

Tax Map/Block/Parcel  
No. 50-4-208

Building Permit/Zoning  
Certificate No. 95-0677

Case 4013

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

**APPLICANTS:** William D. Coale, Sr. and Frances W. Coale  
2480 New Windsor Road  
New Windsor, Maryland 21776

**ATTORNEY:** Michelle M. Ostrander, Esquire  
23 North Center Street  
Westminster, Maryland 21157

**REQUESTS:** As amended, conditional uses for a garden center and parking of commercial vehicles in a proposed metal building, 40 feet by 50 feet, and a variance reducing one minimum required side yard of 30 feet to 20 feet

**LOCATION:** 2480 New Windsor Road in Election District 11

**BASES:** Article 6, Sections 6.3(q), 6.3(x) and 6.7; Article 15, Section 15.5.4(d); Ordinance 1E (The Carroll County Zoning Ordinance)

**HEARING HELD:** May 25, 1995

On May 25, 1995, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional uses described above. The variance request for reduction of the minimum required side yard was withdrawn at the start of the public hearing. Therefore, the provisions of Article 15, Section 15.5.4(d) are not applicable in this case.

Articles and Sections noted herein are of Ordinance 1E.

In accordance with the provisions of Article 17, Sections 17.6.6 and 17.7 and the Board's longstanding policy of visiting sites prior to public hearing, the Board visited the site April 24, 1995, prior to a hearing scheduled April 25, 1995. That hearing was postponed and an amended application subsequently filed. The purpose of the visit was for the Board to view the site and 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 accordance with the state Open Meetings Act, the Board denied the conditional uses for the garden center and parking of commercial vehicles.

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

FINDINGS of FACT

The 3.376 acre lot is located between New Windsor Road, Md. Rt. 31 (Rt. 31) and Old New Windsor Road. The lot and Mr. and Mrs. Coale's home are oriented to Rt. 31. Vehicular access to and from the dwelling and Rt. 31 is by a residential driveway which also serves the adjacent home of Mr. and Mrs. Gregory, located east of the Mr. and Mrs. Coale's home. (Protestants' Exhibits 1B, 1C, and 1D.) The driveway connection to Rt. 31 is not constructed in accordance with State Highway Administration requirements governing commercial access. To the west, Mrs. Gist's home overlooks Mr. and Mrs. Coale's home. Vehicular access to Mrs. Gist's home is from Old New Windsor Road.

As depicted on the site location map and other exhibits, the configuration of the lot is irregular and may be described as a pan with a handle, or panhandle lot. The handle of the lot extends from the northwest corner of the lot to Old New Windsor Road and is subject to a right of way for ingress and egress described in deeds recorded in the Carroll County land records.

A Right of Way and Joint Maintenance Agreement, including a surveyor's plat portraying the right of way, is recorded in Liber 1036, page 18. The description of the right of way recorded in Liber 1514, page 0685 specifies that the right of way is for "...the joint use and maintenance of the grantors herein and Eileen D. Welsh Gist, and their respective personal representatives and assigns,.... (Protestants' Exhibit 2, Collective.) Mr. and Mrs. Coale are assigns.

The purpose of the conditional use for the garden center is to relocate and operate a business, New Windsor Lawn Service, at this site. The business is operated by Mr. and Mrs. Coale's oldest son and one full-time employee. Their son lives elsewhere. Two part-time laborers will probably be employed seasonally from early spring through late fall. One of the part-time employees is Mr. and Mrs. Coale's youngest son. During summer, one or two vehicles of part-time employees might be parked outside the building.

The service includes seeding and reseeding of lawns, and landscaping. Hours of operation would be from around 7:00 a.m. to dusk or darkness, Monday through Friday, and possibly Saturday. Landscaping equipment that would be stored in the building includes a tractor, bobcat, planter, stone rake, and rock hound. If the business is successful, additional equipment would probably be purchased. As much as possible of the equipment would be stored within the building, or the building could be enlarged with county approval.

As presently contemplated, no retail business will be conducted from the premises, and no business identification signs would be erected. However, at sometime in the future, flowers might be sold to the public, using space within the right of way adjacent to Old New Windsor Road.

The purpose of the conditional use for parking of commercial vehicles is to allow the vehicles used in the business to be parked within the building. Presently, the vehicles include two trucks and trailers.

As depicted on the revised plot plan submitted with the amended application, Mr. and Mrs. Coale propose to erect a metal building, 40 feet by 50 feet, located adjacent to the rear of their home, not closer than 30 feet to the westerly side property line. In addition, two bins would be constructed next to the easterly side of the building for temporary storage of top soil and mulch. Each of the bins would be 15 feet by 15 feet with side and rear walls 4 to 5 feet in height, with the front open nearest the driveway--the northerly side--to facilitate unloading and loading. Some shrubbery and trees purchased from nurseries would be stored temporarily next to the building.

