

Tax Map/Block/ Parcel  
No. 71-24-47

Building Permit/Zoning  
Certificate No. 98-1288

Case 4212

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

**APPLICANTS:** Michael R. Harrison  
1973 Gillis Falls Road  
Woodbine, Maryland 21797

**REQUEST:** A conditional use request for a private commercial airport for  
powered on property zoned "A" Agricultural District.

**LOCATION:** 1973 Gillis Falls Road in Election District 14

**BASIS:** Basis: Article 6, Section 6.3(b); Ordinance 1E (The Carroll County  
Zoning Ordinance)

**HEARING HELD:** August 26, 1998, September 16, 1998, September 29, 1998, and  
November 19, 1998

**FINDINGS AND CONCLUSION**

On August 26, 1998, September 16 and 29, 1998, and November 19, 1998 the Board of Zoning Appeals (the Board) convened to hear the application of Michael R. Harrison for a conditional use for a private commercial airport<sup>1</sup> on property zoned "A" Agricultural District in Election District 14. This application is the latest struggle to establish an airport on this property that began in 1972 and has continued to present day. The history of what has taken place on this parcel of land is important for rarely does the Board have an opportunity to consider an application with so much evidence of the actual (rather than perceived) effects of the use upon the neighborhood and the surrounding properties prior to the Board's decision on the use contemplated. As best as can be determined by the Board's review of its prior decisions, the following is the procedural history of the airport on the subject property.

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<sup>1</sup>Section 6.3(b) of the Zoning Ordinance of Carroll County authorizes as conditional uses "Airports or landing fields, public or private, subject to approval of the State Aviation Commission". The Code of Maryland Regulations 11.03.04.02 (I)(J) define private use airport as an airport open to specific individuals and occasional guests. Private airports are not open to the public at large. Commercial airport is defined as an airport which charges fees or receives payment for goods services. (See Code of Maryland Regulations 11.03.04.02(c)).

## **PROCEDURAL HISTORY**

In 1972, the Board approved a request for conditional use for a private airport and drop zone for parachutists (BZA Case No. 728). Subsequently, in 1982, in response to complaints from neighbors, the Board revoked the use granted determining that the airport as established and being used was in violation of its prior authorization (BZA Case No. 1879). The Board permitted the applicants therein to file a new application for an airport which became BZA Case 1988. BZA Case 1879 was appealed to the Circuit Court of Carroll County, alleging that Board lacked the authority to revoke the use. As this was transpiring, the Board in 1984, decided the new application filed in BZA Case No. 1988 and authorized an airport for powered and non-powered aircraft with eight conditions (the first of 3 decisions in this case). BZA Case 1988 was also appealed to the Circuit Court for Carroll County alleging the conditions imposed were preempted by state and federal law. Both appeals were consolidated by the Circuit Court. The Circuit Court for Carroll County ruled that the Board lacked authority to revoke the use (Civil Case LA26499/25912) and did not address whether the conditions were preempted considering the second appeal moot. The Circuit Court's decision was appealed to the Court of Special Appeals, Case No. 1270. The Court of Special Appeals in County Commissioners of Carroll County v. Gaudet, an unreported decision, held that the right of appeal was waived when the owners filed a new application for an airport, an act inconsistent with the position on appeal. The effect was that the Board's authority to revoke the use was upheld. The case was remanded to the Circuit Court to hear the second appeal.

On remand of BZA Case 1988, the Circuit Court determined that of the eight conditions imposed, conditions 2, 3 and 7 were preempted by state and federal law. The Circuit Court's decision was appealed to the Court of Special Appeals (September term, 1988 No. 1425) which affirmed the decision of the Circuit Court in part and reversed in part, holding that only condition (7) was preempted. The matter was further appealed to the Court of Appeals. In Harrison v. Schwartz, 319 Md. 360, (Md. 1990), the Court of Appeals reversed the Court of Special Appeals and affirmed the Circuit Court (conditions 2, 3, and 7 were preempted). The case was remanded to the Board for the Board to determine whether the use can be granted absent the offending conditions. The Board held oral arguments and issued its second decision in BZA Case No. 1988 based on the record of case and without any additional testimony. The Board found that without the conditions, the use would cause unique adverse effects at this location and the use was denied. The denial was appealed to the Circuit Court (Case No. 91-11369) which reversed the Board and instructed the Board to issue the conditional use. The Board issued the conditional use (decision three of three in Case No. 1988). Circuit Court Case No. C-91-11369 was appealed however, to the Court of Special Appeal. The Court of Special Appeals in Schwartz v. Harrison (September term, 1995 No. 739 unreported), reversed the Circuit Court and affirmed the denial of the Board. No further appeal was noted. The use ceased sometime thereafter. The application before the Board is an attempt to reestablish the use on the property.

## **CURRENT REQUEST**

The applicant herein is Mr. Michael R. Harrison, the son of the prior applicant, and current

owner of the property. The property consists of 168.577 acres more or less, portion of which is zoned Conservation and the balance is zoned Agricultural. The Conservation zone does not permit airports as either principal or conditional uses. In the past, a portion of the land zoned Conservation was used for accessory structures of the airport in violation of the zoning ordinance. This request is therefore limited to the land zoned Agricultural.

