988. This extension also expired without the zoning certificate being issued.

Although this application is very similar to the development plan proposed in Case 2526, a variance to the minimum rear yard requirement of 40 feet for lot

20 is requested in this case. The request is based on the irregular alignment of the existing property line of the parcel and the affect of the cul-de-sac upon the configuration and buildable area of the lot. Relaxation of the requirement will allow construction of a home having the same dimensions and area as other homes in the subdivision, which will promote comparable property values in keeping with the purpose of the zoning ordinance.

As noted in Case 2526, the Comprehensive Plan for Westminster and Environs designated this area for suburban residential development with a density beginning at four dwellings units per acre.

The site development plan, Applicant's Exhibit 1, was previously approved by the Subdivision Advisory Committee and reviewed by the Carroll County Planning and Zoning Commission. Review of such plans includes approval of stormwater management facilities in accordance with applicable regulations. In addition, construction of the cul-de-sac and development of the subdivision are subject to the requirements imposed within approvals of the Planning and Zoning Commission and public works agreements. While the cul-de-sac will be incorporated into the county road system following construction to the county's standards, the potable water supply and sanitary sewerage systems are subject to the requirements of the Carroll County Health Department and City of Westminster.

In considering conditional use requests, the Board is governed by the provisions of Article 17, Section 17.7 of the zoning ordinance. In addition, the Board is governed by decisions of the courts. In the case of *Schultz v. Pritts*, 291 Md. 1, 22, (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 considering the factors expressed in Section 17.7 as well as the standard expressed above, the Board is convinced that the applicants have met their burden of proof and that establishment of the proposed semi-detached dwellings are appropriate in this location and will not unduly affect the residents of adjacent properties, the values of their properties, or public interests. The Board also finds that authorization of the variance reducing the minimum rear yard requirement of 40 feet to about 35 feet for lot 20 is justified due to practical difficulty in development of the lot. Accordingly, the conditional use and variance are hereby authorized.

5-25-94
Date

Claude R. Rash
Claude R. Rash, Chairman