In order to construct the building in the proposed location, as much as 6 feet of the hillside would have to be excavated and a retaining wall erected. Although there was some indication that there would be several feet between the building and the retaining wall, the distance was not established.

Vehicular access to and from the building would be restricted to the right of way to Old New Windsor Road. A stone driveway would be constructed to connect the right of way and the building. No improvements are proposed to be made to the right of way. The surface of the right of way is grass, except adjacent to the connection to Old New Windsor Road where the topography of the right of way is relatively level and traffic has killed the grass. As observed by the Board while visiting the site, and portrayed by photographs, the topography changes to a significant downward slope further from Old New Windsor Road. The slope extends to the base of the hill, some distance from the rear of Mr. and Mrs. Coale's home. (Protestants' Exhibits 1C, 1D and 1E.)

Landscaping is proposed consisting of evergreens, 4 to 5 feet tall, planted 8 to 12 feet apart for approximately 75 feet paralleling the westerly property line between the proposed building and Mrs. Gist's property as depicted on Applicants' Exhibit 2.

Both Mrs. Gist and Mr. Gregory expressed concerns regarding use of the right of way to Old New Windsor Road for ingress and egress to and from the premises. Mr. Gregory commented that he had observed 4-wheel drive vehicles have difficulty using the right of way, presumably climbing the hill when the grass was wet. Mrs. Gist indicated that because of the grade of the right of way, it was very difficult to use during winter.

Mr. Gregory and Mrs. Gist opposed the requests because of the visibility of the site from their properties, and their firm belief that the values of their properties would depreciate if the uses were established.

Mr. Gregory indicated that as construction of Mr. and Mrs. Coale's home caused stormwater runoff problems to his property, construction of the proposed building would increase stormwater runoff and exacerbate the problems.

#### APPLICABLE LAW

The property is zoned "A" Agricultural District as depicted on zoning map 50B. The land use provisions of the district are expressed in Article 6.

Section 6.3, Conditional Uses (requiring Board authorization), paragraph (q) specifies:

Garden supply centers, including the sale of small or light garden supplies, equipment and tools, customary and incidental to the sale of garden plants and nursery stock; and including the sale of woodburning stoves, fireplaces and their accessories.

Paragraph (x) of Section 6.3 reads in relevant part:

Parking facilities for commercial vehicles, not to include truck or motor freight terminals, provided the Board shall have the authority to limit the number of vehicles based on considerations enumerated in Section 17.[7] and provided the Board determines sufficient space is available to park the vehicles without disturbance to neighboring properties.

Section 6.7 specifies the following minimum requirements: lot area - 3 acres; lot width - 200 feet; front yard depth - 40 feet; side yard (width each side yard) - 30 feet; and rear yard depth - 50 feet.

Conditional uses are defined in Article 20 as:

Uses which are specified for Board approval prior to authorization and which uses, after public hearing, may be approved conditionally or disapproved in accordance with Sections 17.2 and 17.7. 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.

Section 17.7, which governs the Board in considering and deciding conditional uses, reads:

#### Limitations, Guides and Standards

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 case of *Schultz v. Pritts*, 291 Md. 1, 22 (1981), 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 accordance with the provisions of Section 17.4.10, the Board extended the time for issuing this decision.

#### REASONING

In considering the testimony and evidence in this case relevant to the provisions of Section 17.7, the Board is convinced that establishment of the garden center and parking of commercial vehicles by construction of the proposed building would:

- be a landscaping business, performing services elsewhere--not a garden supply center as described in Section 6.3 (q)

- unduly affect the interests of Mrs. Gist in the use of the right of way when employees, or others, would unsuccessfully attempt to leave the premises by driving vehicles up the hill when the grass would be wet and slippery, and would either have to remain on the premises until conditions permitted exit, or leave by the residential driveway connecting to Rt. 31, contrary to the purpose of the driveway and adversely affecting Mr. and Mrs. Gregory's interests (Paragraph c)
- depreciate the property values of Mr. and Mrs. Gregory's and Mrs. Gist's homes (Paragraph e)
- not be an appropriate use of the lot because of the size of the building, its visibility from the properties of Mr. and Mrs. Gregory and Mrs. Gist, and lack of unencumbered access to and from Old New Windsor Road and Rt. 31 (Paragraph g)
- not be consistent with the land uses allowed in the "A" Agricultural District

Furthermore, in light of the standard of *Schultz v. Pritts, supra*, governing conditional uses, the Board is convinced that establishment of the landscaping service, as a garden center, and parking of commercial vehicles used in operating the business would have greater adverse effects at this particular location than elsewhere in the district and, therefore, must be denied.

#### CONCLUSION

Based on the findings of fact, applicable law, and reasoning expressed above, the conditional uses are hereby denied in accordance with the Board's oral decision at the conclusion of the public hearing.

7-13-95  
Date

Claude R. Rash  
Claude R. Rash, Chairman