

Tax Map/Block/Parcel
No. 12-23-274
Case 5938

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Sharon A. Costa
3952 Old Hanover Road
Westminster, MD 21158

ATTORNEY: Kelly Shaffer, Esq.
73 East Main Street
Westminster, MD 21157

REQUEST: An appeal of the Zoning Administrator's decision dated December 17, 2015, denying an arts and crafts shop as an accessory use.

LOCATION: The site is located at 3952 Old Hanover Road, Westminster, Maryland, on property zoned "A" Agricultural in Election District 3.

BASIS: Code of Public Local Laws and Ordinances, Sections 158.070(F)(13).

HEARING HELD: March 29, 2016

FINDINGS AND CONCLUSION

On March 29, 2016, the Board of Zoning Appeals (the Board) convened to hear the appeal of the Zoning Administrator's decision dated December 17, 2015, denying an arts and crafts shop as an accessory use. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

Jay Voight testified as the Zoning Administrator who reached the December 17, 2015 written decision contained in the file in case number ZA-1619. In the written decision he wrote:

that the use-in-common driveway runs thru and across several adjoining properties. The users of the driveway have a right-of-way to use the driveway, but do not own any land that the driveway sits on, except that which goes thru their property.

In his testimony he stated that 12' wide use-in-common driveway was an issue that led to his disapproval of the request. The use-in-common driveway serviced seven separate properties. More specifically, he wrote that:

There were several neighbors in attendance who opposed the approval for the shop due to traffic issues such as; people using the wrong driveway, people going to the wrong house, driving onto lawns, etc. The driveway was not designed or built to handle any more traffic than what is normal for a residence. It would not be fair to the neighbors to force additional expense onto them for maintenance from additional traffic.

Mr. Voight testified that as the Zoning Administrator he was to consider Section 158.133(G) of the County Code in rendering his decision. He believed that the traffic conditions as set forth by the neighbors and the peaceful enjoyment of people in their homes were factors that negatively affected the ultimate result. He believed that the factors in 158.133(G) applied to a conditional use as well as an accessory use.

Sharon Costa testified as the applicant in this case. She purchased her house in 2002. She talked about a neighbor accidentally causing a studio to be burned down on her property in approximately 2014. She then decided to rebuild the studio in the same footprint as the one that burned down. She has a twelve car parking lot next to the studio. There is also a loft in it. She stated that her company name was "Violet's." She mentioned that she was not a retail operation. She basically wanted to teach women classes about repurposing items that are salvaged and creating pieces of art. She stated that people would come to her shop by appointment only. She attained clients by word of mouth. She was amenable to having no more than six people per class and holding classes three days a week. Children would come to classes during the daytime and adults, mostly adult women, would come to classes during the evening. She stated that one would pass through four neighboring properties before coming to her property.

She discussed an art tour that she agreed to participate in. She stated that there was an unusual amount of traffic as a result of the art tour. She wrote a note in the file that fifty people showed up for the art tour. Many people missed the signs that she had for the tour and went to neighboring properties. She thought that she could rectify such a problem with bigger signs and maybe placing cones in places where clients should not drive. Because of the problems with the first art tour, Ms. Costa declined to participate in two other art tours.

Exhibit 6 was entered into evidence through the applicant. It represented a 1989 agreement by the property owners that created a use-in-common driveway among the property owners. The property owners were to equally bear the cost of maintaining the use-in-common driveway.

In the 1970s there was a dispute about the use-in-common right of way around the properties. Page 2 of Exhibit 5 states that: "the parties hereto desired to cancel one right-of-way which is in dispute, create a new right-of-way and modify a third right-of-way."

Yolanda Cole testified in opposition to the application. She has lived at her residence since 2001. She stated that one needed to pass the applicant's property in order to arrive at her property. She stated that on two occasions people who intended to go to the applicant's house came to her property before turning around. Some of the vehicles were driven at higher speeds than were safe. The speed of the fast moving vehicles caused her to have concern for her

grandchildren and dogs who might have been near the road. Her grandchildren range in ages from 1 years old to 10 years old. Another neighbor also had young children.

Robin Dull testified in opposition to the application. She stated that her house was the very last house on the driveway. She also stated that vehicles intending to go to the applicant's property came to her driveway. Some of those vehicles travelled too fast. She mentioned that she had a large "No Trespassing" sign on her property. Even with the sign some of the applicant's patrons still came to her property.

A neighbor that lived next door to the applicant wrote a March 27, 2016 letter for the Board. Debra A. Raymond stated that the entrance to Ms. Costa's business would be next to the entrance of her driveway. She put up a "No Trespassing" sign to keep people away who were trying to get to the applicant's property. She even resorted to putting a cone at the end of her driveway to keep unknown persons out. She also mentioned children and grandchildren playing in the yards. The seven properties along the use-in-common driveway are located in a secluded area. People walk along and bike on the road. She took photographs of two signs that included the name of the applicant's business. One had the name "Violet's Studio" and the other had the name "Violet's." Although Ms. Raymond could not attend the Board's hearing according to her letter, she did testify at the Zoning Administrator's hearing on the matter.

All of the neighbors testified about or wrote about the maintenance aspect for the use-in-common driveway. Three neighbors did not provide either testimony or a written statement about the application.

Nokomis Ford, Planning Technician, wrote a March 16, 2016 memo to the Board. She wrote that the request "is not compatible with the vision and goals for the area." She also wrote that "staff feels the proposed commercial use of land would be better suited in a more appropriate location." Staff was also concerned with the traffic on the use-in-common driveway and its negative effect on the other resident users. Finally, she wrote that "the staff finding is that this request is inconsistent with the *2014 Carroll County Master Plan* and could have an adverse effect on the current use of the property and its environs."

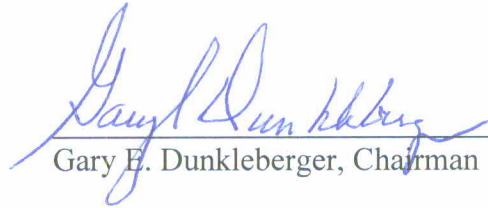
The use-in-common driveway was created with stone. The portion of the road to Ms. Costa's property was approximately 700 feet. The Board found that the driveway's use with Ms. Costa's classes would be a detriment to the road itself and create higher fees to maintain the road. There would also be additional traffic concerns and concerns for the safety of children and pets on the road.

The Board was convinced that authorization of the request with regard to an accessory use was inconsistent with the purpose of the zoning ordinance, inappropriate in light of the factors to be considered regarding conditional uses of the zoning ordinance, and would unduly affect the residents of adjacent properties, the values of those properties, or public interests. Based on the findings of fact made by the Board above, the Board found that the proposed accessory use would generate adverse effects (i.e. noise, traffic, dust, water issues, lighting issues, property depreciation, etc.) greater here than elsewhere in the zone. As noted by Mr. Voight, the Board found that the proposed use would negatively impact traffic conditions and the

peaceful enjoyment of people living along the use-in-common driveway. The Board agreed with the decision of the Zoning Administrator and denied the conditional use requested by the applicant.

1 April 2016

Date


Gary E. Dunkleberger, Chairman

Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court for Carroll County within 30 days of the date of the decision pursuant to Land Use Article, Section 4-401 of the Annotated Code of Maryland.

Pursuant to Section 158.133 (H)(3) of the County Code, this approval will become void unless all applicable requirements of this section are met. Contact the Office of Zoning Administration at 410-386-2980 for specific compliance instructions.