Mr. Harrison testified that he would like to operate a private commercial airport on his property at 1973 Gillis Falls Road. He has lived in the area his entire life and has been a farmer during that time. He needs to supplement the farming operation. The 100' x 2,500' plus runway for the airport is ready for use having been constructed and used previously. Unlike his predecessor, he will not delegate the management of the airport to others, but will manage the private commercial airport himself. As a private airport operation, pilots will be permitted to land if he has given them permission to land. Mr. Harrison would be responsible for granting or denying the request. The commercial status is requested to allow Mr. Harrison to collect rent from planes using tie downs. The airport operation will offer supplemental income to Mr. Harrison. He will install a VASIE System, a land marking system used to guide pilots when landing. Mr. Harrison is willing to accept any restriction the Board may impose if he can be authorized to operate the private commercial airport.

Mr. Bruce F. Mundie, Aviation Administrator with the Maryland Aviation Administration (MAA), testified the airport at the property has been licenced by the state since 1972 and the MAA has authorized operations through May 31, 1999, as it was not aware of the decision of the Court of Special Appeals. Mr. Mundie supported the installment of a VASIE System to assist pilots in landing aircraft.

Testimony in opposition was presented by members of the Woodbine Concerned Citizens and other neighbors. The Woodbine Concerned Citizens<sup>2</sup>, an association of certain neighbors appeared in opposition to the request and was represented by Brian M. Bowersox, Esquire and Michelle M. Ostrander, Esquire. In addition, several other neighbors appeared in opposition to the request. Many of the neighbors testified regarding the disruptive effects the noise from the past airport operations had on their use and enjoyment of their properties. In the past, the airport was used as a gliderport. A tow plane would take off towing a glider. The tow plane would have to ascend at a low rate of elevation and in concentric circles. The engine would be at full throttle which would create the most noise during the ascent. Once the tow plane reached the desired altitude, the glider would be released and the tow plane would return to pick up another plane. This occurred as many as 90 times a day. The airport was in operation seven days a week.

Mr. Bernard Schwartz, a neighbor and long time resident of area, testified that the airport created noise that was extremely disruptive noise to the enjoyment of his property. In addition, he

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<sup>2</sup>The composition of the Woodbine Concerned Citizens is made up of Mr. Bernard A. Schwartz, Mr. Roland Ross, Mr. Robert I. Harrison, Mr. Carl Rauschenberg, Mr. and Ms. Ty and Julie Case and Ms. Lucille Laden.

described several accidents resulting from the airport's glider activity. The adverse effects of the noise generated by the glider operations was reiterated by Mr. Wayne Leroux, Mr. Roland Ross, Ms. Lucille Ladon, Mr. William Bates, Mr. Ralph Troutline, and Mr. Robert L. Harrison. All these witnesses, who live near the property, asserted that the noise was extremely disruptive to their enjoyment of their property. They also expressed concern for their safety. Mr. Leroux recalled that debris from a shattered canopy and oil from the planes flying over his house fell in his yard. Another testified that tow pilots failed to follow flight patterns or landed with their tow ropes attached contrary to current regulations. Mr. Harrison, who owns land adjacent to the runway, observed tow planes taking off and being only a few feet of the ground when they cross his property line. He remembers that he had a glider come across the cornfield and crash. Mr. James Dulany, IV, a real estate appraiser and consultant, presented a Study of Robert E. Harrison Property and East Side John Pickett Road (Protestant's Exhibit One). Mr. Dulany testified that the airport use would cause a unique adverse effect on the property values in the neighborhood. The use would change the residential character of the neighborhood. The Board finds the testimony of neighbors and of Mr. Dulany to be very credible and accepts that the use of the property for glider operations would adversely affect the neighbors' quiet enjoyment of their properties.

In rebuttal to the testimony by the protestants, Mr. Harrison modified his request indicating that if the use is granted, that he would be responsive to the neighbors' concerns and would not permit the operation of gliders. He submitted a letter to the Board expressing his intention to exclude gliders.

The Board finds that the use of the property as an airport in which gliders were permitted to operate would adversely affect the neighboring property values and the peaceful enjoyment of people in their homes to a greater extent at this location than elsewhere in the agricultural zone. The use of the property as an airport in which gliders were permitted to operate would cause greater adverse effects on the public safety, security, and general welfare at this location than elsewhere in the agricultural zone. If Mr. Harrison's request were for an airport with glider operations, it would be denied. However, Mr. Harrison has clearly indicated that no gliders would be operating at the site if the use were approved as an airport. The Board finds Mr. Harrison's assurances to be credible.

The Board finds the request for a private commercial airport, if operated as represented by Mr. Harrison, and with the hereinafter imposed conditions to be a permissible use causing not greater adverse effects at this location than elsewhere in the Agricultural zone.

The Board hereby approves the request of Mr. Harrison, conditioned upon the following:

- 1) No glider operation of any kind is permitted on the property.
- 2) Airport operations for tie downs, hangers, and all other accessory uses are limited to one half of an acre (exclusive of the runway).
- 3) No airport operations are permitted in the "C" Conservation zone.

- 4) Management of the airport is restricted to Mr. Michael R. Harrison. If ownership of the property changes, the use must cease unless the new owners obtain authorization for the airport from the Board.
- 5) The airport authorized is restricted to a private commercial status.
- 6) Should any condition of the Board be overturned, or be deemed preempted by a court of competent jurisdiction then the application is denied.
- 7) A site plan review is required.

December 23, 1998

Date

Karl V. Reichlin

Karl V. Reichlin, Chairman

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December 22, 1998