

Case 5459

**OFFICIAL DECISION – AMENDED<sup>1</sup>**  
**BOARD OF ZONING APPEALS**  
**CARROLL COUNTY, MARYLAND**

- APPLICANT:** Michael L. Schussler, Sr.  
4228 Arters Mill Road  
Westminster, Maryland 21158
- ATTORNEY:** Clark Shaffer
- REQUEST:** A confirmation that landscaping, patio and paving work, and other related work done in connection with, or independently of, the sale, delivery and/or installation of nursery stock, shrubs and other nursery materials as an accessory use to the operation of a commercial nursery; and a request for a conditional use for a contractor's equipment storage facility; and, in the alternative, a request for a conditional use for parking facilities for commercial vehicles; and, if needed, a variance from the distance requirements of 400 ft. to 80 ft.
- LOCATION:** The site is located at 4228 Arters Mill Road, Westminster, MD 21158, on property zoned "Agricultural" District in Election District 3.
- BASIS:** Code of Public Local Laws and Ordinances, Section 223-71 A (5) & (23) and 223-16
- HEARING HELD:** January 6, February 25, April 29, and August 20, 2009

**FINDINGS AND CONCLUSION**

On January 6, February 25, April 29, and August 20, 2009, the Board of Zoning Appeals (the Board) convened to hear a confirmation that landscaping, patio and paving work, and other related work done in connection with, or independently of, the sale, delivery and/or installation of nursery stock, shrubs and other nursery materials as an accessory use to the operation of a commercial nursery; and a request for a conditional use for a contractor's equipment storage facility; and, in the alternative, a request for a conditional use for parking facilities for commercial vehicles; and, if needed, a variance from the distance requirements of 400 ft. to 80 ft. Based on the testimony and evidence presented, the Board made the following findings and conclusion:

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<sup>1</sup> The decision was amended to incorporate conditions which should have been delineated in the original official decision dated September 16, 2009, which is now superseded.

## OFFICIAL DECISION

Case 5459

Page 2

The Applicant resides with his family on 28 acres (+/-) of land in the Agricultural zone. He is a licensed horticulturalist and operates a commercial nursery on 2 acres of the property. He hopes to expand the nursery to 12 acres in the future. A 4,960 square foot building was erected on the property to support the nursery operation.

The property is bordered by Arters Mill Road to the east, but portions of the property do not have direct access to that road. The other access is from West Valley Lane, which is a private drive used and maintained by 10 neighbors. The surrounding neighborhood is rural in nature, with scattered large lot residences and farm plots.

The Applicant wishes to move a landscaping/contractor's parking facility to a portion of the property. There will be up to 13 employees, most of whom will be seasonal (March 1-December 31). The employees will drive to the site in the morning, secure their assigned vehicles and equipment, and leave 45 minutes later to work off site. Typical hours for the facility will be 7:00 a.m. to 5:00 p.m. during the week with occasional Saturday hours. There will be no retail sales at the property and there will be no customer traffic. The Applicant also performs snow removal services in the winter months.

Materials to be stored will include pavers, sand, crusher run, natural and blue stone, mulch, compost and decorative boulders. Mulch will be delivered by large trucks weekly during the busy season. Other products will be delivered by large trucks once a month.

Vehicles and equipment to be stored at the site include dump trucks, trailers, skid steers, lawn tractors, a van, roll-off dumpsters, pick up trucks and smaller trucks, snow removal equipment and landscaping tools. Routine vehicle maintenance will be performed in the building.

A certified real estate appraiser accepted as an expert in the field by the Board performed a market impact study at the proposed use. She concluded that the parking of the vehicles and storage of the materials as proposed would not negatively impact property values. No evidence contradicting her conclusion was received by the Board.

Opposing neighbors testified that this use would adversely affect the rural character of the neighborhood and would be detrimental to the peaceful enjoyment of their homes. However, most of the opposition centered on the Applicant's intended use of West Valley Lane to access his vehicles, equipment and nursery stock. Neighbors testified credibly as to the poor condition of this lane and its unsuitability for heavy trucks and traffic. In response, the Applicant agreed to refrain from using West Valley Lane for any commercial purpose (i.e. no use by landscaping business or nursery vehicles). The Applicant will pursue a different access point for these uses from Arters Mill Road.

**OFFICIAL DECISION**

**Case 5459**

**Page 3**

Based on the above, the Board concluded that landscaping, patio constructions and similar types of work are not accessory uses with a nursery. The two uses are separate, stand alone, and in most cases, are unrelated to each other. The Board further found that, with certain conditions, the Applicant's parking of commercial vehicles and ancillary storage of materials on site would not generate noise, dust, fumes, gases or traffic greater here than elsewhere in the zone. The facility will be quiet and idle most of the time, with activity only in the early morning and late afternoon. These types of facilities are frequently found in the Agricultural zone. The Board further found that there was no credible evidence of any diminution of property values, and adopted the appraiser's testimony in this regard. Traffic will be minimal, and the Applicant's decision to forego the use of West Valley Lane for his business should address most of the neighbor's concerns. Therefore, the Board approved the conditional use for the storage of commercial vehicles with the ancillary storage of equipment and materials, subject to the conditions set forth in the Motion of then Chairperson Roberta Windham, attached as Exhibit A\*.

No variances were needed for this use.

October 16, 2009  
Date

Charles H. Wheatley, III, Chair  
Charles H. Wheatley, III, Chair

1 MS. WINDHAM: Want me to do it? Chairman  
2 doesn't usually make a motion. Let me see if I can  
3 do it.

4 MR. WHEATLEY: May I also comment as a  
5 matter of record for informational purposes having  
6 been through the bridge process, I seriously doubt  
7 unless things change for these folks, that they're  
8 going to make that bridge in a year. It's possible,  
9 but I'm highly skeptical. So that's why we're  
10 saying October 31st instead of August.

11 MS. WINDHAM: Okay. So we're going to  
12 approve the conditional use for parking of  
13 commercial vehicles with the following conditions:  
14 That they will have the landscaping on the pole  
15 building on Arters Mill Road and there will be one  
16 acre designated around that existing pole building  
17 for the parking of these commercial vehicles and  
18 that there will be -- they will endeavor as much as  
19 possible to hide them and screen them from the  
20 surrounding neighbors; that they will pursue  
21 crossing onto the back part of the land to the

1 nursery over the flood plain and over the stream to  
2 the nursery building over the next fourteen months,  
3 and after a period of fourteen months from today,  
4 they will no longer be able to access West Valley  
5 Lane for any commercial purposes; there will be no  
6 new storage building on the back property that I'm  
7 referring to near the nursery; they are voluntarily  
8 giving up their right to use West Valley Lane for  
9 any kind of commercial purposes after that fourteen  
10 month period; there will be no retail sales from the  
11 landscaping premises or the nursery premises; they  
12 will use minimal outdoor lighting; that the use of  
13 the landscaping business -- or the parking for  
14 commercial vehicles we should really call it -- is  
15 non-transferable and only approved for the  
16 Schusslers; and the hours of operation be  
17 approximately seven a.m. to five or six p.m. Monday  
18 through Friday with occasional Saturday and Sunday  
19 hours. Did I miss anything?

20 MR. SCHUSSLER: Except if it snows, you  
21 know.