

Tax Map/Block/Parcel
No. 59-21-524

Building Permit/Zoning
Certificate No. 92-0775

Case 3704

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANTS: Michael Almony and Pamela Almony
3351 Old Gamber Road
Finksburg, Maryland 21048

ATTORNEY: William R. MacDonald, Esquire
117 East Main Street
Westminster, Maryland 21157

REQUEST: A conditional use for a beauty shop within the basement of the existing dwelling, to be operated solely by a resident; and variances reducing the minimum required: setback of 60 feet from Clover Hill Road, a platted but unconstructed street; lot area of 40,000 square feet; and, the lot width of 150 feet, all as presently existing

LOCATION: 3351 Old Gamber Road in Election District 4; Clover Hill subdivision, lot 10 recorded in Carroll County Plat Records in book 4, page 76

BASIS: Article 5C, Sections 5C.2(h) and 5C.5; Ordinance 1E. (The Carroll County Zoning Ordinance)

HEARINGS HELD: April 29, 1992; **REOPENED:** May 28, 1992

On April 29, 1992, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use request for a beauty shop within the existing dwelling at 3351 Old Gamber Road in Election District 4. During the public hearing, the Board's attention was directed to the fact that the application and public notice were insufficient to consider the conditional use request for reason that the location of the dwelling and the lot did not conform to the minimum requirements expressed in the zoning ordinance. In the interests of fairness to all parties, the Board ordered that the public hearing be reopened, and that the public notice be amended to include variances to the applicable requirements pertaining to the requested beauty shop.

The Board visited the site April 22, 1992, prior to the first public hearing. The Board did not revisit the site.

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

conditional use and variances pertaining thereto and as stated within the notices of the public hearing.

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

FINDINGS OF FACT

The 0.445 of an acre (19,384.2 square feet) lot is located on the southerly side of Old Gamber Road abutting the west side of Clover Hill Road, a platted but unconstructed subdivision street. Lot 10 was created with the recordation of Clover Hill subdivision in the Carroll County Plat Records October 6, 1959, in book 4, page 76 prior to the adoption of the subdivision regulations and the zoning ordinance.

In 1984, a single-family dwelling was constructed on lot 10 for the applicants. The architectural front of the dwelling faces Old Gamber Road, and the driveway entrance connects with Old Gamber Road adjacent to the westerly side property line. From inspection of a plat submitted during the May 28 hearing, Applicants' Exhibit 3, the lot width as measured at the mid-points of the easterly and westerly property lines scales slightly more than 90 feet.

As also depicted on the plat, the dwelling complies with the minimum building lines of 60 feet from Old Gamber Road and 20 feet from Clover Hill Road established by the recorded subdivision plat. However, as scaled on the plat, the dwelling does not comply with the minimum side yard requirement of 25 feet for the beauty shop. This information was not available prior to the submission of Applicants' Exhibit 3 during the reopening of the case on May 28, 1992.

A variance to the side yard requirement was not included in the public notice reopening the public hearing.

Mrs. Almony proposes to establish a beauty shop within a portion of the basement of her home, to operate it by appointment only, and solely by herself. She would accept appointments on Tuesday, Wednesday and Saturday from 10:00 a.m. to 5:00 p.m., and Thursday and Friday from 10:00 am. to 7:00 p.m.

Customer parking and maneuvering spaces are proposed by enlarging the existing parking area, extending it westward and onto lot 9, as depicted by Applicants' Exhibit 3. Lot 9 is owned by Pamela Almony's father-in-law and mother-in-law, Mr. and Mrs. Myron N. Almony. The driveway entrance would also have to be widened to provide for two-way traffic in compliance with the requirements of Section 14.1(b)3 of the zoning ordinance.

The applicants submitted a lease agreement, Applicants' Exhibit 4, to establish their interest in the use of lot 9.

