

Tax Map/Block/Parcel
No. 27-5-169

Building Permit/Zoning
Certificate No. 91-0077

Case 3506

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

APPLICANT: Dale L. Repp
5907 Keysville Road
Keymar, Maryland 21757

REQUEST: Variances reducing one minimum required side yard of 30 feet to about 15 feet, and reduction of the minimum distance requirement of 200 feet for an agricultural shelter from a residential lot of less than 3 acres to about 60 feet

LOCATION: 5907 Keysville Road in Election District 1

BASES: Article 6, Sections 6.2(a) and 6.7; Article 4, Section 4.12(b); Article 15, Section 15.5; Ordinance 1E. (The Carroll County Zoning Ordinance)

HEARING HELD: February 26, 1991

On February 26, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning the request. During the public hearing, it was established that no farm animals would be kept within the proposed building. Accordingly, it was unnecessary to consider the variance for reduction of the minimum distance requirement of 200 feet as specified within the public hearing notice of the case.

The Board visited the site February 20, 1991, 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 must deny the variance for reduction of the minimum required side yard of 30 feet to about 15 feet.

In February of 1986, the applicant, Mr. Repp, came before the Board in Case 2467. Following the public hearing, the Board authorized variances reducing one minimum side yard of 30 feet to about 15 feet, and the minimum distance requirements of 200 feet to about 60 feet, as existing, for the structure described below as the second building. At that time farm animals were kept in the building. The Board imposed a condition of authorization which reads:

1. Upon the transfer of ownership of either

the one acre home site, or the subject seven acres, to other than members of the applicant's family, the authorization for the use of the building for sheltering farm animals shall cease.

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

FINDINGS OF FACT

The 7.060 acre property is located on the south side of Keysville Road about 1,200 feet west of Francis Scott Key intersection. It adjoins a 1.033 acre lot, fronting on Keysville Road, improved with a dwelling which is the home of the applicant. The site is improved with three existing farm buildings. The first building was constructed in 1980 and the second in 1986. A third building was apparently constructed after the public hearing in Case 2467 in 1986.

As depicted by the plot plan filed with this application, the first two buildings are 16 feet in width by 32 in length. The proposed building is 36 feet in width by 48 feet in length. The third existing building is not shown on the plot plan; however, Mr. Repp described the building as a goat shed.

From the file of Case 2467, the first building was described on Permit Application and Zoning Certificate 80-0733 as a farm building for storage. Apparently, that application superseded Permit Application and Zoning Certificate 78-1989. Although the dimensions shown on Permit Application 80-0733 are 24 feet by 40 feet, the plot plan filed in Case 2467 notes dimensions of 16 feet by 32 feet. Mr. Repp testified that the size of the building was reduced prior to its construction. The Permit Application and Zoning Certificate were approved, applying the setback requirements for an accessory building.

The second building was described as a pole building, 16 feet by 32 feet, for storage on Permit Application and Zoning Certificate 86-4102. Mr. Repp indicated that the building is designed to shelter four farm animals. The Board's authorization of the variances for one minimum required side yard and the minimum distance requirements for a building in which farm animals are sheltered pertain to this building.

The third building may have been constructed without a zoning certificate. It was originally erected to shelter goats. The building was not part of the application in Case 2467, and no variances to the minimum required side yard or the minimum distance requirements have been authorized for it.

Farm animals have not been kept in any of the buildings recently.

Mr. Repp testified that the reasons for the requested variance to the minimum required side yard include keeping the buildings in line, mowing around the buildings, and maintenance purposes. The buildings are now planned to be used for storage of agricultural equipment. In the future, farm animals may be sheltered in the second building.

Mr. Repp presented no testimony regarding characteristics of the property, or practical difficulty and unreasonable hardship in its use, that restrict erection of the building in compliance with the minimum requirements of the zoning ordinance.

APPLICABLE LAW

Articles and sections cited below are of Ordinance 1E.

The site and adjacent properties are zoned "A" Agricultural District as depicted on zoning map 27B. The land use provisions for the district are specified in Article 6. Agriculture is the preferred land use (Section 6.1).

Section 6.2, Principal Permitted Uses, paragraph (a) states:

Agriculture, as defined in Section 20.02, including commercial or non-commercial nurseries and greenhouses; and provided that any greenhouse heating plant or any building or feeding pens in which farm animals are kept, shall comply with the distance requirements specified in Section 4.12.

Section 6.4, Accessory Uses, paragraph (a) reads in relevant part:

Accessory buildings and uses customarily incidental to any principal permitted use or authorized conditional use,....

Section 6.7, Lot Area, Lot Width and Yard Requirements, specifies for other principal permitted or conditional uses minimums of three acres for the lot area, 200 feet for the lot width, 40 feet for the front yard, 30 feet for each side yard, and 50 feet for the rear yard. The location of the proposed building complies with the minimum distance requirements with the exception of the west side yard.

The variance for reduction of the minimum distance requirements specified in Section 4.12 is moot for reason that farm animals will not be kept within the building.

Article 15, Exceptions and Modifications; Sections 15.0, Generally, and 15.5, Variance, read respectively and in relevant part:

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

The Board may authorize, upon appeal, in accordance with Section 17.2 variances from...yard regulations,.... 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 the public health, safety, and general welfare.

Article 20, Section 20.39 defines a variance as:

...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

There is no evidence of practical difficulty and unreasonable hardship in the use of the property that would justify authorization of the requested variance.

Although the Board authorized variances reducing one minimum side yard and the minimum distance requirements in Case 2467 for the second building, it is now evident that the Board erred. However, the Board cannot now reverse itself in Case 2467, and the decision in that case stands as written. In this case, it is evident that the request is based upon Mr. Repp's preference, and that the variance would be solely a matter of convenience. As such, the request is without merit and must be denied.

CONCLUSION

Based on the record of this case, the Board hereby denies the requested variance.

March 11, 1991
Date

John Totura
John Totura, Chairman