

Tax Map/Block/Parcel
No. 56-22-253

Building Permit/Zoning
Certificate No. 92-0681

Case 3699

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Robert J. Wisner
3166 Cardinal Drive
Westminster, Maryland 21157

ATTORNEY: David K. Bowersox, Esquire
Hoffman and Comfort
24 North Court Street
P.O. Box 1200
Westminster, Maryland 21157

REQUEST: A variance reducing the minimum required lot area for a barn in which cattle are kept from 5 acres to 4.0861 acres

LOCATION: 3166 Cardinal Drive in Election District 9; Glenvue Acres subdivision, Section III, lot 57 recorded in Carroll County Plat Records in book 17, page 41

BASES: Article 5, Sections 5.1(a) and 5.5; Article 15, Section 15.5; Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: April 27, 1992

On April 27, 1992, the Board of Zoning Appeals heard testimony and received evidence concerning a variance reducing the minimum required lot area for a barn in which cattle are kept from 5 acres to 4.0861 acres at 3166 Cardinal Drive.

The Board visited the site April 22, 1992.

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 approve the variance, subject to the condition that not more than five cattle shall be kept on the premises at one time.

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

FINDINGS OF FACT

The 4.0861 acre lot is located on the west side of Cardinal Drive about 3,250 feet south of Bluebird Drive intersection in Glenvue Acres subdivision. The property is improved with a

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FINDINGS OF FACT

The 4.0861 acre lot is located on the west side of Cardinal Drive about 3,250 feet south of Bluebird Drive intersection in Glenvue Acres subdivision. The property is improved with a

dwelling, detached garage, and accessory building constructed in 1983 as a barn. Applicant's Exhibit 3 substantiates that Permit Application and Zoning Certificate 83-4457 was filed and issued for a pole barn, 30 feet by 30 feet, and that the Use and Occupancy Permit was issued. The Use and Occupancy Permit, under special conditions of zoning and site plan information, indicates that use of the barn is for steers. The approval date is noted as May 3, 1983. Since then the barn has been used to shelter from 3 to 5 cattle, including brood cows brought to the premises for calving. The value of the barn is now estimated to be \$10,000.00.

The applicant's son, Tom Wisner, is a member of the Future Farmers of America, and participates in 4-H fairs preparing and grooming cattle for showing.

The barn is located in the rear yard of the property, and is not visible from Cardinal Drive for reason that topography of the lot drops substantially from near the rear of the dwelling to the rear property lines. Woods along the northerly side property lines screen the barn from view from the adjoining lot identified as 56 on Applicant's Exhibit 4. Although the adjoining land to the south is planned to be subdivided for residential development, the subdivision plat has not been recorded.

The owner of the land proposed for subdivision testified in opposition to the variance, expressing his interests, and belief that the use would adversely affect property values and the variance would be contrary to the provisions of the zoning ordinance.

Testimony presented in behalf of the request substantiated that other residents within the subdivision have, or in the past have kept, horses and sheep on their properties, and that use of the barn has not adversely affected adjacent residents.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The premises and adjacent properties are zoned "C" Conservation District as depicted on zoning map 56B. The land use provisions for the district are expressed in Article 5. Agriculture is listed as a principal permitted use in Section 5.1(a), provided that barns in which farm animals are kept must comply with the distance requirements specified in Section 4.12. The barn complies with the requirements. Section 5.5, Lot Area, Lot Width and Yard Requirements indicates that the minimum lot area applicable in this case is 5 acres. The area of the lot is slightly more than 4 acres.

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.

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..., lot area,.... 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.

The Board is aware that the State Enabling Act has been amended to read practical difficulty or unreasonable hardship; not practical difficulty and unreasonable hardship as expressed above in Section 15.5. The Board's consideration of this request is in accordance with the amended State Enabling Act.

REASONING

The principal use of this property is residential. The limited use of the barn for sheltering 3 to 5 cattle has not adversely affected the residents of adjacent properties, the values of their properties, or the public interests since its erection in 1983.

Denial of the variance would now severely restrict use of the building, without substantial evidence of beneficial affects to the adjacent residents and properties. In contrast, authorization of the variance is justified in order to preclude practical difficulty or unreasonable hardship that would otherwise occur in use of the property.

CONCLUSION

In accordance with the Findings Of Fact, Applicable Law and Reasoning noted above, the Board hereby authorizes the variance, subject to the condition that not more than five cattle shall be kept on the premises at one time.

May 12, 1992
Date

John Totura
John Totura, Chairman

JDN/bmh/c3699dec
May 11, 1992