Several residents and owners of adjacent properties opposed the request. Their opposition to the request included the substandard area of the lot and lack of compliance with applicable zoning requirements, vehicular traffic safety at the driveway entrance on Old Gamber Road, adverse affects to the ground water in the area resulting from chemicals used in providing beauty care in the shop, and depreciation of real property values.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The applicants' lot and surrounding properties are zoned "R-40,000" Residence District as portrayed on zoning map 59A. The land use provisions for the district are expressed in Article 5C. Section 5C.1; paragraph (c) lists single family dwellings as a principal permitted use. Section 5C.2, Conditional Uses, (requiring Board authorization), paragraph (h) reads:

Beauty shops, or barber shops provided that they are one-chair operations and that one resident provides all services in connection with the operation. (Added 12/27/82) (Amended 9/23/86)

Section 5C.5, Lot Area, Lot Width and Yard Requirements specifies in relevant part that for permitted uses not specifically listed and for conditional uses the minimum applicable requirements are:

Lot Area - 40,000 square feet
Lot Width - 150 feet
Front Yard - 60 feet
Side Yard - 25 feet
Rear Yard - 75 feet

Article 4, General Provisions; Section 4.8, Buildable lots reads:

Any lot which was a buildable lot under the terms or regulations in effect at the time of the adoption of this ordinance, and which was established or recorded at that time shall be deemed a buildable lot for the erection only of a single-family dwelling, subject to the provisions of Section 15.1.
(Emphasis added)

Article 15, Exceptions and Modifications; Section 15.1 Lot Area Modification, paragraph (b) reads:

In any district where a single-family dwelling is permitted, a dwelling may be erected on any lot or parcel of record, despite the fact that the lot or parcel does not meet the minimum area requirements of this ordinance, provided: (Amended 4/26/78)

1. The lot or parcel (including any yard requirements) was lawfully created in compliance with all zoning and subdivision regulations applicable at the time the lot or parcel was created;
2. Where the lot or parcel was created prior to August 17, 1965, the side yards must be at least ten (10) percent of the width of the lot, but need not exceed the side yard requirements of the district in which the lot is located;
3. All other regulations, including the standards of the State and County Health Departments, are complied with. The Zoning Administrator may deny a permit for the erection of a dwelling on a lot which is substandard in area of yard if, because of extraordinary conditions, construction of a dwelling on the lot would present a danger to health or safety. (Emphasis added)

Article 20, Section 20.09 defines conditional uses as:

Uses which are specified for Board of Appeals approval prior to authorization and which uses, after public hearing, may be approved conditionally or disapproved in accordance with Section 17.2. The term "conditional use" shall constitute the same meaning as "special exception" specified as one of the general powers of the Board of Appeals in accordance with Article 66B of the Annotated Code of Maryland.

Article 17, Board of Appeals; Section 17.7, Limitations, Guides and Standards governs the Board in considering conditional uses requests. However, the provisions will be omitted for brevity.

The Board is also governed by decisions of the courts. In the case of *Schultz v. Pritts*, 291 Md. 1, 22, (1981) the decision reads:

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.)

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 (Amended 2/25/76) 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, lot width, 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 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.

REASONING

Although the applicants' lot qualifies for use for a single-family dwelling, the lot does not comply with the minimum lot area and lot width requirements for a beauty shop in the "R-40,000" Residence District. In addition, the building does not comply with the minimum front setback requirements of 60 feet from Clover Hill Court or the side yard requirement of 25 feet.

In considering the provisions of the zoning ordinance governing variances, the Board finds no evidence of practical difficulty or unreasonable hardship in the use of the property that would justify authorization of the variances. The ordinance provides for the residential use of lots that do not comply with minimum lot area and width requirements, but does not exempt conditional uses from meeting applicable requirements.

Furthermore, the applicants did not include lot 9 as part of the original application, nor did the public notice state that lot 9 was to be considered during the public hearing. Therefore, use of lot 9 can not be considered in this case. However, regardless of the lack of proper notice for consideration of lot 9, the variances are essentially a matter of convenience to the applicants in seeking approval of the conditional use for the beauty shop, which can not justify their authorization.

In considering the conditional use request in light of the standard expressed in the decision of *Schultz v. Pritts*, and the circumstances in this case, including the facts that neither the lot nor the location of the building comply with the minimum requirements, the conditional use must be denied.

CONCLUSION

In accordance with the above findings of fact, applicable law, and reasoning, the Board hereby denies the variances necessary to allow the beauty shop as a conditional use, and the conditional use for the beauty shop.

June 9, 1992
Date

John Totura
John Totura, Chairman

JDN/bdc/C3704DEC
June 8, 1992