

Tax Map/Block/Parcel  
No. 39-13-699 & A

Building Permit/Zoning  
Certificate No. 95-1013

Case 4020

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

**APPLICANTS:** Richard E. Lowry and Doris V. Lowry  
134 Sullivan Road  
Westminster, Maryland 21157

**ATTORNEY:** John T. Maguire, Esquire  
Hollman, Hughes, Finch & Maguire, Chartered  
189 East Main Street  
Westminster, Maryland 21157

**REQUEST:** Conditional uses for two-family semi-detached dwellings

**LOCATION:** South of Sunshine Way opposite Skyline Way intersection about  
375 feet west of Sullivan Road in Election District 7; Autumn  
Ridge subdivision, tentatively proposed as Section 9

**BASES:** Article 8, Section 8.2(e); Ordinance 1E (The Carroll County  
Zoning Ordinance)

**HEARING HELD:** May 23, 1995

On May 23, 1995, the Board of Zoning Appeals heard testimony and received evidence concerning conditional uses for two-family semi-detached dwellings as noted above.

Articles and Sections cited below are of Ordinance 1E.

In accordance with the provisions of Article 17, Section 17.6.6 and 17.7 and the Board's longstanding policy of visiting sites prior to public hearing, the Board visited the site on May 22, 1995. 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 approved the conditional uses. The pertinent findings determining the Board's decision include the following:

**FINDINGS OF FACT**

The location of the parcel, relative to the neighborhood and adjacent properties, is depicted by Applicants' Exhibits 1 and 2. Although the

Conventional Concept Plan (Plan), Applicants' Exhibit 2, notes that the area of the property is 7.54 acres, the application specifies 7.44 acres. The discrepancy has no bearing on this decision.

The purpose of the Plan is to establish the maximum number of lots which would comply with the minimum lot area and lot width requirements for the district, and for use in applying for conditional uses for two-family dwellings. From the information developed by the Plan and authorization of conditional uses for two-family semi-detached dwellings by this Board, a clustering plan may then be prepared for submission to the Planning and Zoning Commission for review and approval.

The clustering plan that will be submitted to the Planning and Zoning Commission will likely be for a mixture of single and two-family homes.

The parcel is located on the southwest side of Sunshine Way and northwest side of Sullivan Road. It is improved with a single-family dwelling, constructed of stone as a farm home years ago. Mr. and Mrs. Lowry acquired the property about 1977 and have substantially improved the home since then. As portrayed by photographs included in Applicants' Exhibit 3, they have also planted numerous trees and bushes in landscaping and landscape screening the parcel from adjoining properties. Where possible, existing trees will be saved. Additional landscaping and landscape screening is planned. The large barn and sheds evidently constructed when the property was farmed, and depicted on the Plan, will be razed.

Public water and sanitary sewerage facilities are available to the parcel for development purposes.

From previous subdivision development, single-family homes and open space adjoin or are adjacent to the parcel. (Applicant's Exhibit 2.)

Slightly more than two acres of the parcel is identified as open space and includes an existing stormwater management pond. The pond will be maintained and stormwater runoff originating within the site will be piped to the pond. The open space, stormwater management pond, and a section of Sullivan Road are within a 100 year floodplain.

Although portions of eight lots, including that of the existing dwelling, are located within the floodplain, neither the Mr. and Mrs. Lowry's home nor the proposed dwellings will be within the floodplain.

Vehicular access is planned by a cul-de-sac, identified as Skyline Court, connecting with Sunshine Way opposite Skyline Way. No vehicular access to Sullivan Road is planned.

The county's land use plan for the area adjacent to the City of Westminster identifies the land use area as suburban residential, which corresponds with the "R-10,000" Residence District of Ordinance 1E.

An expert in real estate appraisal, familiar with the parcel and

surrounding neighborhood, testified that in his opinion the two-family dwellings would be consistent with the orderly development in the community and would not adversely affect the residents and owners of adjacent properties. (Applicants' Exhibit 3.)

A real estate sales agent, accepted as an expert in sales, testified in opposition to the request and disputed the appraiser's conclusions. However, the sales agent merely presented arguments and did not introduce any probative evidence to substantiate her conclusions.

The sales agent also presented a petition identified as Protestants' Exhibit 1 in opposition to the Conditional uses for the two-family dwellings. The petition indicated only that the signers were opposed to the conditional uses for the two-family dwellings.

A number of owners and residents of nearby homes also appeared in opposition to the requests, citing a variety of reasons for their opposition. However, no probative evidence was offered in substantiation of their allegations.

#### APPLICABLE LAW

The property is zoned "R-10,000" Residence District as portrayed on zoning map 39A. The land use provisions for the district are expressed in Article 8. Section 8.2, Conditional Uses (requiring Board authorization) paragraph (e) specifies two-family dwellings. Section 8.5, Lot Area, Lot Width and Yard Requirements specifies the following minimums: lot area - 7,500 square feet; lot width - 37.5 feet; lot area per family - 7,500 square feet; front yard - 35 feet; one side yard - 12 feet; and, rear yard - 40 feet for semi-detached dwellings.

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 governs the Board in considering conditional uses and specifies:

#### 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 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, 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.)

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 *Steuart Petroleum Company v. Board of County Commissioners of Saint Mary's County, Md.*, 276 Md. 435, 445 (1975) the court wrote:

In the context of zoning law, a "plebiscite of the neighbors" or "of the neighborhood" refers to instances where the action of an administrative body which effects a change in zoning and deprives an individual of a property right is predicated on the pleasure of the owners of nearby property rather than on a comprehensive plan, which imposes mutual restrictions and confers mutual benefits on all,.... (Citations omitted.)

In *Entzian v. Prince George's County, Md.*, 32 Md. App., 256, 262, 263 (1976) the decision quotes from the opinion of the Circuit Court for Prince George's County quoting *Rockville Fuel and Feed Company v. Board of Zoning Appeals of the City of Gaithersburg, Md.*, 257 Md. 183 and 193 (1970):

"'Zoning is not a plebiscite'" and therefore testimony in opposition restricted solely to lay witnesses, petitions of objection to the proposal by residents, and testimony amounting to unsupported dislike and fear of (a) project, "...amounted to no evidence at all." (Citation omitted.)

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

#### REASONING

Due to the relatively small area of the parcel, extensive landscape screening, and location relative to adjoining homes and surrounding neighborhood, subdivision and development of the parcel with two-family dwellings will have little effect upon the residents of adjacent homes, the values of those homes, or public interests.

Furthermore, the Board is convinced that the applicants have met their burden of proof in establishing that the conditional uses are in accord with the purpose of the zoning ordinance, and comply with the standard expressed in *Schultz v. Pritts, supra*.

CONCLUSION

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

6-29-95  
Date

Claude R. Rash  
Claude R. Rash, Chairman

JDN/bmh/c4020dec.bmh