

Tax Map/Block/Parcel  
No. 75-5-620

Building Permit/Zoning  
Certificate No. 96-0625

Case 4091

OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND

**APPLICANT:** SPJ, Inc.  
P. O. Box 26  
Westminster, Maryland 21158

**ATTORNEY:** J. Brooks Leahy, Esquire  
Dulany and Leahy, LLP  
127 East Main Street  
P. O. Box 525  
Westminster, Maryland 21158

**REQUEST:** A conditional use for a "B-L" Local Business District use in the "I-R" Restricted Industrial District, to wit: a convenience store, car wash, and gas and go station

**LOCATION:** The northwest corner of Sykesville Road (Md. Rt. 32) and Bartholow Road intersection in Election District 5; Cross Country Plaza subdivision, lot 1 recorded in the Carroll County Plat Records in book 40, page 141

**BASES:** Article 12, Section 12.2(b); Article 11, Sections 11.1, 11.6 and 11.7; Ordinance 1E

**HEARING HELD:** March 26, 1996

On March 26, 1996, the Board of Zoning Appeals (Board) heard testimony and received evidence concerning the conditional use for a "B-L" Local Business District use in the "I-R" Restricted Industrial District, to wit: a convenience store, car wash, and gas and go station on the northwest corner of Sykesville Road (Md. Rt. 32) and Bartholow Road intersection.

The applicant amended the request at the public hearing to include lot 2 of Cross Country Plaza subdivision to provide additional space and improve the site development plan.

Articles and Sections cited below are of Ordinance 1E.

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 compliance with the state Open Meetings Act, the Board authorized the conditional use, subject to conditions of authorization imposed below. The pertinent findings determining the Board's decision include the following facts.

FINDINGS OF FACT

Lot 1 of Cross Country Plaza subdivision is located on the northwest corner of Bartholow Road and Sykesville Road (Md. Rt. 32) intersection. The subdivision consists of four lots. Lots 2, 3 and 4 are north of lot 1 and front on Md. Rt. 32. The subdivision plan was reviewed, duly approved by the Carroll County Planning and Zoning Commission for recordation, and recorded in book 40, page 41 of the plat records of Carroll County. The subdivision and surrounding area are served with public water and sanitary sewerage facilities. In the interests of vehicular traffic safety and to reduce the number of individual driveway connections to Md. Rt. 32, vehicular access to and from the four lots will be provided by a use-in-common two-way driveway having single connections to Bartholow Road and Md. Rt. 32, as depicted on the subdivision plat. The driveway connections are restricted to the locations shown on the subdivision plat (General Notes: 11, 12, and 14).

As portrayed by the amended Sketch Plan A, Cross Country Plaza, Lots 1 and 2, Applicant's Exhibit 1, the convenience store and four gasoline pump islands are located on lot 1; one of two diesel pump islands extends across the property line of lots 1 and 2, with the second island on lot 1; and the car wash is located on lot 2. Although the amended sketch plan portrays the proposed development, it does not constitute the required site development plan.

Development of the site will require significant grading and may require construction of a retaining wall due to the topography. This will result in reducing the elevation of the improvements relative to Md. Rt. 32, the abutting properties, and Bartholow Road.

Adjoining or neighboring properties include Sandosky Contractors, Inc. to the west; lot 3 of the subdivision, which is vacant, and lot 4, where a funeral home has been authorized as a conditional use; Londontown Manufacturing Company land, identified on the site location map used in this case to the east on the opposite side of Md. Rt. 32; a planned business center authorized in March 1995 by the Board in Case 4003 and now under construction on the southeast corner of Londontown Boulevard and Md. Rt. 32; and Wal-Mart and the Carroll County Bank and Trust Company further to the south, east of Md. Rt. 32; and, a Baltimore Gas and Electric Company substation on the south side of Bartholow Road.

Color photographs of portions of the site portray views to the north, northwest, west, and southwest (Applicant's Exhibits 2A-2D).

Mr. Harry L. Sandosky, Jr., President of Sandosky Contractors, Inc. which is located on the adjoining lot to the west, and Jeffrey N. Zumbrun and Constance Zumbrun, owners of lot 4 support the request (Applicant's Exhibits 3 and 4 respectively).

