

Tax Map/Block/Parcel
No. 9-6-160

Building Permit/Zoning
Certificate No. 90-2582

Case 3421

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

APPLICANT: George Samuel Bower
4675 Piney Creek Road
Taneytown, Maryland 21787

REQUEST: To amend condition 1 in Case 2858 to allow continued use of the agricultural barn for a five year period extending from September 30, 1990 to September 30, 1995

LOCATION: 4675 Piney Creek Road in Election District 1.

BASES: Article 17, Section 17.2; Ordinance 1E. (The Carroll County Zoning Ordinance)

HEARING HELD: August 21, 1990

On August 21, 1990, the Board of Zoning Appeals heard testimony and received evidence concerning the request to amend condition one in Case 2858 to allow continued use of the agricultural barn for a five year period extending from September 30, 1990 to September 30, 1995, on the premises of 4675 Piney Creek Road.

The Board visited the site August 20, 1990, prior to 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, the Board will deny the request.

The pertinent findings determining the Board's decision include the following facts.

FINDINGS OF FACT

On December 28, 1987, the Board of Zoning Appeals held a public hearing to consider requests for variances reducing the minimum required lot area of 3 acres to 0.754 of an acre, one minimum required side yard of 30 feet, a minimum required rear yard of 50 feet, and a minimum distance requirement of 200 feet pertaining to a proposed agricultural barn. As depicted on the plot plan submitted with the application, the agricultural barn consisted of a proposed pole shed, 8 feet in width by 16 feet in length, located 3 feet from the rear property line and 8 feet from the southerly side property line.

The purpose of the shed was to provide shelter for pigs to be raised as a project by the applicant's son, Tim Bower, a member of Future Farmers of America at Francis Scott Key High School. From a statement filed in the record of Case 2858, it was clear that a number of adjacent property owners believed that the project would be for 2 years, or until Tim Bower's graduation in June of 1990.

Based on the testimony and evidence comprising the record of that case, the Board authorized the requested variances, imposing the following conditions:

1. As establishment and operation of the agricultural barn is in conjunction with a FFA project for pig management, authorization of the variances for use of the building as an agricultural barn shall expire September 30, 1990.
2. Use of the agricultural barn in conjunction with the FFA project shall be restricted to not more than four pigs at one time.

Since its establishment, the project has evidently been successful. The first batch of pigs was raised to market weight of about 240 pounds, and thereafter new batches were brought to the premises every three to five months. Although exact figures were not available, 30 to 40 pigs have been raised in conjunction with the project.

As indicated on the plot plan submitted in Case 2858, the nearest house to the south was approximately 225 feet from the southerly property line. A new house is presently under construction, adjacent to the applicant's property. The new house is substantially closer than the previous house, which would require an additional variance to the minimum distance requirements of 200 feet pertaining to the agricultural barn.

Apparently due to the success of the project, the applicant requests a five year extension to September 30, 1995 to conduct the business.

The property is improved with the applicant's home, and the principle use of the property is residential.

APPLICABLE LAW

Unless otherwise noted, Articles and Sections cited below are of Ordinance 1E.

The property is zoned "A" Agricultural District as depicted on zoning map 9B. The land use provisions for the "A" Agricultural

District are specified in Article 6. Although Section 6.1 specifies that agriculture is the preferred use in the district, Section 6.2, Principle Permitted Uses and Section 6.7, Lot Area, Lot Width and Yard Requirements govern agricultural uses.

The applicant's property does not conform to the minimum requirements of a lot area of 3 acres, a lot width of 200 feet, one minimum required side yard of 30 feet, the minimum required rear yard of 50 feet, and the minimum distance requirement of 200 feet for the agricultural barn as specified in Article 4, Section 4.12.

Section 4.12, Distance requirements (Amended 7/5/77) reads in relevant part:

Any uses or buildings subject to compliance with this section shall be located at least 200 feet from:

- (a) any lot of less than 3 acres occupied or intended to be occupied by a dwelling not located on the same lot as the said use or buildings....

Article 15, Exceptions and Modifications; Section 15.0, Generally, states:

The regulations specified in this ordinance shall be subject to the following exceptions, modifications, and interpretations:

Section 15.5, Variance (Amended 2/25/76), states in relevant part:

The Board may authorize, upon appeal, in accordance with Section 17.2, variances from...lot area, lot width, yard regulations...and distance requirements specified in Section 4.12.... The Board may grant such variance only in cases where the strict compliance with the terms of this ordinance would result in practical difficulty and unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to public health, safety and general welfare.

Article 20, Definitions: Section 20.39, Variance reads:

A variance is a relaxation of the terms of the Zoning Ordinance 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 unnecessary and undue hardship.

REASONING

The temporary and conditional relaxation of the minimum requirements governing the agricultural barn were authorized on the basis of the circumstances presented to the Board on December 28, 1987 in Case 2858.

The request is now to sanction the continued operation of the project as a business.

CONCLUSION

There is no evidence of practical difficulty and unreasonable hardship in the use of the property that would justify authorization of the variances necessary to permit the continued use of the agricultural barn for business purposes. Accordingly, the request is hereby denied.

Aug. 28, 1990
Date

JDN/bmh/c3421dec
August 27, 1990

John Totura
John Totura, Chairman