

Tax Map/Block/Parcel
No. 46-23-1514

Building Permit/Zoning
Certificate No. 95-1038

Case 4021

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

APPLICANT: Denise Michele Trentzsch
1035 Cool Spring Drive
Westminster, Maryland 21157

ATTORNEY: David K. Bowersox, Esquire
Hoffman and Comfort
24 North Court Street
Westminster, Maryland 21157

REQUESTS: A conditional use for a beauty shop limited to one chair and services provided by a resident of the dwelling, and variances reducing the minimum required driveway width and parking spaces

LOCATION: 1035 Cool Spring Drive in Election District 4; Tara Oaks subdivision, Section 2, Plat B, lot 16 recorded in Carroll County Plat Records in book 34, page 18

BASES: Article 5C, Sections 5C.2(h) and 5.5; Article 14, Division I, Section 14.1(a)(5) and (b)(3); Article 15, Section 15.5.4(d); 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 the requests.

Articles and Sections cited below are of Ordinance 1E.

In accordance with the provisions of Article 17, Sections 17.6.6 and 17.7 and the Board's long-standing policy of visiting sites prior to public hearing, the Board visited the site 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 denied the conditional use and variances. The pertinent findings determining the Board's decision include the following:

FINDINGS OF FACT

Mr. and Mrs. Trentzsch's home is located at 1035 Cool Spring Drive. The property is also known as Tara Oaks subdivision, Section 2, Plat B, lot 16 which is recorded in Carroll County Plat Records in book 34, page 18. Cool Spring Drive is a single lane use-in-common driveway, paved to a width of twelve feet extending from the cul-de-sac of Tara Oaks Court slightly less than 460 feet to a "T" turnaround centered on the common property line of lots 16 and 17. The driveway provides vehicular access to individual driveways serving lots 14 through 20. Except for single and two-family dwellings, the specifications for access driveways are 20 feet in width for two-way traffic. Section 14.1(b)3.

Mr. and Mrs. Trentzsch's home includes a two car garage, with a paved parking and maneuvering area adjacent to the garage as portrayed by the plot plan submitted with the application. The parking and maneuvering area is adequate to park two vehicles. Three parking spaces are required for each station (chair). Section 14.1(a)5. A one chair beauty shop would be established within a room on the first floor in the front portion of the dwelling, having separate access from the parking area.

As proposed, Mrs. Trentzsch would operate the shop solely by appointment on a part-time basis Tuesdays, Thursdays, Fridays, and Saturdays. A typical day would involve five appointments. No business identification sign, other than a sign directing entrance to the shop as required by applicable state regulations, would be erected.

A number of owners and residents within the subdivision opposed the request on various grounds. Vehicular and pedestrian safety were of particular concern due to the number of homes served by the single lane use-in-common driveway. Increasing the width of the driveway to twenty feet to provide for two-way vehicular traffic is not a practical consideration in this case. The cost of maintaining the use-in-common driveway is shared by the owners of lots 14 through 20.

Testimony presented on behalf of the Mrs. Trentzsch that the beauty shop would not adversely affect the marketability or values of homes within the subdivision was disputed.

APPLICABLE LAW

The property is zoned "R-40,000" Residence District. The land use provisions for the district are expressed in Article 5C. Section 5C.2, Conditional Uses (requiring Board authorization), paragraph (h) reads in relevant part:

Beauty shops,...provided that they are one-chair operations and that one resident provides all services in connection with the operation.

Section 14.1(a)(5) specifies that three parking spaces are required for each station. Section 14.1(b) requires that access driveways for two-way

vehicular traffic be a minimum of twenty feet wide.

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.

Variances are defined in Article 20 as:

...a relaxation of the terms of the Zoning Ordinance in accordance with Sections 15.0, 15.2, and 17.2 where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the Ordinance would result in practical difficulty or unreasonable hardship.

Section 17.7, Limitations, Guides and Standards governs the Board in considering conditional uses.

Section 15.5.4(d) reads in relevant part:

...The Board may grant a variance only in cases where the strict compliance with the terms of the ordinance would result in practical difficulty or unreasonable hardship which have not been caused by the applicant or the applicant's predecessor in title. The Board shall not grant a variance if to do so would violate the spirit and intent of the regulation, or cause or be likely to cause substantial injury to public health, safety and general welfare. The Board shall be guided in its decision by those considerations set forth in Section 17.7.

The Board is also governed by decisions of the courts.

REASONING

Although operation of the beauty shop would be on a part-time basis, solely by a resident, the Board is convinced that the vehicular access to the premises provided by the single lane use-in-common driveway is not suitable and requires denial of the conditional use in accordance with the standard expressed in the case of *Schultz v. Pritts*, 291 Md. 1, 22 (1981).

In addition, the Board finds that authorization of the variances for

reduction of the minimum required width of the access driveway and elimination of one parking space would be merely matters of convenience for the applicant and are not justified.

CONCLUSION

Accordingly, the conditional use and variances must be, and are hereby, denied.

6-2-95
Date

Claude R. Rash
Claude R. Rash, Chairman