The sketch plan for development of the site was prepared by Mr. Jeff Zigler, Project Manager for Carroll Land Services. Mr. Zigler testified that lot 2 was added to the plan to provide greater flexibility in developing the site, additional space to increase the setbacks or yards, and facilitate grading. Mr. Zigler indicated that the connections to Bartholow Road and Md. Rt. 32 were approved in the process of reviewing and recording the subdivision plat, and that water and sanitary sewerage permits, and the stormwater management plan have been approved.

The Director of the Carroll County Department Economic Development, Mr. John T.

Lyburn, Jr., supports the conditional use, indicating in his letter of March 25, 1996:

- The character of the neighborhood has changed due to [the planned business center], Wal-Mart, and the Carroll County Bank and Trust Company building.
- The site "...is very narrow without depth. Typical industrial uses need adequate acreage to support activities. Attracting an industrial use to this small and peculiar shaped property would be unlikely."
- Article 12 acknowledges that there are circumstances where business uses "...can be reasonably and logically considered...." (Applicant's Exhibit 5.)

Mr. Wes Guckert, President of The Traffic Group, appeared in behalf of the applicant and was accepted by the Board as an expert in the field of traffic engineering and transportation planning. Mr. Guckert testified that about seventy percent of the vehicular traffic to gas and go stations and convenience stores is from traffic in the area; about 1,200 vehicles could be expected to visit the business in 24 hours, an average of 50 vehicles per hour, or one vehicle every two to three minutes; and, that new vehicular trips to the site would not affect the existing levels of service on Md. Rt. 32. Mr. Guckert agreed with opponents that there could be more than one car a minute entering or leaving the site and that the average could exceed 50 vehicles per hour during peak traffic hours.

The representative from the Engineering Access Permits Division of the State Highway Administration expressed no objection to the conditional use in a memorandum to the Board dated February 29, 1996. (Engineering Access Permits Division is a member of the Subdivision Advisory Committee that reviewed the preliminary subdivision plan, prior to approval by the Carroll County Planning and Zoning Commission.)

The Director of the Carroll County Department of Planning and Development submitted a memorandum, dated March 13, 1996, to the Board indicating:

- The proposed gas station is not consistent with the "Mini" Plan, citing [from subsection 1.5, Goals and Objectives] Land Use Goals and Objectives, page 4 as substantiation, which reads in relevant part:

Promotion of prosperity, efficiency and economy in the development process, and to this end, the location of business and light industry located only in those locations determined logical and compatible with existing and planned land uses.

- The "Mini" Plan will be reviewed and updated during the next eleven months
- A survey and study of industrial lands is underway regarding zoning and that recommendations of the study may affect the future zoning classification of the property
- The subdivision was recorded after adoption of the "Mini" Plan.
- Use of the lot for industrial purposes is not likely due to its size.
- Accordingly, the Department will not oppose the conditional use request.

Many residents and home owners within Parrish Park subdivision, which is located to the west of Bartholow Road, and other properties, either adjacent or within the Freedom area, appeared before the Board to testify and present evidence in opposition to the conditional use.

They expressed concerns and fears regarding additional vehicular traffic, traffic safety and congestion, the driveway connection to Bartholow Road, environmental pollution, noise, crime, depreciation of residential property values, adverse affects to the residential neighborhood, the proximity of the site to Liberty High School, and aggravation of problems of low water pressure in the area. In addition, it was alleged that the convenience store, car wash, and gas and go station constitute a planned business center, and that the conditional use would not be consistent with the "Mini" Plan.

The petition submitted in opposition to the conditional use, Protestants' Exhibit 3, alleges several of the same concerns and fears.

The Board finds that the concerns and fears are without substantiating evidence that the convenience store, car wash, and gas and go station would have any greater adverse effects at this site than they would elsewhere in the "I-R" Restricted Industrial District. However, the opponents' objections regarding the proximity of the site to the residential subdivision of Parrish Park and the contemplation of operating the convenience store, car wash, and gas and go station 24 hours, day and night, justify restricting the hours of operation. Therefore, the Board will impose a condition requiring that all facilities be closed from 12:00 midnight to 6:00 a.m.

In addition, with respect to the problem of low water pressure in the area, the Board will direct the applicant to advise the Carroll County Bureau of Utilities of the problem when applying for the Building Permit and Zoning Certificate.

#### APPLICABLE LAW

The lot is zoned "I-R" Restricted Industrial District as depicted on zoning map 73B, which is consistent with the Comprehensive "Mini" Plan for the Freedom Area and Environs land use map adopted December 14, 1977. Section 12.2, Conditional Uses, paragraph (b) reads in relevant part:

Any use permitted and as regulated as a principal permitted use...in the "B-L" and "B-G" District,..., provided that in addition to the criteria set forth under Section 17.[7], the Board shall also consider criteria set forth under Section 14.61 (a), (b) and (c) in authorizing the use of any land for a planned business center..., in accordance with the stated purpose of the "I-R" District. (Added 9/22/77)

Article 11, "B-G" General Business District; Section 11.1, Principal Permitted Uses, paragraphs (a) and (c) read respectively and in relevant part:

Retail trades, businesses and services of a general commercial nature,....

Any use or structure permitted and as regulated as a principal

permitted use in [the]... "B-L" District.

Article 10, "B-L" Local Business District; Section 10.1, Principal Permitted Uses, reads in relevant part:

(a) Local retail business or service shops, including:

Food and grocery stores  
Service stations

Section 10.3, Accessory Uses, states in part:

Uses and structures customarily accessory and incidental to any permitted principal use....

Land uses permitted in the business districts are also subject to the provisions of Section 4.26 pertaining to site development plans. However, in the interests of brevity, the provisions will not be quoted.

A planned business center is defined in Article 20 as:

Three or more retail stores or service establishments designed as a unit and primarily served by common accessories such as signs, parking lots, arcades and walkways.

The purpose of the "I-R" Restricted Industrial District, as stated in the preamble of Article 12, reads:

(The purpose of this district is to provide locations for some of the lighter manufacturing processes and which may not be as extensive as those provided in the "I-G" District. For the most part, the manufacturing is composed of processing or assembly of previously processed materials. It is not the purpose of this district to promote or encourage the use of land within the district for retail services or planned business centers normally expected to be located within the established business districts; however, it is anticipated that there may be areas or locations where retail services or planned business centers can be reasonably and logically considered due to their relationship with other uses existing within the district, as well as their relationship with the district boundary line or the configuration of the property and the relative scale of the project.) (Amended 9/22/77)

Although opponents of the conditional use assert that the combination of convenience store, car wash, and gas and go station constitute a planned business center, the Board disagrees. While each of the uses could be established individually, the practice has been to develop convenience stores with gas and go stations, and either a car wash or service garage as an accessory and complementary use when circumstances and space allow.

Article 17, Board of Appeals; Section 17.7, which governs the Board in considering 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.

As defined in Article 20, conditional uses are the same as special exceptions.

The Board is also governed by decisions of the courts. In *Turner v. Hammond*, 270 Md. 41, 55 (1973), the decision reads:

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 *Mossburg v. Montgomery County*, 107 Md. App. 1, 7-8 (1995) the Court stated:

...a special exception/conditional use in a zoning ordinance recognizes that the legislative body of a representative government has made a policy decision for all inhabitants of the particular governmental jurisdiction, and that the exception or use is desirable and necessary in its zoning planning provided certain standards are met.

In *Schultz v. Pritts*, 291 Md. 1, 21 (1981) principal permitted uses and conditional use are described. The decision reads in part:

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 established the following standard governing conditional use applications:

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.)

### REASONING

Elements of the master plan, consisting of plans, maps, ordinances, regulations, and policies, proceeded adoption of Ordinance 1E and the comprehensive zoning maps in 1965. At that time the master plan was instrumental in determining the specific zoning districts comprising the comprehensive zoning plan for the county. Since then documents comprising the master plan have been adopted, expanded, and amended as time passed and the county developed.

In March of 1975, study began for the Comprehensive "Mini" Plan for the Freedom Area and Environs ("Mini" Plan). The "Mini" Plan, as amended, was adopted by the Commissioners of Carroll County December 14, 1977. Recommendations included comprehensive rezoning of properties and amendments of the zoning ordinance. One of the problems, which had been identified earlier, involved development of "I-R" Restricted Industrial District zoned land for businesses, instead of industry. In an attempt to control the problem, one of the amendments adopted September 22, 1977, designated most business uses allowed in the "I-R" Restricted Industrial District as conditional uses. (Comprehensive "Mini" Plan, Section 7.3.2, p. 121.) (Text Amendment 40.)

Although the topic of Section 7.3.4 of the "Mini" Plan is "Modification of Residential District Uses", the reasoning cited in that section also applied in changing business uses from principal permitted uses to conditional uses in the "I-R" Restricted Industrial District. Section 7.3.4 reads in part:



...The amendment<sup>1</sup> essentially permits the Board of Zoning Appeals to exercise its discretion in approving applications.... Each case will be weighed and considered on its own merits, and affords the applicant and community the opportunity to determine the appropriateness of a particular use in a particular location. In planning such uses, the Board is required to study the specific property involved, as well as the neighborhood, consider all testimony and data submitted, and hear any person desiring to speak for or against the issuance of a permit. 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, the Board would have no recourse other than to disapprove the application. (Compare to Section 17.7 *supra*.)

The Board is governed by the provisions of the Article 66B of the Annotated Code of Maryland, the zoning ordinance, and decisions of the courts. The reasoning expressed above at least implies that the Board may arbitrarily approve or deny conditional uses. The implication is false. Decisions by the Board must be based on facts, derived from probative testimony and evidence submitted for the record during public hearings. Whether a particular use is appropriate at a particular location is not a decision for this Board--the Court of Appeals established the standard in *Schultz v. Pritts*.

The zoning plan for the county provides for a variety of zoning districts. Land uses legislatively deemed to be similar and compatible are permitted in the respective districts. The districts range from the "C" Conservation District, which is among the more restrictive districts, to the "I-G" General Industrial District, which is the least restrictive district.

Land uses allowed as principal permitted uses<sup>2</sup> in more restrictive districts are routinely allowed as principal permitted uses in less restrictive districts. However, to accomplish the purpose<sup>3</sup> of the zoning ordinance, uses first allowed in a less restrictive district are not allowed in more restrictive districts. Thus, uses first allowed in an industrial district are not allowed in business districts.

The proposed convenience store, car wash, and gas and go station are allowed as principal permitted uses in the "B-G" General Business District, but are designated conditional uses in the "I-R" Restricted Industrial District. Ordinarily and until amendment of the zoning ordinance September 22, 1977, the business uses were allowed as principal permitted uses in the "I-R" Restricted Industrial District as uses determined appropriate in the more restrictive business districts. If the legislative body did not intent to permit business uses in the "I-R" Restricted Industrial District, business

---

<sup>1</sup>An amendment designating the professional office of an insurance agent, real estate sales office or other similar professional building as conditional uses within residential zoning districts.

<sup>2</sup>Uses that do not require Board authorization.

<sup>3</sup>Article 1, Section 1.0, Ordinance 1E.

uses would not be included as conditional uses in Article 12.

Regardless of the explanation of the purpose of "I-R" Restricted Industrial District, "B-L" Local Business District and "B-G" General Business District principal permitted and conditional uses are allowed as conditional uses in the district, and the standard governing authorization of conditional uses established in *Schultz v. Pritts, supra*, is the applicable law.

In considering the testimony and evidence comprising the record of this case relative to the standard of *Schultz v. Pritts, supra*, the Board finds that there is no probative evidence that the convenience store, car wash, and gas and go station would have adverse effects at this site above and beyond those effects inherently associated with those uses.

With regard to the provisions of Section 17.7, the Board finds no probative evidence that would justify denial of the conditional use for the convenience store, car wash, and gas and go station.

The applicant is aware of the requirement pertaining to submission of a site development plan for review and approval of the Carroll County Planning Commission in accordance with the provisions of Section 4.26.

The Board recognizes the differences of opinion regarding consistency of the conditional use with the "Mini" Plan, but is convinced that the applicant has met his burden of proof in establishing that the conditional use is: consistent with the "Mini" Plan; in accord with the purpose of the zoning ordinance, and complies with the standard governing conditional uses expressed in *Schultz v. Pritts*.

Therefore, the Board may not lawfully deny the conditional use.

#### CONCLUSION

Based on the findings of fact, applicable law, and reasoning expressed above, the Board hereby authorizes the convenience store, car wash, and gas and go station, subject the following conditions of authorization which are imposed in order to promote the intent and purpose of the zoning ordinance:

1. All facilities shall be closed daily from 12 midnight to 6:00 a.m.
2. In conjunction with applying for the Building Permit and Zoning Certificate for the car wash, the applicant shall advise the Carroll County Bureau of Utilities of problems involving low water pressure experienced by nearby residents.

4/23/96

Date

Karl V. Reichlin

Karl V. Reichlin, Chairman